

### Existing Openreach FTTP offers with geographic pricing

We are grateful that Ofcom is consulting on this important issue. We briefly highlight below a number of general points and then comment on each discount scheme in turn:

- Ofcom should set out and apply a framework for assessing existing and future geographically targeted pricing schemes. Such an approach would provide further guidance to Openreach on the factors and features of a discount scheme that are likely to be problematic. In turn, it would also enable competitors and investors to comment on whether this framework is likely to be effective in identifying aspects of schemes that may undermine alternative network investment. Ofcom's analysis and commentary in this consultation do not provide a detailed enough assessment framework to give adequate guidance to either Openreach or rival investors.
- Openreach's Intention in initiating a discount scheme (as revealed by its internal documents) is important in the evaluation of a scheme, but Ofcom should pay equal attention to its consequences for competition. The mechanics within a scheme to "*underpin the FTTP business case*" may still be problematic for altnet investment, even if that is not a stated or intended objective.
- Ofcom notes it has not assessed whether concerns exist in relation to other commercial terms,<sup>1</sup> and instead this assessment has focused on the targeted geographic pricing features of the existing schemes. It is not clear why these other commercial terms are beyond the scope of Ofcom's assessment as this consultation provides the opportunity to consider these features, in line with Ofcom's intended approach for future schemes.<sup>2</sup>
- This is important because geographic discounts will likely be nested in broader schemes; other elements of a scheme can have adverse effects on competition. A green light for geographic discounting should not imply that the overarching scheme lacks problems;
- Ofcom correctly highlights the problems with volume-based discounting ("*[w]e have identified loyalty discounts or pricing contingent on large volumes as a particular concern*")<sup>3</sup>; we also submit that 'mix-based' discounting can have loyalty-inducing properties.

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<sup>1</sup> The consultation, paragraph 2.6

<sup>2</sup> WFTMR volume 3, paragraph 7.152-3

<sup>3</sup> WFTMR volume 3 paragraph 7.5

## GEA Volume Offer

1. Ofcom assesses that the geographic discounting of FTTP in this scheme is not a concern because “[g]eographic pricing for FTTP services is...a by-product of the offer and not the focus”. This puts too much onus on intention; Ofcom should also examine the potential consequences for future competition:
  - Altnet build could move into BDUK areas in the future. Those that have built (and established a local brand) in certain geographic areas may look to proximate BDUK areas for further expansion. Public funding may have reduced the cost to build using PIA, which may make these BDUK locations incrementally more attractive to build to if chambers have been replaced, or blockages cleared/broken duct segments replaced/pole capacity expanded.
  - At new development sites, altnets would have the benefit of not facing an incumbency disadvantage or customer inertia (home moving is a common prompt for customers to switch supplier). As a result, take-up at these locations could be disproportionately high. Permitting Openreach CPs to undercut altnet prices with targeted geographic discounts would make it harder for altnets to establish a foothold and instead result in each new household being likely to stay within the Openreach ecosystem. The fact that Openreach does not control the geography of the discounts should not be the only germane factor for Ofcom; the segment or class of build is also relevant. Altnets could identify new development sites as an opportunity to establish a high-penetration foothold to support its rollout in the neighbouring population clusters. Denting this penetration through discounting could undermine the build economics in that area and targeting discounts in this way enables Openreach to limit the cost of achieving this outcome.
2. [X].

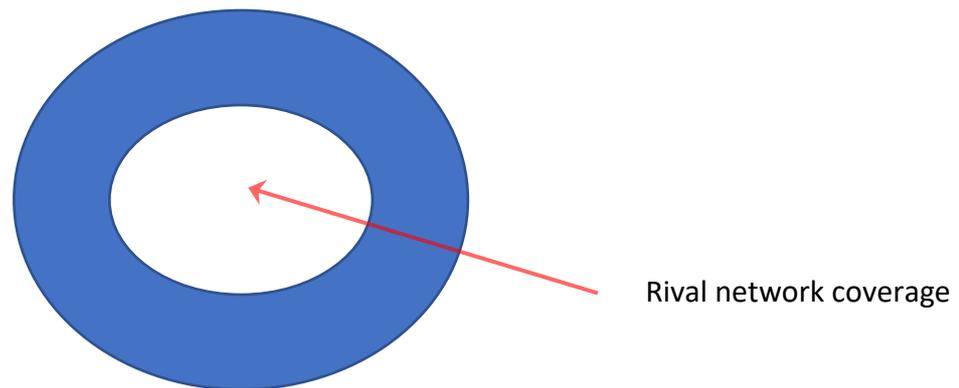
## FTTP only offer v2

3. We believe discount schemes of this nature (i.e., those based on mix), depending on their construction, can have adverse effects on competition.
4. In the WFTMR <sup>4</sup> Ofcom says:
  - “... Openreach could design commercial terms which undermine alternative network operator rollout. For example, commercial arrangements such as loyalty discounts or pricing contingent on large volume commitments from wholesale customers, which penalise access seekers for moving volumes from Openreach to an alternative network operator.”

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<sup>4</sup> WFTMR Volume 3, paragraphs 7.18 and 7.30

- *“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.”*
5. [X].
  6. FTTP discount schemes that depend on the mix connections across geographies not covered by Openreach’s infrastructure competitors can have loyalty inducing properties if they encourage Openreach’s wholesale partners to remain loyal because achieving the threshold mix is more likely if they do.
  7. This could occur if the coverage area of the rival overlaps with households who have a higher proclivity to shift to fibre. To achieve the overall requirement Openreach’s wholesale partners may therefore not be inclined to shift business to a rival network provider. The scheme may resemble an inducement to encourage migration to FTTP, but its effect is to bind its wholesale partners to Openreach.
  8. For example, in the diagram below we show a simplified example: Openreach has FTTP available in the blue and white areas; its rival only has network in the latter. If the scheme has a mix threshold of 80% upgrade to FTTP to qualify for a discount, but the two areas have different types of customers so that the upgrade probability is nearly 100% in the white area, but only 60% in the blue; Openreach’s wholesale customers are unlikely to want to switch providers for fear of forgoing the discount available in the blue area (provided it is of a sufficient depth). Alternatively, the rival network provider will have to deepen its discount in the white area to compensate for the discount forgone.



### Local Marketing Offer

9. Ofcom again puts a lot of store on intent: *“We understand that the objective of the offer is to encourage access seekers to undertake local marketing initiatives. We understand that it is a pilot scheme, designed to inform Openreach’s evolving thinking of how best to encourage future take up of FTTP.”* It should give equal consideration to effect: the fibre first towns could have been designed to anticipate and deter rival build; the discount scheme exacerbates this effect.

**Virgin Media**  
**April 2021**