**Openreach proposed FTTP Offer starting 1 October 2021**

**Response to Ofcom's consultation**

## Executive summary

Sky agrees with Ofcom's provisional conclusion that the Equinox Offer will not have a material adverse impact on competition and that Ofcom should take no action at this time.

Sky considers that:

- the Equinox Offer prices do not act as a barrier to the entry and expansion of alternative network providers ("**altnets**") because, even at the discounted levels, they are substantially above Ofcom's own estimates of both Openreach's costs and the level that efficient altnets would need to charge in order to compete;
- the Equinox Offer is structured so as to incentivise FTTP take-up versus alternative Openreach products, and is not dependent on achieving particular order volumes. Accordingly, the offer does not deter Sky or any other CP from placing orders with altnets; and
- the Equinox Offer covers the whole of the UK and does not, therefore, target specific geographic areas. Therefore, the Equinox Offer does not amount to differentiated geographic pricing.

Notwithstanding the fact that the Equinox Offer does not create any obvious or material competition concerns, it will also be enormously beneficial to consumers across the UK as it will encourage more attractive pricing for FTTP services as well as new offers in the market to encourage consumers to migrate to FTTP services. Ultimately, the biggest beneficiary of the Equinox Offer will be UK consumers.

## The Equinox Offer prices do not act as a barrier to the entry and expansion of altnets

Under the Equinox Offer, the price of the anchor FTTP 40/10 Mb/s service is set at the regulated price ceiling which Ofcom set by estimating the price that a new entrant, altnet would need to charge in order to recover its efficiently incurred costs. All other prices under the Equinox Offer are set at levels above the price of the anchor FTTP 40/10 Mb/s service and the underlying costs to Openreach of supplying each of the different FTTP services are virtually the same irrespective of the speed being supplied.

Therefore, the prices for all of the services in the Equinox Offer are at a level above Openreach's costs and at or above the level that efficient altnets would need to charge in order to compete. In the WFTMR statement, Ofcom compared estimates of an efficient competitor's costs and revenues based on its decision to keep the price of FTTP 40/10 Mb/s constant and estimated that *"the unit cost of supplying FTTP services for a competing network operator ranges between £9.53 and £13.67."* [1] This compares to the much higher prices on offer in the Equinox Offer.

Sky, therefore, agrees with Ofcom's provisional conclusion that the prices set out in the Equinox Offer are not too low and do not act as a barrier to the entry and expansion of altnets.

[1] Paragraph 1.37, Volume 4, WFTMR statement (March 2021).

**The way the Equinox Offer is structured does not deter Sky (or other CPs) from placing orders with alternative network providers**

Sky broadly supports Ofcom's framework, which evaluates the impact on altnets and weighs that up against any countervailing benefits

To assess the impact on altnets, Ofcom has followed the approach it set out in the WFTMR statement. Its starting point is that any barrier to using altnets would only be justified where: (i) the impact on nascent network providers is immaterial; and (ii) the arrangements demonstrate clear benefits.

Sky broadly supports this approach but considers that Ofcom must ensure that its assessment does not operate in such a way as to dampen the ability for Openreach and retailers to agree long-term agreements by taking an overly cautious approach.

Openreach will continue to be a key supplier for large parts of the UK and it is important that it retains the flexibility to reach agreements with retailers that enable it to accelerate its build and for its customers to drive more take-up. The Equinox Offer remains subject to general competition law. The fact that competition law addresses anti-competitive behaviour after it has happened should not be a concern *per se* as the existence of competition law and the potential sanctions could be sufficient to deter Openreach from engaging in anti-competitive behaviour in the first place.

Ofcom must ensure that it does not apply its framework in a way that dampens the ability for Openreach and retailers to agree long-term agreements, which could promote network competition by "de-risking" investments and ensuring that roll-out occurs at scale and pace. When assessing offers from Openreach, Ofcom must carefully consider the likely material impact on altnet roll-out against any off-setting benefits that such agreements can deliver.

The order mix targets will not deter Sky from moving its demand to altnets

Under the Equinox Offer, Sky will pay discounted prices if it meets order mix targets for the percentage of new FTTP orders it places with Openreach relative to the total orders it places with Openreach in the Equinox Offer areas. The targets only relate to orders that Sky places with Openreach and are, therefore, independent of any orders Sky may place with altnets, and have no volume conditions. Accordingly, this discount structure does not induce Sky to place orders with Openreach or deter Sky from placing orders with altnets.

Ofcom suggests that there could be an impact on altnets if CPs were still intending to place orders for legacy services in Equinox Offer areas where both Openreach and an altnet has rolled out FTTP networks. For instance, if a CP intended to keep placing orders for legacy services then it might be induced to place any new orders for FTTP services with Openreach in order to meet the order mix targets.

[✂]. Ofcom is correct to suggest that Sky's ability to provision customers onto legacy services in the future will disappear once 'stop-sell' is triggered.[2] Ofcom expressed support for the 'stop sell' process in the WFTMR statement as a useful mechanism to move consumers from copper to fibre-based services.

[✂]. The Equinox Offer does not, in any way, deter Sky from moving its demand to altnets.

The forecasting requirements will not deter Sky from using altnets

Sky agrees with Ofcom that the forecasting requirements provide sufficient flexibility and will not deter Sky from using altnets. In short, if Sky decides to enter into an arrangement with an altnet it will need to negotiate financial terms and agree operational arrangements that enable it to move customers to a new network. This process takes significant time and Sky will be able to factor any impact of that new

[2] As Ofcom itself notes in paragraph 2.52, Equinox consultation.

arrangement into its forecasts in a way that does not compromise its ability to meet the forecasting requirements under the Equinox Offer.

In any event, as Ofcom rightly points out, Sky would only be penalised under the Equinox Offer if it submits inaccurate forecasts for three consecutive quarters. Due to the long-term planning Sky would undertake to move customers to a new network, we consider that this is unlikely to happen.

**The Equinox Offer covers the whole of the UK and does not, therefore, target specific geographic areas**

Sky agrees with Ofcom that the 'new-to-network' discounts do not constitute differentiated geographic pricing. These discounts are available throughout the Equinox Offer areas and do not target specific geographic locations.

In any event, the impact of the 'new-to-network' discounts is fairly minor:

- [✂].
- As Ofcom notes, the discounts are not targeted at new network build and, in fact, are more likely to impact established altnets (such as Virgin Media) in the short term. Sky agrees with Ofcom that its competition concerns should relate primarily to new network build.[3]
- In relation to connection charges, Ofcom is correct to suggest that this discount is immaterial compared to the expected customer lifetime value for FTTP. The relatively modest discount available under the Equinox Offer (equivalent to £25 per connection) does not deter Sky from considering alternative wholesale arrangements.
- In relation to rental charges, the discount is only for a short period of time so even if there is an impact it will only be in the short-term and after that initial contract period demand for those customers will be contestable again. [✂].

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[3] Paragraph 2.68, Equinox consultation.