

**Response to Ofcom consultation:**

**Existing Openreach FTTP offers with geographic Pricing**

**CWPP** Common  
Wholesale  
Platform

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## Executive Summary

The Common Wholesale Platform<sup>1</sup> (CWP) plans to become a direct competitor to Openreach and will seek to attract large and small ISPs to purchase wholesale access to a (potentially large) number of altnet networks across the UK.

The three offers being reviewed in this consultation all have elements that tie ISPs to the Openreach platform and strongly incentivises them to remain there. The large FTTC discounts incentivises ISPs to keep their customer's on FTTC until Openreach deploys FTTP and creates a substantial barrier to switching for the ISPs.

Although the two FTTP-specific offers expire in September 2022, the discounts actually survive the offers and run to 2025 and 2026. This will effectively tie ISPs to the Openreach platform in those locations for the duration of the WFTMR<sup>2</sup> remedies.

Openreach's incumbency benefits are substantial and clearly recognised by Ofcom in the WFTMR Final Statement. The impact of these offers further strengthens those benefits and make it extremely difficult for any competitive network provider to attract the business of ISPs that participate in them.

Ofcom's consultation and analysis can be described as, at best, cursory, if not negligent. We urge Ofcom to withdraw its proposal to grant consent to the geographic pricing elements of the three offers and, instead, issue a full and transparent consultation covering both geographic pricing and other commercial terms. For that, we recommend that Ofcom use the assessment framework proposed in the INCA response to this consultation.

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<sup>1</sup> The CWP was founded by County Broadband, WightFibre, Airband, and ITS. It plans to offer streamlined commercial access to a (potentially large) number of competitive fibre networks, removing the costs for ISPs to interface with many individual network providers.

<sup>2</sup> The wholesale fixed telecoms market review, concluded in March 2021.

## Introduction

The Common Wholesale Platform (CWP) is pleased to submit its response to Ofcom consultation on existing Openreach FTTP offers with geographic pricing.

The Common Wholesale Platform (CWP) is a consortium of independent network operators (altnets) developing a wholesale platform for open access. It will allow scale retailers to supply their services over independent networks. Led by 4 altnets (Airband, County Broadband, ITS Technology Group and Wight Fibre), the platform will be open to all altnets.

The founders of CWP are members of INCA and fully support the response submitted by INCA and a group of altnets. **This response is supplementary to that response and highlights the issues related specifically to the CWP.**

## The CWP

The purpose of the CWP is to present an attractive commercial wholesale proposition to large national ISPs by aggregating a number of smaller altnet networks and offering a streamlined interface to overcome issues ISPs may have with consuming wholesale access to a large number of smaller networks.

Although the CWP has been created by a small number of altnets and will launch in early 2022. A large number of altnets have expressed interest in using the platform and we expect to present approx. 1.5m premises passed to large scale ISPs within 12 months of launch.

The CWP is planning to become a direct competitor to Openreach and seeks to sign up as many ISPs as possible to ensure that end customers in locations served by participating altnets will have a full choice of retail services and retail services providers.

## Ofcom's analysis and proposals

In its very short consultation document, Ofcom proposes that all of Openreach's current three FTTP offers with geographic pricing should receive consent from Ofcom to continue until their intended expiry dates. The three offers are:<sup>3</sup>

- The GEA Volume Offer
- The FTTP Only Offer V2, and
- The Local Marketing Offer

Discounts under these schemes will be available until November 2023, September 2025, and March 2026 respectively.

### Ofcom's analysis

In the recently concluded wholesale fixed telecoms market review (WFTMR), Ofcom set out its conclusions for why it is important to prevent Openreach from behaving in a manner that has the potential effect of deterring investment in competitive fibre infrastructure. It identifies two kinds of pricing and commercial terms that could have such an effect:

- geographic pricing, and
- Other commercial terms (OCTs)

#### The WFTMR

Ofcom imposes a ban on geographic pricing in the broadband market in both Areas 2 and 3 and in Area 2 (with the possibility of Openreach asking Ofcom for consent in exceptional circumstances) for the leased lines market. For OCTs a 90-day pre-notification requirement is imposed.

Despite arguing that an *ex-ante* competition framework is needed to create transparency and certainty for investors in competitive fibre networks (and for Openreach itself), Ofcom, however, did not provide a clear and transparent assessment framework for either geographic pricing or OCTs.

For geographic pricing, Ofcom says it will consider the following, should Openreach request Ofcom's consent to use geographic pricing:

- *"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)."*<sup>4</sup>

For OCTs Ofcom has set the following high-level assessment criteria:

1. *"the impact on nascent network competitors is unlikely to be material; and*
2. *the arrangements will generate clear and demonstrable benefits, such as:*
  - a. *the arrangements are essential to Openreach's business case for fibre roll-out; or*
  - b. *the arrangements are necessary to offer more efficient prices that would deliver benefits for consumers."*<sup>5</sup>

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<sup>3</sup> See Annex 1 for a summary overview of the three offers.

<sup>4</sup> WFTMR V3 paragraph 7.129.

<sup>5</sup> WFTMR V3 paragraph 7.154.

### This consultation

In this consultation, Ofcom addresses only geographic pricing, ignoring clear and significant OCT issues. We do not believe that the fact that there is no outright ban on OCTs means that Ofcom does not have a duty to assess whether existing offers are compliant with the new rules. We therefore include in this document comments on both geographic pricing and OCTs.

Ofcom's analysis of the three offers is set out in less than five pages within its report. It includes no transparent analysis and effectively appears to rely on Openreach statements as to its intent for creating the three offers. Whilst Ofcom has said it would assess whether Openreach can objectively justify geographic pricing, it also says that it would assess whether giving consent to the geographic pricing supports Ofcom's overarching objective of encouraging investment in competing fibre networks.

We do not believe that Ofcom has met its stated obligations. Quoting Openreach statements does not amount to assessing whether Openreach has objectively justified the offers. As for whether the offers are consistent with Ofcom's overarching objectives, this is hardly assessed at all.

We are extremely concerned and disappointed that Ofcom's process of assessment is cursory and inadequate. Ofcom does not provide transparency and certainty, but rather concern and increased regulatory risk that it will not implement its own decisions and policies.

## Our assessment of the three offers

The INCA and altnet response present transparent assessment frameworks for the implementation of the geographic pricing consent process and the prenotification requirements for OCTs and performs a high-level assessment of the three offers using those frameworks. We do not propose to repeat that analysis here, instead we focus on the potential impact of the three offers on the CWP.

The three offers all incentivise ISPs to remain with Openreach.

### The GEA volume offer

The GEA volume offer provides very substantial discounts on FTTC, which is a strong disincentive from moving to altnet FTTP networks. The GEA volume offer runs till November 2023, a very important period for altnets in general to gain customers and for the CWP in particular to attract ISPs to its services.

This risk is acknowledged by Ofcom in the WFTMR:

*“Openreach could design commercial terms which mean access seekers face a significantly higher average charge for services purchased from Openreach if they don’t purchase all their services from Openreach.”<sup>6</sup>*

Ofcom further states:

*“If Openreach is able to deprive new networks of demand, they will fail.”<sup>7</sup>*

and

*“New network builders that operate a wholesale model rely on selling ultrafast services to access seekers. If Openreach uses commercial terms to induce loyalty from access seekers, meaning they purchase all or most of their ultrafast requirements from Openreach, then it will deprive these network operators of demand. Ultimately this could undermine alternative operators’ FTTP investment plans.”<sup>8</sup>*

However, despite having specifically identified this as a potential effect of Openreach’s pricing and OCTs, Ofcom’s analysis does not even consider the impact of the FTTC discounts on ISP incentives to stay with Openreach or move to competitive providers.

The FTTP Only Offer and the Local Marketing Offer both provide strong incentives for ISPs to migrate their customer from Openreach FTTC services to Openreach fibre services, significantly increasing the already substantial barriers to switching which Ofcom has indeed acknowledged in the WFTMR:

*“Openreach has a relationship with all the main access seekers and it is in a strong position to migrate customers to its FTTP network as this is built”<sup>9</sup>*

*“It is difficult to switch wholesale provider [...] migration is complex and time consuming.”<sup>10</sup>*

In light of these clear acknowledgements of the harm that could be caused to investment in competing networks from Openreach engaging in exactly the kind of pricing and OCTs as those in the

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<sup>6</sup> WFTMR V3 paragraph 7.30.

<sup>7</sup> WFTMR V3 paragraph 7.50.

<sup>8</sup> WFTMR V3 paragraph 7.49.

<sup>9</sup> WFTMR V3 paragraph 7.32.

<sup>10</sup> WFTMR V3 paragraph 7.48.

three offers being assessed, it is striking and almost unbelievable that Ofcom has not assessed those offers for such effects and is proposing to grant its consent to them being continued.

#### The duration of the FTTP Only Offer and the Local Marketing Offer

Although the two offers are set to expire in September 2022, it is conspicuous that the pricing does not revert to standard list prices after that. Instead, the prices increase by CPI on an annual basis until 2025 and 2026. This means that the ISPs will continue to enjoy very significant discounts throughout the period covered by the WFTMR.<sup>11</sup>

It is our understanding that Ofcom was unaware of the extended duration of these discounts when the consultation was issued. We sincerely hope that Ofcom will take this new information as a further reason for why it needs to retract its proposal to provide consent to the three offers and present a more complete and comprehensive analysis.

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<sup>11</sup> This information was communicated by email from Keith Hatfield (Ofcom) to GOS Consulting on 29<sup>th</sup> April, in response to a query as to whether Ofcom were aware that the discounts would continue after the formal offer expiry date. Initially Ofcom were not aware and write to Openreach for clarification.

## Conclusion

Ofcom should issue a new consultation that presents transparent analyses of the three offers, covering both geographic pricing and the OCTs. We recommend that Ofcom apply the assessment frameworks proposed in the INCA response. Doing so, would meet Ofcom's commitment to deliver a transparent and predictable regulatory environment, allowing both Openreach and its competitors to anticipate what types of pricing and commercial terms would be acceptable and which would not.

## Annex 1 – Summary of Openreach Offers

### **GEA volume offer**

Key features of the offer are:

Geographic scope	For FTTP/G.fast the geographic scope of the offer is limited to the legacy footprint prior to July 2018 plus BDUK locations and new sites, but FTTC discounts are available in all locations.
Offer expiry	September 2023
Rental discount expiry	November 2023
Rental discount levels	0-25% depending on volume tier
Volume criteria	Targets defined in 5 tiers; all of CP's fibre volumes are taken into account (not just those in the offer footprint) Volumes a CP acquires from an alternative network provider in the Openreach footprint are also taken into account.
Service mix criteria	A percentage of fibre base is required to be 80Mbps+, and a percentage FTTP/G.fast
Revenue criteria	None
Forecasting accuracy criteria	Discounts are reduced if forecasts not achieved.
Marketing criteria	None

### **FTTP only offer v2**

Key features of the offer are:

Geographic scope	FTTP Fibre First footprint ready for service by August 2021
Offer expiry	August 2021
Rental discount expiry	Discounts defined until September 2022, <u>but then endure until September 2025, subject to annual CPI increases</u>
Rental discount levels	7% – 23% depending on speed.
Volume criteria	None
Service mix criteria	Target for FTTP new provides as % of total new provides
Revenue criteria	None
Forecasting accuracy criteria	None
Marketing criteria	None

**Local marketing offer**

Key features of the offer are:

Geographic scope	CP selects up to 4 conurbations, max 500k premises in total, within Fibre First footprint.
Offer expiry	March 2021
Rental discount expiry	Discounts defined until September 2022, <u>but then endure until March 2026, subject to annual CPI increases</u>
Rental discount levels	7% – 23% depending on speed.
Volume criteria	None
Service mix criteria	None
Revenue criteria	Minimum ARPU over offer term
Forecasting accuracy criteria	None
Marketing criteria	CP must demonstrate local marketing activities in the selected areas.