
Existing Openreach FTTP offers with geographic pricing

Non-confidential version – redacted for publication [X]

STATEMENT:

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1. Overview

In the [wholesale fixed telecoms market review statement](#) (WFTMR Statement), we decided to prohibit geographic pricing for some services to address our concern that Openreach could use targeted discounts to undermine new alternative network build. Openreach can apply to us for consent to use different geographic prices where this would otherwise be prohibited.

At the time of the WFTMR Statement, Openreach had three live offers which result in differences in rental pricing on a geographic basis, which would in principle be prohibited by the geographic discrimination prohibition. In order to avoid disruption to the market, we temporarily exempted these offers from the geographic prohibition until 1 August 2021 while we consulted on whether to consent.

In the consultation [existing Openreach offers with geographic prices](#) (March 2021 Consultation) we assessed these offers and set out our provisional view that they do not raise concerns.¹

Having considered responses, in this statement we confirm our decisions to grant consent in relation to these three offers. This permits the existing geographic pricing to continue until the current offer periods end.

¹ On 28 May 2021 Openreach notified a change to one of these existing offers (FTTP Only Offer v2). In light of this change [we invited stakeholders to make additional representations](#) should they wish. No additional representations were received.

2. Introduction

- 2.1 In the WFTMR Statement we decided to prohibit geographic pricing for some services to address our concern that Openreach could use targeted discounts to undermine new alternative network build (we refer to this as the geographic discrimination prohibition).² Specifically, we prohibited geographic discounts on rental charges as follows:
- All virtual unbundled local access (VULA)³ – in each of Area 2⁴ and Area 3⁵ of the wholesale local access (WLA) market.
 - Ethernet⁶ and WDM⁷ services – in Area 2 of the leased lines access (LL Access) market.
- 2.2 Openreach can apply to us for consent to use different geographic prices where this would otherwise be prohibited.
- 2.3 At the time of the WFTMR Statement (18 March 2021) Openreach had three live offers which result in differences in rental pricing of FTTP⁸ VULA services on a geographic basis, and which would be prohibited by the geographic discrimination prohibition, unless we provide consent:⁹
- Volume commitment special offer on GEA-FTTC¹⁰, G.fast¹¹, and GEA-FTTP (GEA¹² Volume Offer)
 - GEA-FTTP Only Offer v2 (FTTP only Offer v2)
 - GEA-FTTP Local Marketing Pilot offer (Local Marketing Offer)
- 2.4 In order to avoid disruption to the market, we temporarily exempted these offers from the geographic prohibition until 1 August 2021. The March 2021 Consultation then assessed whether each offer raised competition concerns in relation to geographic pricing for FTTP

² Our competition concerns and reasoning are set out in Volume 3 Section 7 of the WFTMR Statement. The geographic discrimination prohibition is set out in SMP Condition 4.

³ VULA is a regulatory obligation requiring BT to provide access to its FTTC and FTTP network deployments which allows telecoms providers to connect at a local aggregation point and are provided a virtual connection from this point to the customer premises.

⁴ Area 2 represents areas (postcode sectors) in which there is, or there is likely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks.

⁵ Area 3 represents areas (postcode sectors) in which there is not, and there is unlikely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks.

⁶ Ethernet is a packet-based technology originally developed for use in Local Area Networks (LANs) but now also widely used in telecoms providers' networks for the transmission of data services.

⁷ WDM (wavelength division multiplexing) is an optical frequency division multiplexing transmission technology that enables multiple high capacity circuits, to share an optical fibre pair by modulating each on a different optical wavelength.

⁸ FTTP (fibre-to-the-premises) is an access network structure in which the optical fibre network runs from the local exchange to the end-user's house or business premises. The optical fibre may be point-to-point (there is one dedicated fibre connection for each home) or may use a shared infrastructure.

⁹ Openreach publishes a standard 'list' price for its FTTP access services. In addition, Openreach has special offers which provide different FTTP pricing when access seekers meet certain conditions.

¹⁰ FTTC (fibre-to-the-cabinet) is an access network structure in which the optical fibre extends from the exchange to the street cabinet. The street cabinet is usually located only a few hundred metres from the subscriber's premises. The remaining part of the access network from the cabinet to the customer is usually copper wire but could use another technology, such as wireless.

¹¹ GEA over Fibre-to-the-Distribution-point uses a fibre connection between the serving exchange and the distribution point, with a copper connection between the distribution point and the premise. It provides higher broadband speeds than FTTC.

¹² GEA (Generic Ethernet Access) is Openreach's wholesale service providing telecoms providers with access to its FTTC and FTTP networks to supply higher speed broadband services. The GEA service meets BT's obligation to provide VULA.

rentals and provisionally concluded that they did not. We therefore proposed to grant a consent in relation to these specific offers, permitting the existing geographic pricing to continue until the end of each offer period.

- 2.5 In this Statement we consider stakeholder responses to the March 2021 Consultation and set out our decisions.

Scope of this assessment

- 2.6 Our assessment in this statement focuses solely on the geographic rental pricing element of these offers which would be prohibited unless we consent.¹³
- 2.7 GOS Consulting,¹⁴ Common Wholesale Platform (CWP) and Virgin Media said that we should have considered whether other commercial terms within the offers raise competition concerns.¹⁵
- 2.8 In addition to the prohibition on geographic discounts, in the WFTMR Statement we imposed a 90-day notification requirement for any new commercial terms that Openreach proposes where the price or other contractual conditions are conditional on the volume and/or range of services, which applies for all WLA and LL Access markets.¹⁶ This is to allow us to consider, and if necessary intervene, including through our direction making powers, to prevent such terms before they are introduced. Such terms are not *de facto* prohibited and do not require consent, thus were not considered in the March 2021 Consultation. In any event, these offers pre-date the WFTMR statement and therefore, the 90-day notification requirement did not apply. If stakeholders have concerns about other commercial terms in Openreach's existing offers (which have been in the market for some time) they can raise these separately by writing to us.
- 2.9 On 1 July 2021 Openreach gave 90 days' notification for a new FTTP offer. We have separately published a call for inputs setting out our process for considering this offer and inviting stakeholders to raise any initial concerns with us.
- 2.10 The consents we are granting apply for the offers as currently specified. If Openreach wants to change or extend its current offers it should request a new consent.

¹³ Connection and ancillary services are not subject to a prohibition on geographic pricing so we have not considered them.

¹⁴ GOS Consulting submitted a response on behalf of INCA, Zzoomm, County Broadband, Full Fibre, Truespeed, WightFibre and Airband.

¹⁵ CWP, page 6; GOS Consulting, paragraph 12; Virgin Media page 1; in their responses to the March 2021 Consultation.

¹⁶ WFTMR Statement, Volume 3 paragraphs 7.5-7.6. The 90-day notification requirement is set out in SMP Condition 8.6.

3. Our assessment

Overarching comments

- 3.1 Some stakeholders made overarching comments on our assessment and proposals. We consider these points first before turning to detailed comments in respect of each offer.

Stakeholder responses

- 3.2 Name withheld [§<], Vodafone, toob, Openreach, TalkTalk and CityFibre agreed with our proposal to grant consent for geographic pricing within the offers in the March 2021 Consultation.¹⁷ Vodafone noted that prohibiting the offers would harm retailers and consumers.¹⁸ TalkTalk said there is no evidence that the offers have damaged the scope for alternative network rollout.¹⁹ It considered the existing discounts are poorly targeted at alternative networks, and are therefore unlikely to have either an anticompetitive object or an anticompetitive effect.²⁰ CityFibre considered that any harmful effects from the offers would already have happened, so there is little to be gained from prohibiting them now.²¹
- 3.3 toob and CityFibre said we should be careful about setting precedents (i.e. sending a signal that future geographic pricing would be permitted), and toob considered that regional pricing by Openreach could undermine alternative network business plans.²²
- 3.4 GOS Consulting, CWP and Virgin Media disagreed with our proposals. These stakeholders argued that the assessment was not detailed enough.²³ They also made comments in relation to the assessment framework for geographic pricing set out in the WFTMR Statement.²⁴
- 3.5 GOS Consulting and CWP considered that we did not follow the framework set out in the WFTMR Statement and our analysis was not sufficiently transparent.²⁵ CWP argued that the offers incentivise ISPs to remain with Openreach.²⁶
- 3.6 GOS Consulting, CWP, Virgin Media and CityFibre commented that we placed too much weight on Openreach's stated intention of the offers (derived from its internal papers).²⁷ CityFibre commented that a fuller assessment by Ofcom is needed for future offers.²⁸ It also argued that any future assessment should focus on the effects on competition.

¹⁷ Openreach, paragraph 2; toob, page 1; Name withheld [§<], page1; CityFibre, paragraph 1.3; TalkTalk, paragraph 1.2; in their responses to the March 2021 Consultation.

¹⁸ Vodafone response to the March 2021 Consultation, paragraphs 6-8.

¹⁹ TalkTalk response to the March 2021 Consultation, paragraph 1.2.

²⁰ TalkTalk response to the March 2021 Consultation, paragraph 1.3.

²¹ CityFibre response to the March 2021 Consultation, paragraph 1.3i.

²² CityFibre, paragraph 1.3ii; toob, page 1; in their responses to the March 2021 Consultation.

²³ Virgin Media response to the March 2021 Consultation, page 1.

²⁴ CWP page 5; GOS Consulting paragraphs 61-63; Virgin Media page 1; in their responses to the March 2021 Consultation.

²⁵ GOS Consulting, paragraphs 3-6; CWP, page 6; in their responses to the March 2021 Consultation.

²⁶ CWP response to the March 2021 Consultation, page 7.

²⁷ CityFibre, paragraph 1.3iv; CWP, page 6; Virgin Media, page 1; GOS Consulting paragraph 3; in their responses to the March 2021 Consultation.

²⁸ CityFibre response to the March 2021 Consultation, paragraph 1.3v.

- 3.7 GOS Consulting questioned whether the discounted prices under the offers would be below the cost base for an alternative operator and, even if they were not, argued that they would reduce revenues for alternative networks which would harm investment incentives.²⁹ It suggested an alternative framework to assess Openreach geographic pricing. It said we should first consider whether an area is contestable i.e. whether Openreach faces actual or potential competition from entrants.³⁰ If an area is contestable then no geographic discounts should be allowed and Openreach's prices should be above the costs of an efficient entrant.³¹
- 3.8 GOS Consulting made a further submission, which reiterated the points made in the first response and stated that Openreach offers create incentives for ISPs to remain with Openreach and therefore potentially foreclose the wholesale market for alternative networks in the geographic areas where they apply.³² GOS Consulting said that it was not reasonable to expect alternative networks to present analysis of specific harm that is likely to arise from the existing offers. It elaborated that it was not possible to submit a detailed impact assessment as the impact may not have happened yet. It also considered that the 'burden of proof' for granting an exemption lay with Ofcom and Openreach.
- 3.9 GOS Consulting noted that we defined several product and geographic markets in the WFTMR. It considered that we should perform a separate assessment for each market.³³
- 3.10 CityFibre argued that we should consider the aggregate impact of the various offers. It considered that the cumulative impact across all Openreach offers would impact an ISP's incentives to use an alternative network. It said we should consider whether the offers can be used in a complementary way that creates stronger incentives for an ISP to remain with Openreach.³⁴

Our analysis and conclusions

Our approach

- 3.11 The assessment framework set out in the WFTMR Statement applies to any new geographic pricing that Openreach proposes. Under that framework we said we would consider:
- any objective justification provided by Openreach for the differential pricing; and
 - whether it is consistent with our overarching policy objectives (including our strategy to promote network competition).³⁵
- 3.12 For offers already in place at the time of the WFTMR Statement we followed a somewhat different process. We did not consider that asking Openreach to objectively justify the offers was appropriate in this case as the offers were already in place and they were

²⁹ GOS Consulting response to the March 2021 Consultation, paragraph 133.

³⁰ GOS Consulting response to the March 2021 Consultation, paragraph 91.

³¹ GOS Consulting response to the March 2021 Consultation, paragraphs 91 and 103.

³² GOS Consulting second response to the March 2021 Consultation, pages 1-2

³³ GOS Consulting response to the March 2021 Consultation, paragraphs 10-11.

³⁴ CityFibre Annex, response to the March 2021 Consultation, paragraphs 2.57-2.60.

³⁵ WFTMR Statement, Volume 3 paragraph 7.129.

introduced at a time when our geographic pricing regulation did not apply to these offers. Instead, we looked at the reasons for the offers set out in its contemporaneous internal papers. The overall objective of the assessment was to consider whether the geographic pricing could deter new network build. We explain below why we do not consider that the geographic pricing in the existing offers is a concern.

- 3.13 GOS Consulting's comments on an alternative framework are relevant to the design of the appropriate remedy to deal with our concerns.³⁶ These matters were consulted on in the January 2020 Consultation and decided in the WFTMR Statement.
- 3.14 We consider that the level of analysis and detail in the March 2021 Consultation was appropriate given the context and circumstances. We will consider future geographic pricing proposals on a case-by-case basis and recognise that a more detailed analysis may be appropriate.
- 3.15 We agree with GOS Consulting that the burden of proof for granting a consent lies with Ofcom. For the reasons set out below, we are satisfied we have discharged that burden in relation to our decision to grant consent for the three relevant offers.

Separate assessment for each product and geographic market

- 3.16 Our analysis considers the impact of the offer on new network build irrespective of whether it applies in Area 2 or Area 3, and we do not consider a separate assessment for each geographic market is necessary. The offers we consider here relate to FTTP only so we do not consider that an assessment in relation to other product markets (e.g. leased lines) would be relevant.

Aggregate impact of offers

- 3.17 While theoretically we might need to consider the aggregate impacts of multiple offers, we have not seen evidence to suggest that the aggregate impact of the geographic elements of the offers we consider in this statement raises competition concerns.

GEA Volume Offer

Offer details

- 3.18 Under this offer, access seekers can benefit from discounts to FTTC and FTTP prices if they meet certain targets on the volume and bandwidth mix of services purchased and forecasting accuracy.³⁷
- 3.19 This offer was introduced in 2018 and runs until September 2023. It was primarily designed to increase take-up of superfast broadband (i.e. to encourage migration to FTTC). However,

³⁶ In relation to GOS Consulting's comments about the level of prices, we discussed in the January 2020 Consultation that a price floor remedy could potentially allay this concern providing that the floor was above average total costs. However, we recognised there were problems in establishing the appropriate level of a price floor and concluded that a prohibition on geographic discounts was simpler and more proportionate means of addressing our competition concern. See paragraphs A15.80-A15.88 of the [January 2020 Consultation](#).

³⁷ See [Openreach Volume commitment special offer on GEA-FTTC, G.fast and GEA-FTTP slide deck](#) [accessed 23 June 2021].

some premises do not have access to FTTC services, and FTTP was included within the offer for these specific premises to ensure access seekers could use FTTP where FTTC was not available.³⁸

- 3.20 Specifically, the discounted offer price is only available where FTTP is provided at the following premises in Great Britain:
- BDUK premises – where the FTTP was provided under the UK Government funded BDUK (broadband development UK) programme aimed to improve broadband speeds in rural areas of the UK.
 - New sites e.g. at new housing developments.³⁹
 - Premises that are part of the legacy FTTP footprint built prior to July 2018.
- 3.21 This offer results in geographic pricing for FTTP because only the types of premises described above can potentially qualify. Our consideration of the offer only concerns the geographic pricing aspect for FTTP. It does not cover any other aspects of the offer.

Consultation proposals

- 3.22 We noted that the GEA Volume Offer primarily concerns FTTC services. However, Openreach has included FTTP in the GEA Volume Offer for the relatively small number of premises that are unlikely to have access to FTTC. Geographic pricing for FTTP services is therefore a by-product of the GEA Volume Offer and not its focus.
- 3.23 We considered whether the discounted FTTP prices that arise as a by-product of the GEA volume offer may nevertheless have an impact in undermining alternative network build. We considered each of: BDUK premises, new sites, and premises that are part of the legacy FTTP footprint separately. Our provisional view was that the GEA Volume Offer did not raise competition concerns in relation to geographic pricing for each of these categories.
- 3.24 Below we discuss stakeholder comments and our conclusions for each type of premises.

BDUK premises

Stakeholder responses

- 3.25 CityFibre noted that build plans evolve over time. It said that while alternative networks may not plan to build in areas where Openreach has been awarded BDUK contracts immediately, this may change in future. Therefore, it cautioned we should be wary of granting a consent without looking in more detail how it might impact alternative networks

³⁸ Meeting between [redacted] and others (Openreach) and [redacted] and others (Ofcom), titled *Ofcom - Openreach on geo pricing*, dated 18 November 2020.

³⁹ Openreach defines new sites as, “where Openreach either directly or through any BT Group Company holds an agreement (existing before or after the Effective Date) for installation of GEA-FTTP with a developer that is (either directly or through any affiliate, sub-contractor, agent or other representative) undertaking demolition, new build, conversion, and/or refurbishment works at a residential site.” Openreach response dated 13 January 2021 to the s.135 notice dated 6 January 2021, Q1c.

over time.⁴⁰ Virgin Media also considered that alternative networks could look to expand in BDUK areas in future and PIA⁴¹ might make this more attractive.⁴²

3.26 On the other hand, TalkTalk considered it would be “financially irrational” for alternative networks to overbuild Openreach, and this was particularly the case in BDUK areas which have high network build costs.⁴³

3.27 CityFibre queried whether Openreach can offer GEA discounts where it overbuilds in a BDUK area (i.e. where the BDUK contract has been awarded to another provider, but Openreach subsequently overbuilds).⁴⁴

Our analysis and conclusions

3.28 BDUK provides UK Government funding to deliver broadband networks with the aim of improving speeds in eligible rural areas. BDUK has its own rules and processes to allocate funds. Each local authority runs a competitive procurement process which aims to ensure value for money. Network operators can bid for BDUK contracts in specific areas, and the contract is ultimately awarded by the local authority.

3.29 CityFibre noted that any award must follow an Open Market Review which has established that no operator has an intention to build commercially in the intervention area for three years.⁴⁵ For BDUK contracts awarded recently or in the future, by the time the three-year period has elapsed the GEA volume offer will have finished. We therefore consider it unlikely that the GEA volume offer discounts for BDUK premises will deter prospective overbuild by alternative networks.

3.30 PIA might reduce build costs, but we do not think this would make a material difference such that BDUK areas would become commercially attractive to rival network builders, especially once Openreach has already built in the area which is likely to reduce the anticipated penetration (and financial returns) of an alternative network.

3.31 We remain of the view that geographic pricing by Openreach for BDUK premises is unlikely to undermine alternative network build in these areas.

3.32 In relation to the query from CityFibre regarding whether Openreach can offer GEA discounts when it overbuilds a BDUK area, Openreach only offers GEA discounts for FTTP at BDUK premises where it holds the BDUK contract.

⁴⁰ CityFibre Annex, response to the March 2021 Consultation, paragraphs 2.14-15.

⁴¹ Physical Infrastructure access (PIA) is a remedy requiring BT to provide telecoms providers with access to its passive access network infrastructure (i.e. ducts and poles).

⁴² Virgin Media response to the March 2021 Consultation, paragraph 1.

⁴³ TalkTalk response to the March 2021 Consultation, paragraphs 2.2-2.3.

⁴⁴ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.13.

⁴⁵ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.14.

New sites

Stakeholder responses

- 3.33 TalkTalk considered that new build sites are likely to be geographically diffused and the GEA volume offer has no realistic prospect of deterring entry in an area, even if alternative networks were foreclosed from serving those premises.⁴⁶
- 3.34 Virgin Media and CityFibre considered that GEA discounts for new sites could undermine alternative network rollout. Virgin Media said new sites could present an opportunity for alternative networks to establish a high penetration foothold with the potential to support rollout in neighbouring areas.⁴⁷ CityFibre said that some alternative network business models are based on rolling out to new sites.⁴⁸ It also noted 150-200k new dwellings are built each year so this was an important opportunity for alternative networks.⁴⁹
- 3.35 Gigaclear noted that it sometimes processes ‘change requests’ within its BDUK contracts to connect new build sites within a BDUK intervention area. It stated that Openreach also builds FTTP to these new sites, and then extends the FTTP footprint to nearby properties within the intervention area. It considered that this reduces take-up and damages the commercial viability of serving the new sites and the wider BDUK intervention area.⁵⁰

Our analysis and conclusions

- 3.36 As set out in the March 2021 Consultation, the locations of new sites are determined by land developers i.e. the geographic location is not actively controlled by Openreach. In addition, the discounted GEA offer pricing is available to all new sites, providing the access seeker meets the qualifying criteria. As discussed at Volume 2 Section 7 of the WFTMR Statement, we expect network builders that are likely to offer material and sustainable competition to Openreach will be building over a wide footprint, whereas the GEA discounts would apply at small and geographically dispersed new build sites. For these reasons we consider it unlikely that Openreach could use GEA Volume Offer discounts on new sites to target geographic pricing to undermine new network build.
- 3.37 We recognise that it could be a deterrent if an alternative network was primarily focussed on new build sites. However, we are not aware of an alternative operator primarily focused on this business strategy, as CityFibre suggested (nor did any stakeholders indicate this was their strategy in response to the March 2021 Consultation).
- 3.38 Openreach may build to new sites that are close to BDUK areas, as noted by Gigaclear. We recognise that the number of FTTP network operators available in an area is likely to impact on take-up and could affect build decisions. We consider this issue is primarily about overbuild rather than geographic discounts in the GEA Volume Offer. If Openreach does extend its FTTP footprint beyond the new sites into the wider BDUK area (where

⁴⁶ TalkTalk response to the March 2021 Consultation, paragraph 2.4.

⁴⁷ Virgin Media response to the March 2021 Consultation, paragraph 1.

⁴⁸ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.18.

⁴⁹ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.19.

⁵⁰ Gigaclear response to the March 2021 Consultation, pages 1-2.

Openreach does not hold the BDUK contract), it does not offer GEA discounts as noted in paragraph 3.32 above.

- 3.39 We remain of the view that the GEA Volume Offer does not raise competition concerns in relation to geographic pricing at new sites.

Legacy FTTP footprint

Stakeholder responses

- 3.40 CityFibre noted that the number of legacy premises to which the GEA Volume Offer applies was redacted in the March 2021 Consultation. It considered that, even if a rental discount applies to a small number of premises, it can impact an alternative network's business plan. For example, it noted that a 1 million premises rollout plan might comprise 10 towns with 100k premises each. It regarded that each town would be material.⁵¹
- 3.41 TalkTalk considered that the legacy FTTP footprint was *de minimis* in scale.⁵²

Our analysis and conclusions

- 3.42 The legacy FTTP footprint (i.e. that built prior to July 2018, as noted above) is very small covering only 58k⁵³ premises and will not increase further. This is considerably smaller than the 100k premises example which CityFibre regarded might be material to an alternative network. Given the number of premises involved we do not consider that this is a material consideration and remain of the view that it does not raise competition concerns.

FTTP Only Offer v2

Offer details

- 3.43 This offer is available across Openreach's Fibre First towns and cities and market towns and villages FTTP build programmes (Fibre First FTTP footprint)⁵⁴ and provides discounts on FTTP rentals and connections.⁵⁵ At the time of the March 2021 Consultation access seekers could opt to use the offer in **either** the primary offer area (the Fibre First FTTP footprint ready for sale up to 31 March 2020) **or** the primary and secondary offer areas combined (the Fibre First FTTP footprint available/planned to be ready for sale up to 31 August 2021).

⁵¹ CityFibre Annex, response to the March 2021 Consultation, paragraphs 2.21-2.22.

⁵² TalkTalk response to the March 2021 Consultation, paragraph 2.4.

⁵³ Openreach response dated 13 January 2021 to the s.135 notice dated 6 January 2021, Q2.

⁵⁴ The Fibre First towns and cities programme covers most of Openreach's commercial FTTP build across cities, market towns and villages since July 2018 (excluding BDUK and new sites). Source: [Openreach's website](#) [accessed 23 June 2021].

⁵⁵ See Openreach website for offer information;

<https://www.openreach.co.uk/orpg/home/updates/briefings/ultrafastfibreaccessbriefings/ultrafastfibreaccessbriefingarticles/nga202020.do>,

<https://www.openreach.co.uk/orpg/home/updates/briefings/ultrafastfibreaccessbriefings/ultrafastfibreaccessbriefingarticles/nga202720.do> and

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=8qWfStiIOBLuP31%2Fmhiy639eRXZECbKJOu%2BoYd6xMM%2BTOX3NJZRuttlA3uml2vze6YShZ82RgLOGLSH2e9%2Bmw%3D%3D> [accessed 23 June 2021]. Openreach has made some changes to the offer to minimise the impact on access seekers due to the lockdown and resulting changes to Openreach's FTTP provisioning policy – see

<https://www.openreach.co.uk/cpportal/updates/briefings/ultrafast/nga200121> [accessed 23 June 2021].

On 28 May 2021 Openreach notified an expansion to the footprint of the secondary offer area to include FTTP ready for sale up to 30 September 2021 (i.e. an additional month of rollout).⁵⁶ The access seeker needs to have a GEA Cablelink for FTTP enabled at each location where it wants to use the offer.⁵⁷

- 3.44 The offer results in geographic pricing because it is only available in Openreach's Fibre First FTTP footprint. It is not available for FTTP build that occurred prior to July 2018, new sites or BDUK premises.⁵⁸
- 3.45 To qualify for discounts, access seekers need to meet minimum requirements in terms of the proportion of new orders within the offer area that are FTTP. To be included in the offer orders need to be placed by 30 September 2022.
- 3.46 Openreach's internal papers indicate that the rationale for the offer was to increase FTTP take-up, test ADSL/VDSL⁵⁹ stop sell and underpin the FTTP business case.⁶⁰

Consultation proposals

- 3.47 Our provisional view was that the offer does not represent targeted geographic pricing aimed at undermining alternative network build. We did not consider that the expansion of the footprint to include one additional month of rollout (notified by Openreach on 28 May 2021) changed our consultation proposals.

Stakeholder responses

- 3.48 TalkTalk agreed that the offer does not constitute targeted discounting.⁶¹
- 3.49 GOS Consulting and CityFibre noted that the offer is available on a widespread basis and could impact an ISP's choice of network provider.⁶² GOS Consulting suggested that the offer sends a signal that Openreach will set discounted prices across all its FTTP deployment which will have a chilling effect on competitor buildout.
- 3.50 GOS Consulting, CWP and CityFibre noted that in our March 2021 Consultation we said the rental discounts applied until 30 September 2022. They pointed out that after this date, rental prices do not revert to list price but are subject to a maximum CPI increase up to 31 March 2025.⁶³ They considered that the longer a discount is in place, the larger the potential impact on alternative networks. GOS Consulting considered that this was a very

⁵⁶ See [Openreach website](#) [accessed 23 June 2021].

⁵⁷ Source: Openreach's FTTP offer v2 contract. Openreach's response dated 21 October 2020 to Q2 of the s.135 notice dated 7 October 2020, Q2.

⁵⁸ Openreach distinguishes between FTTP built to premises as part of the Fibre First towns and cities programme, and FTTP built prior to July 2018 or as part of BDUK or New Sites programmes.

⁵⁹ ADSL and VDSL are part of a family of technologies generically referred to as DSL (Digital Subscriber Line) or xDSL that enable the transmission of broadband signals over ordinary copper telephone lines.

⁶⁰ Openreach internal governance papers titled Fibre Cities Offer – FTTP only on new connections (2/12/19) and FTTP-Only offer extension (27/7/2020) submitted to the Openreach Commercial Policy and Pricing Board. Openreach's response dated 10 September 2020 to the s.135 notice dated 20 August 2020, Q4b.

⁶¹ TalkTalk response to the March 2021 Consultation, paragraph 3.2.

⁶² CityFibre Annex, paragraphs 2.36-37; GOS Consulting, paragraph 122; in their responses to the March 2021 Consultation.

⁶³ CityFibre Annex, paragraph 2.38; CWP, page 8; in their responses to the March 2021 Consultation.

significant point.⁶⁴ GOS Consulting argued that if the purpose of the offer was to assist early migration to FTTP, it would not need to run until 2025.⁶⁵

- 3.51 We did not receive any stakeholder responses regarding the expansion of the footprint to include one additional month of rollout.

Our analysis and conclusions

- 3.52 As set out in Volume 3 Section 7 of the WFTMR Statement, our concern is that Openreach could use targeted geographic pricing to deter alternative networks rolling out new fibre networks.
- 3.53 This offer is available on a relatively widespread basis – it covers all Openreach’s commercial FTTP build since July 2018 (excluding new sites and BDUK build) – therefore we do not consider that it represents targeted use of geographic pricing. At the end of December 2020, it was possible for access seekers to use the offer at [~~3~~]⁶⁶ premises, compared to a total FTTP footprint of c.4m.⁶⁷ We understand that the objective of the offer is to encourage migration to FTTP by incentivising access seekers to place a high proportion of new orders as FTTP rather than FTTC/copper.
- 3.54 We note that the offer includes rental discounts over the period from October 2022 to March 2025. However, this does not change our assessment of the offer for the reasons set out above (which are not dependant on the length of the rental discount).
- 3.55 We remain of the view that this offer does not raise competition concerns in relation to geographic pricing.

Local Marketing Offer

Offer details

- 3.56 Under this offer access seekers can select up to four conurbations (subject to a maximum of 500,000 premises in total) within the Openreach Fibre First FTTP footprint where they can benefit from discounted prices for FTTP.⁶⁸ To qualify they need to meet certain criteria including:

- Undertaking local marketing

⁶⁴ GOS Consulting response to the March 2021 Consultation, paragraphs 16-18.

⁶⁵ GOS Consulting response to the March 2021 Consultation, paragraph 123.

⁶⁶ Openreach response dated 20 January 2021 to the s.135 notice dated 6 January 2021, Q7.

⁶⁷ [Openreach third quarter results 2020/21](#) [accessed 23 June 2021].

⁶⁸ See Openreach website for offer information;

<https://www.openreach.co.uk/orpg/home/updates/briefings/ultrafastfibreaccessbriefings/ultrafastfibreaccessbriefingarticles/nga202619.do>,

<https://www.openreach.co.uk/orpg/home/updates/briefings/ultrafastfibreaccessbriefings/ultrafastfibreaccessbriefingarticles/nga202820.do> and

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=BtqL1POvtzK746SiYwlfQIZB0zrSNIOAojVC0vZRA9q%2FCUHfmZJHKkF036xG69e6YShZ82RgLOGLsH2e9%2Bmw%3D%3D> [accessed 23 June 2021]

Openreach has made some changes to the offer to minimise the impact on access seekers due to the lockdown and resulting changes to Openreach’s FTTP provisioning policy – see

<https://www.openreach.co.uk/cpportal/updates/briefings/ultrafast/nga200121> [accessed 23 June 2021].

- Achieving minimum average revenue per user of £16.28/month across the offer term
- 3.57 The Local Marketing Offer provides discounted FTTP rentals in specific towns/cities and therefore results in geographic price variations.
- 3.58 Openreach's internal papers indicate that the rationale for the offer was to increase FTTP take-up, test the impact of local marketing and underpin the FTTP business case.⁶⁹
- 3.59 This offer was originally introduced in November 2019 and participants needed to sign up by 30 June 2020. Participation was reopened from 1 February 2021 to 31 March 2021.

Consultation proposals

- 3.60 Our provisional view was that the Local Marketing Offer was unlikely to raise competition concerns in relation to geographic pricing of rental services.

Stakeholder responses

- 3.61 [REDACTED]. Vodafone was unaware of any harm occurring to retail competition or the development of the wholesale market due to the offer.⁷⁰
- 3.62 TalkTalk considered that there was little scope for the current offer to lead to exclusionary effects given that overlap between Openreach and alternative networks FTTP build was currently limited. However, it cautioned that a more widespread version of the offer had greater potential for anticompetitive effects as, over time, there would be increasing overlap between Openreach and alternative networks. It also noted the potential for a discriminatory impact in downstream markets because it could be easier for ISPs with a physical shop network (e.g. BT Consumer using the EE shop network) to fulfil the local marketing targets.⁷¹
- 3.63 CityFibre [REDACTED].⁷² [REDACTED].
- 3.64 CityFibre noted that the offer is only available in the Fibre First footprint which is likely to represent areas where build is more commercially attractive, thus likely to be a focus of alternative networks.⁷³ Virgin Media considered that Openreach's Fibre First rollout could be designed to deter alternative network build and the discount exacerbates this effect.⁷⁴ GOS Consulting argued that the offer would discourage ISPs from switching to an alternative network in areas where there is competitive fibre deployment.⁷⁵ CityFibre considered that 500k premises could represent 3-4 cities which could be material to alternative network plans.⁷⁶

⁶⁹ Openreach internal governance paper titled Localised marketing pilot offer for FTTP in Fibre Cities (27/10/2019) submitted to the Openreach Commercial Policy and Pricing Board. Openreach's response dated 1 November 2019 to the s.135 notice dated 18 October 2019, Q1.

⁷⁰ Vodafone response to the March 2021 Consultation, paragraph 14.

⁷¹ TalkTalk response to the March 2021 Consultation, paragraphs 4.4-4.8.

⁷² CityFibre response to the March 2021 Consultation, paragraph 4.3.

⁷³ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.46.

⁷⁴ Virgin Media, response to the March 2021 Consultation, paragraph 9.

⁷⁵ GOS Consulting response to the March 2021 Consultation, paragraph 135.

⁷⁶ CityFibre Annex, response to the March 2021 Consultation, paragraph 2.48.

- 3.65 GOS Consulting and CWP noted (as above) that the rental discounts last beyond September 2022 – and are potentially subject to a maximum CPI increase up to 30 September 2026.⁷⁷

Our analysis and conclusions

- 3.66 We expect Openreach to roll out widely (especially in areas which are more commercially attractive) and we have not seen any evidence of Openreach strategically targeting areas where competitors have built or plan to build.
- 3.67 We recognise (as suggested by CityFibre) that 500k premises could be material to an alternative network build plan. However, this is the **maximum** scope of the offer per ISP, and there is no requirement on an ISP to use the Local Marketing Offer at any location. We consider that ISPs are more likely to opt for the Local Marketing Offer in locations where they are not considering using an alternative operator. As noted by TalkTalk, there is currently limited overlap between Openreach and alternative networks.
- 3.68 [REDACTED].⁷⁸ [REDACTED].
- 3.69 We do not want to prevent Openreach from using innovative offers to promote or trial FTTP, providing this is not done in a targeted way which could undermine new network build. Under the Local Marketing Offer it is the access seeker, not Openreach, which selects the towns/cities where the offer applies. Even if Openreach's intention was to use the offer to deter alternative network build, it would likely be a very imprecise mechanism, given the access seeker is selecting the locations. We do not think it would be an effective way for Openreach to target geographic discounts at specific areas where rivals are building or planning to build.
- 3.70 We note that the rental discounts may last until 2026, however, this does not change our assessment of the offer for the reasons set out above (which are not dependant on the length of the rental discount).
- 3.71 Given the nature and scale of the offer we remain of the view it is unlikely to have a material impact on alternative network rollout.

Legal Tests

- 3.72 We have considered our decision to grant the consent against the tests set out in section 49(2) of the Communications Act 2003 (the "Act") and we consider that it is:
- a) objectively justifiable, as we have explained why we consider that the existing FTTP offers referred to above do not target and would not undermine FTTP roll out by competitors;
 - b) not unduly discriminatory because BT is the only provider which is subject to a prohibition on geographic pricing for FTTP services;
 - c) proportionate, in that it only exempts the specifically identified existing FTTP offers and for the offer period as stated on Openreach's website as at 15 March 2021 or in the

⁷⁷ CWP, page 8; GOS Consulting, paragraph 133; in their responses to the March 2021 Consultation.

⁷⁸ CityFibre response dated 18 August 2020 to the s.135 notice dated 21 July 2020, Q4, pages 17 and 24.

case of the GEA-FTTP Only Offer v2 extension, for the period as notified to Ofcom on 28 May 2021; and

- d) transparent, in that it is clear that Ofcom intends to allow the Existing FTTP Offers to continue until the expiry date as set out on Openreach's website as at 15 March 2021 or in the case of the GEA-FTTP Only Offer v2 extension, for the period as notified to Ofcom on 28 May 2021.

Conclusion

- 3.73 We have decided that none of the offers discussed above raises significant concerns due to geographic pricing and we have granted consent for each of the named offers. Our consent can be found at Annex 1.

A1. The Consent

Consent under sections 49 of the Communications Act 2003 and SMP services condition 4.1 set out at Volume 7 of the WFTMR Statement

Background

- A1.1 On 18 March 2021, Ofcom published a statement entitled “Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26” (“**WFTMR Statement**”) as modified by the modification published on 31 March 2021. At Volume 7 of the WFTMR Statement, Ofcom imposed no undue discrimination obligations on BT under SMP Conditions 4.1 to 4.8 in certain markets in which BT was found to have significant market power under that statement, including in WLA Areas 2 and 3.
- A1.2 SMP Condition 4.1 at Volume 7 of the WFTMR Statement provides that except as Ofcom may from time to time otherwise consent in writing, BT must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access. SMP Condition 4.5, which applies to the WLA Areas 2 and 3, provides that BT may be deemed to have shown undue discrimination if it charges different prices in different geographic areas for rental services used to provide network access to VULA that is provided over FTTP, or for other rental services where those services are being provided in conjunction with such a VULA service for the purposes of providing electronic communications services to end users.
- A1.3 In the course of receiving and analysing responses to the WFTMR consultation, certain existing FTTP offers were identified as meeting the then proposed prohibition on geographic pricing described in paragraph A1.2 above in relation to FTTP, namely the offers entitled “GEA-FTTP Local Marketing Pilot Offer”, “GEA-FTTP Only Offer v 2”, and “Volume commitment special offer on GEA-FTTC, G.fast and GEA-FTTP”, as defined by BT on its website as at 15 March 2021 (“Existing FTTP Offers”).
- A1.4 In response to the January 2020 Consultation and the July 2020 Consultation, Openreach asked Ofcom to give consent to the Existing FTTP Offers if it were to decide to impose the no undue discrimination obligations described above.⁷⁹
- A1.5 On 18 March 2021, Ofcom published a notification under s.49A of the Act of the proposed consent with accompanying explanatory text in the consultation entitled “Existing Openreach FTTP offers with geographic pricing” and invited representations by 29 April 2021. Ofcom sent a copy of the notification and the accompanying consultation document to the Secretary of State in accordance with section 49C of the Act.

⁷⁹ [Openreach](#) response to the January 2020 WFTMR Consultation, 4.54; [Openreach](#) response to the July 2020 WFTMR Consultation, 2.46.

- A1.6 On 28 May 2021, Openreach asked Ofcom to include within the scope of any consent, the extension to the GEA-FTTP Only Offer v 2 notified to Ofcom on 28 May 2021 as described in the accompanying explanatory statement.

Decision to grant consent

- A1.7 SMP Conditions 4.1 and 4.5 of Volume 7 of the WFTMR Statement together provide that geographic pricing for FTTP services in the WLA market (Areas 2 and 3) is prohibited except insofar as Ofcom may consent otherwise in writing.
- A1.8 Therefore, Ofcom has decided to consent to BT's Existing FTTP Offers, including the GEA-FTTP v 2 extension notified on 28 May 2021 as set out in paragraphs A1.3 and A1.6 above, pursuant to SMP Condition 4.1 of Volume 7 of the WFTMR Statement. This consent shall take effect on the day it is published.
- A1.9 The effect of and reasons for the decision are set out in the accompanying explanatory statement.

Ofcom's duties and legal tests

- A1.10 Ofcom considers that the consent referred to in paragraph A1.8 complies with the requirements of section 49(2) of the Communications Act 2003 (the "Act") for the reasons set out in the accompanying explanatory statement.
- A1.11 In granting the consent referred to in paragraph A1.8, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act.
- A1.12 Ofcom has also had regard to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019 in making the proposals referred to in this notification. Ofcom has also considered every representation in response to the proposed consent notification and has fulfilled its duty under section 49A(6) of the Act.
- A1.13 Copies of this consent and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 49C of the Act.

Interpretation

- A1.14 Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the notification and SMP services conditions set out in Volume 7 of the WFTMR Statement. Otherwise any word or expression shall have the same meaning as it has in the Act.

A handwritten signature in blue ink, appearing to read 'T. Clarkson'.

Statement: Existing Openreach FTTP offers with geographic pricing

David Clarkson

Director of Telecoms Competition, Ofcom

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

2 July 2021