

WFTMR Team
Ofcom
Riverside House
2a Southwark Bridge Rd
London
SE1 9HA

29 April 2021

Cc: keith.hatfield@ofcom.org.uk

[✂]

Gigaclear response: Existing Openreach FTTP offers with geographic pricing

Gigaclear welcomes the opportunity to respond to Ofcom's consultation concerning existing BT Openreach FTTP geographic pricing. In our response to the WFTMR, we encouraged Ofcom to consult on all such BT Openreach requests for geographic price differentiation. We then fully support Ofcom's decision to openly consult on the continuation of existing geographic pricing measures and ask that this process is also used should BT Openreach propose new geographic pricing measures in the future.

Regarding the consultation itself, we ask that Ofcom consider the impact of discounted BT Openreach services where the premises in question are within the state aid intervention area of an operator other than BT Openreach, and ask that such discounting be prohibited given the potential detriment this has to competition and to the economic viability of the state aid intervention more broadly.

In considering the GEA volume offer, Ofcom notes that 'discounted FTTP prices that arise as a by-product of the GEA volume offer may nevertheless have an impact in undermining alternative network build in the areas where the discounted FTTP prices apply due to the geographic pricing element.' In considering this potential impact for BDUK relevant premises, Ofcom concludes that as 'BDUK areas are unlikely to attract commercial overbuild by others ... [its] provisional view is that geographic pricing by Openreach for BDUK premises is unlikely to undermine alternative network build in these areas.'

Further, in consideration of new build sites, Ofcom concludes that 'Openreach is unlikely to be able to use the GEA volume offer discounts on new sites to target geographic pricing where an alternative network is building new network' because 'the discounted GEA offer pricing is available to all new sites, providing the access seeker meets the qualifying criteria'.

Our concern with these arguments is that they overlook consideration of where a BDUK intervention may be being delivered by an operator other than BT Openreach. This is a material concern; Gigaclear currently operates multiple BDUK state aid contracts across a network that currently passes over 170,000 premises across rural central and southern England. Further, [✂] Openreach has both incentive and capability to selectively build within our intervention areas, in order to deter our continued investment and undermine the wider state aid intervention in that area. In regards to geographic discounts, we are then concerned that these could be used to this effect.

Specifically, a common 'change request' in our current 'Superfast' BDUK contracts is for new build sites to be included in the intervention area. This is something we welcome; the cost of connecting new build sites is considerably lower when done during the appropriate build phase, in comparison to this being done retrospectively. [✂] land an FTTP cabinet to serve these properties, and then

extend the FTTP footprint out to nearby properties within the wider intervention area. This has the effect of reducing the level of take up we had modelled for both the new build homes identified in the 'change request', and the nearby properties that we have connected/are in the process of connecting as part of the wider intervention.¹ In effect, the new build sites can then be 'leveraged' to damage the commercial viability of the wider intervention, beyond that of just the presence of the new build homes. Discounting these connections (and further enabling their take up) then further undermines the business case of the competitor operator's state aid programme.

In the WFTMR, Ofcom acknowledges the potential for counter-veiling buyer power to emerge in parts of Area 3 where state aid is utilised by a competitor operator to BT Openreach², and Ofcom highlights the potential detriment to competition where BT Openreach builds within another operator's intervention area.³

With that in mind and in light of the evidence we submitted to the WFTMR, we consider BT Openreach's ability to offer geographically specific pricing in a competitor operator's state aid intervention area to be a material threat to counter-veiling buyer power emerging in these areas. We then ask that such discounting is prohibited in these geographies.

¹ [REDACTED]

² WFTMR Vol 2. Para 8.115

³ WFTMR Vol 3. Para 2.70