



# Telecoms Access Review:

Approach to the copper retirement second threshold calculation

Virgin Media O2 response

May 2026

**Non-Confidential Response**

# Executive summary

VMO2 supports the need for a clear and practicable mechanism to allow for exclusions when assessing the second threshold for copper retirement. We also recognise the rationale for introducing a start date for the application of any such mechanism.

However, we do not agree with Ofcom's proposed adoption of a Fixed Percentage Approach. In our view, the Defined Exclusions Approach remains the more appropriate mechanism, as it better targets the underlying rationale for exclusions (i.e. genuinely exceptional or high-cost premises), avoids the risks associated with blunt, broad-brush thresholds, and provides a clearer basis for monitoring potential impacts on competition and consumers.

Ofcom's evaluation of the DEA appears to be founded on an assumption that such an approach would necessarily set a very high bar for exclusions. This is not inherent to the design of the DEA and only reflects the views of some stakeholders during TAR. Instead, a DEA could be calibrated by Ofcom in a proportionate and practicable manner.

Ofcom's provisional preference for the FPA also appears to place significant weight on administrative simplicity and the burden of implementing a more granular or premises-based approach. While practicability is clearly relevant, in VMO2's view it should be weighed against the commensurate risks of harm that can arise from an overly broad or blunt approach, including risks to end-users (particularly vulnerable customers) and to the emergence of material and sustainable competition. A mechanistic preference for administrative simplicity is not, of itself, a sufficient basis for selecting an approach if it could materially increase the likelihood or scale of those harms.

In particular, the key trade-off is not between "simplicity" and "complexity" in the abstract, but between (i) a framework that remains anchored to the underlying rationale for exclusions and supports more targeted monitoring of outcomes, and (ii) a broad approximation that may be simpler to apply but risks materially weaker targeting, leading to real potential for consumer detriment. In our view, this trade-off points towards a DEA (or, at minimum, a materially more granular FPA) as the more appropriate and proportionate approach.

Even if Ofcom were to proceed with an FPA, we consider that a uniform national threshold of 10% is not appropriate. A more granular approach (for example, at exchange level, informed by Openreach's commercial build plans and subject to appropriate safeguards) would better reflect underlying conditions and mitigate the risks of distortion by limiting (but not eradicating) the risk of estimation error.

Finally, while we support the inclusion of a start date in principle, we consider that the proposed date of 1 April 2029 may not strike the appropriate balance between supporting migration and protecting both consumers and emerging network competition, particularly in the context of anticipated market developments over the review period. In our view Ofcom should consider a fuller assessment of how an appropriate start date might be defined.

# 1. Introduction

1. Virgin Media O2 (“**VMO2**”) welcomes the opportunity to respond to Ofcom’s consultation<sup>1</sup> on its proposed approach to the treatment of exclusions for the purposes of the second threshold in the Openreach copper retirement framework under the Telecoms Access Review (“**TAR**”) 2026–31 (“**Consultation**”).
2. VMO2 supports Ofcom’s overarching objective of facilitating the transition from legacy copper services to gigabit-capable networks, and recognises the merits of retaining the three-stage framework established in the Wholesale Fixed Telecoms Market Review (“**WFTMR**”) and continued in the TAR. In particular, we recognise the practical need for a mechanism that allows for exclusions to be made when assessing whether the second threshold has been met, without requiring Openreach to achieve 100% FTTP coverage in all exchange areas.
3. However, we do not consider that the Fixed Percentage Approach (“**FPA**”) proposed by Ofcom represents the most appropriate or proportionate mechanism for identifying such exclusions. In our view, a Defined Exclusions Approach (“**DEA**”) is better aligned with Ofcom’s stated objectives and provides a more robust and targeted framework.
4. Even if Ofcom were minded to proceed with a fixed percentage mechanism, we have significant concerns with the design of the proposed FPA, in particular the use of a uniform national threshold and the interaction of this approach with the proposed timing of its application.

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<sup>1</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-2-6-weeks/consultation-approach-to-the-copper-retirement-second-threshold-calculation/main-documents/consultation-approach-to-the-copper-retirement-second-threshold-calculation.pdf?v=413640>

## 2. Approach selection and design

### Ofcom's proposed approach second threshold exclusions

5. The second threshold represents a key point in the copper retirement framework, at which Charge Controls on copper-based services can be removed, allowing Openreach greater flexibility to raise prices on copper-based services and thereby encourage migration to fibre-based services where FTTP is available.
6. VMO2 agrees that an exclusions mechanism is necessary to ensure that this threshold remains achievable in practice, given that there will inevitably be a residual set of premises where deployment is not feasible or proportionate within normal commercial parameters.
7. In the Consultation Ofcom considers the merits of DEA or FPA methods, alongside assessing the design options of an FPA before arriving at its proposal for an FPA uniformly set at 90%. Below we set out of views on this assessment and proposed approach.

### The DEA is the more appropriate mechanism

8. In our view, the DEA provides the most appropriate framework for identifying exclusions to the second threshold.
9. By its design, DEA maintains a direct link between the underlying rationale for exclusions (premises where there is objective evidence of difficulty or costly to serve) and which premises can ultimately be excluded. This is in contrast to FPA, where there is no direct connection between the mechanism for exclusions and which premises ought to be excluded. Given the intended purpose of providing for an exclusion mechanism, we believe there is significant merit in maintaining this connection between rationale and outcome.
10. Ofcom's assessment of the DEA appears to place significant weight on stakeholders' views that such an approach would set a very high bar for exclusions, based on responses to TAR.<sup>2</sup> However, this presumed outcome (or even perhaps just preference) expressed by various stakeholders is not an inherent feature of the DEA itself.

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<sup>2</sup> Consultation, §3.72

11. Ofcom's treatment of the DEA therefore seems to beg the question. By internalising the view expressed by some stakeholders, Ofcom's assessment of the DEA's merits takes a "high bar" outcome as granted, including in its assessment of Openreach's ability to trigger the second threshold, its impact on Openreach's investment case, and the administrative burden of implementation. We do not consider that outcome is a necessary or valid assumption on which to base the assessment of the DEA. In principle, the calibration of any DEA would ultimately be determined by Ofcom, and it would be open to Ofcom to design a DEA that is proportionate and practicable. The option appraisal should therefore focus on which mechanism offers the soundest structural link between the rationale for exclusions and their implementation, and which mechanism best enables transparent monitoring and accountability over time. On that basis, the DEA remains workable and strictly preferable, in our view.

## Limitations of FPA

12. While we recognise that a fixed percentage approach may offer a degree of simplicity, it introduces a number of material drawbacks.
13. Most notably, a uniform percentage applied across all exchanges is inherently a broad-brush measure that cannot reflect asymmetries in deployment conditions, competitive dynamics, or the incidence of genuinely high-cost or inaccessible premises that reasonably ought to be excluded. As a result, a uniform FPA risks being overly permissive in some areas, enabling earlier or broader exposure to copper price increases than is warranted, while not necessarily reflecting underlying conditions in reality.
14. This lack of granularity also limits Ofcom's ability to monitor and assess whether the mechanism is operating as intended, particularly in relation to potential impacts on vulnerable consumers and network competition. If Ofcom considers that adequate monitoring would in any event require granular data and ongoing analysis to detect emerging harms, it would be preferable to incorporate that analysis into the design of the exclusions methodology ex ante, rather than adopt a broad-brush design that is not informed by the same evidence base.
15. In VMO2's view, some of the principal concerns about risks associated with FPA are not symmetrical. There is a risk that a broad-brush, uniform allowance results in copper price deregulation being triggered in exchanges where Openreach's underlying need for exclusions is materially lower than the fixed percentage. This is particularly relevant because the second threshold is intended to function as an incentive mechanism: once

charge controls are lifted, the commercial imperative on wholesale customers and end-users to avoid higher copper input costs may intensify migration behaviour in ways that are not neutral for competition.

16. A uniform percentage also weakens Ofcom's ability to identify where the incidence of risk is most acute. If the mechanism is not anchored to premises-level evidence, it becomes harder to distinguish outcomes that reflect genuine deployment constraints from outcomes that reflect the permissiveness of the approximation. That, in turn, reduces the ability to monitor whether the policy is operating as intended, and whether any emerging harms to competition or consumer outcomes are concentrated in particular geographies or customer cohorts.
17. Consumers would be harmed if they were exposed to price increases solely due to the application of an arbitrary percentage cut-off, when in reality, a more refined approach would show that such price increases were not justified. Given Ofcom's primary duty, we believe this risk needs to be properly assessed for the FPA.

#### If adopted, FPA should not be uniformly designed

18. If Ofcom nonetheless concludes that a FPA is preferable, we consider that the design of this mechanism should be materially refined.
19. In particular, the percentage should not be set on a uniform national basis. Instead, it would be more appropriate to derive thresholds at a more granular level (for example, at exchange level), informed as far as possible by available data on Openreach's commercial rollout plans and expected coverage, to minimise incremental burden on Openreach and to best align with its pre-existing commercial view of which premises it assesses to be outside its rational build plans.
20. Ofcom indicates that assigning different fixed percentages at a more granular level could introduce complexity and would need to take account of changes in Openreach's build plans over time. We recognise those considerations, but in our view the effort involved should not be treated as disproportionate when set against the scale of the policy effects at stake, including the potential for competitive and consumer harms if the uniform approach results in premature or overly broad copper price deregulation in exchanges where the underlying need for exclusions is low. To the extent that there are changes to Openreach's view of its build plans, the onus would be on Openreach to justify why its plans have changed and the evidence or analysis it has drawn on.

21. In practice, Ofcom already receives detailed coverage and planned build information, and Openreach will maintain assumptions and criteria that underpinned those plans any subsequent changes. Furthermore, granular coverage and build information is already produced and analysed by Openreach and others for Government in relation to Project Gigabit schemes, and Openreach needs to provide granular objective justifications regarding its USO obligations.
22. Moreover, the fact that build plans may evolve over time is not a reason to prefer a uniform national approximation. Rather, it points to the need for clear governance around plan revisions. A more granular FPA could be overseen by Ofcom in a way that requires Openreach to demonstrate objective justification for material deviations from baseline assumptions, thereby limiting any incentive to “game” the process through strategically changing its planned coverage. This would preserve a closer link between the fixed percentage applied and the underlying deployment realities, while remaining less burdensome than a fully premises-level designation process if Ofcom maintains that it is unable to define a workable DEA.

### Impact on network competition

23. Ofcom recognises that the second threshold, and the associated ability for Openreach to increase copper-based prices, may have implications for the development of network competition. VMO2 considers this risk is particularly relevant under the proposed FPA, as broader and earlier exposure to copper price deregulation may strengthen incentives for wholesale customers to prioritise rapid migration within the Openreach network.
24. This incentive could have the unintended effect of dampening the development of material and sustainable network competition, especially during a period in which consolidation and new wholesale arrangements are still evolving.
25. The scale of potential exposure also matters. Ofcom’s own analysis indicates that a material proportion of exchanges, in the range of 40-60%, could meet a 90% coverage threshold by the proposed start date, which implies that the FPA could enable copper price deregulation to become relevant across a large set of exchange areas during the review period. VMO2 considers it likely that this set of exchanges will be skewed towards areas where material and sustainable competition is starting to emerge, and so the policy design should be particularly cautious about inadvertent chilling effects on the development of network competition in those locations.

26. In practice, wholesale customers' incentives are likely to be shaped by implementation frictions. Where increased copper input costs become a realistic prospect, many wholesale ISPs may prioritise the lowest-friction route to mitigate that exposure. In many cases, that is likely to be migration of Openreach copper customers onto Openreach FTTP products, rather than undertaking the more complex commercial, systems and operational changes associated with shifting those customers onto alternative wholesale networks.
27. This creates a risk that the incentive effect of the second threshold, if applied broadly and on a uniform basis, may operate in a way that disproportionately advantages Openreach at precisely the point where competition may be beginning to deepen. Consolidation, where it occurs, is also unlikely to be instantaneous; it may involve sequential transactions and then a further period in which combined entities become credible wholesale counterparties and negotiate arrangements with large ISPs.
28. We note that in TAR, in relation to conditional terms offers, Ofcom's guidance identified 'Openreach commercial terms that significantly accelerate migration to FTTP' as a type of conditional terms that Ofcom might consider problematic. The policy design in this Consultation should be mindful of that same risk: the potential to strengthen incentives to accelerate copper-to-fibre migration, and the competitive implications depend heavily on whether alternative wholesale options are practically available to end-users or wholesale customers at the relevant time.
29. Again, consumers would be negatively affected if competition at the wholesale level were dampened through this regulatory change. Given Ofcom's primary duty, we do not believe that such a change can be justified.

### Consumer protection and vulnerable customers

30. Ofcom also identifies the potential risks to consumers, particularly those in vulnerable circumstances, associated with migration and exposure to higher copper-based prices.
31. VMO2 agrees with Ofcom's assessment that a key channel for potential consumer harm is exposure to higher copper-based prices for customers who are unable or unwilling to migrate quickly, including customers in vulnerable circumstances and those facing complex migrations. In that context, an approach that is more tightly connected to the underlying rationale for exclusions has additional value: it provides greater transparency over which premises are effectively being left in the "tail", and therefore greater ability for Ofcom and industry to anticipate where the risk of prolonged exposure to higher copper prices is most likely to arise.

32. By contrast, a broad-brush uniform percentage weakens that visibility. Where exclusions are not grounded in defined categories or other evidence, it becomes harder to distinguish whether the “tail” in a given exchange reflects genuine deployment constraints or simply the breadth of the approximation. That reduces the ability to monitor whether vulnerable customers are disproportionately represented in the excluded cohort, and to assess whether incremental mitigations (including timing, oversight and reporting) may be warranted.
33. In our view, a more targeted approach, such as the DEA or a more granular FPA, would provide better visibility of where exclusions are applied and therefore facilitate more effective oversight of potential consumer harm, especially as it relates to vulnerable customers.

## Start date for application of exclusions

34. VMO2 supports Ofcom’s proposal to introduce a start date for the application of any exclusions mechanism, as this provides important safeguards for both consumers and market participants. However, we have reservations as to whether the proposed date of 1 April 2029 is appropriately calibrated.
35. In particular, as noted above, the period leading up to this date may involve significant market developments, including consolidation and the potential establishment of new wholesale alternatives to Openreach. Introducing strong incentives to accelerate migration before these dynamics have had an opportunity to play out could risk distorting competitive outcomes.
36. The broader copper retirement framework requires that Openreach is to provide at least 12 months’ advance notice of when it expects to meet the second threshold in an exchange area. As Ofcom notes in the Consultation, under its proposals Openreach could issue second threshold notifications from 1 April 2028 in order for exclusions (and any associated copper price increases) to take effect from 1 April 2029.
37. Put more concretely, under Ofcom’s current proposals, in less than two years from today, Openreach may be in a position to give notice that a material proportion of exchanges will be subject to copper price increases. We are concerned that such a large and looming ‘bulk’ repricing approach is likely to incentivise Openreach-based ISPs to reprioritise supplier activities towards short-term mechanisms to mitigate this potential price shock, i.e.

to redouble efforts to migrate customers to Openreach FTTP, rather than actively monitor opportunities that might arise as a result of market consolidations.

38. In that context, VMO2 considers that Ofcom's justification for 1 April 2029 would benefit from further development. Ofcom notes that this date is mid-way through the review period, but in VMO2's view a mid-period anchor, on its own, is not a sufficiently robust justification given the potential scale and strategic importance of the incentive effect created by copper price deregulation.
39. In particular, Ofcom's assessment should more explicitly incorporate reasonably expected market dynamics during the review period. This includes market consolidation, where it occurs, as it may take time to materialise and then further time to translate into credible wholesale alternatives at scale. Similarly, new wholesale agreements (and the operational readiness required to migrate customer bases onto alternative networks) can require significant lead time as well. It is not clear that these potential dynamics will have had sufficient time to develop less than two years from now when it is proposed that 12-month notifications may be issued and commercial priorities begin to refocus.
40. In our view if Ofcom were to more explicitly consider the practical time constraints associated with these anticipated market changes it may conclude that the current proposed start date acts as a mechanism to significantly accelerate migration to Openreach FTTP.

### 3. Consultation question response

41. Below we provide our responses to Ofcom's Consultation question. This should be read in conjunction with our wider response, where applicable.

**Question 1: Do you agree with our proposed approach for excluding premises from the second threshold? Please set out your reasons and supporting evidence for your response.**

VMO2 does not agree that the FPA, as proposed, represents the most appropriate mechanism for identifying exclusions to the second threshold. In our view, a DEA would better reflect the underlying rationale for exclusions and provide a more targeted and robust framework.

Even if Ofcom were to proceed with a fixed percentage mechanism, we consider that the proposed uniform 10% threshold is not appropriate. A more granular approach, informed by exchange-level conditions and subject to appropriate safeguards, would be more consistent with Ofcom's objectives.

VMO2 supports the introduction of a start date for the application of any such mechanism, but in our view further consideration should be given to the appropriate timing in light of potential impacts on competitive market dynamics and potential consumer impacts.