

Consultation Response to Ofcom's Further Consultation on WLA Pricing Remedies (October 2025)

Date: 16 November 2025

Introduction

Community Fibre Ltd welcomes the opportunity to respond to Ofcom's "Further consultation on WLA pricing remedies" for the Telecoms Access Review (TAR26) period, covering 2026 to 2031. As the leading full fibre alternative network provider (AltNet) in London, we are critically focused on ensuring a regulatory environment that promotes sustainable investment and robust infrastructure competition.

Our response focuses primarily on the proposed Contract Focused Approach (CFA) and the fundamental nature of the wholesale pricing remedies required in the Wholesale Local Access (WLA) market.

Response to Question 1: Do you agree with our proposals relating to the Contract Focused Approach?

Community Fibre Ltd does not necessarily disagree with the objective of achieving pricing continuity through Openreach's proposed contractual terms, which aim to provide certainty regarding maximum price levels for the anchor product (80/20 speeds) until March 2031.

However, we urge Ofcom to proceed with extreme caution in adopting the Contract Focused Approach (CFA), specifically concerning the **precedent it sets for Openreach self-regulation** in markets where it holds **Significant Market Power (SMP)**.

The CFA relies on Openreach voluntarily proposing contractual waivers and amendments to replace formal charge controls. Substituting a formal statutory remedy with reliance on the voluntary actions and long-term commercial supply agreements of a dominant undertaking risks eroding regulatory certainty. While the CFA is assessed as a "proportionate" intervention if it achieves the desired outcome in a "less burdensome way," this must not undermine robust regulatory power.

Our primary concern is that the Contract Focused Approach represents a dangerous reliance on the voluntary actions of a dominant undertaking:

1. **Risk to Regulatory Certainty:** While Openreach has proposed contractual waivers and amendments to provide price certainty, Ofcom itself acknowledges that the

CFA—relying on "multiple contracts, notices, waivers, price lists and offers"—may inherently provide **less certainty** for Openreach's customers compared to mandated charge controls. Relying on contract amendments that are "conditional on Ofcom ultimately adopting the Contract Focused Approach" introduces an element of regulatory risk dependent on Openreach's willingness to cooperate fully, rather than mandatory regulatory compliance.

2. **Maintaining Regulatory Teeth:** By substituting a formal charge control (mandated by SMP conditions) with a reliance on commercial contracts, Ofcom risks eroding the principle that remedies for SMP operators must be robust and enforceable statutory obligations, not merely commercial agreements that require Openreach to "waive its contractual rights". A key reason for Openreach's proposals was its concerns regarding the legal basis of the proposed charge controls. Adopting the CFA might be seen as validating the view that SMP remedies can be effectively delegated to the SMP operator itself.
3. **The Need for Safeguards:** Even under the CFA, Ofcom still appropriately finds it necessary to introduce safeguards, such as interpreting the fair and reasonable pricing requirement to explicitly address the risk of **excessive pricing** for the anchor products. This necessary inclusion highlights that contractual reliance alone is insufficient to protect competition against the inherent risks posed by Openreach's market position.
4. **The Need for Transparency** – There is a risk, particularly for operators that are not Openreach WLA customers, that they will not be able to see the WLA prices being offered by Openreach and / or the terms that surround those prices, if a CFA approach is adopted. Under the proposed CFA approach Ofcom should ensure that there are sufficient obligations on Openreach to make their pricing and terms publicly available.

If the CFA is adopted, Community Fibre urges Ofcom to clearly articulate that this decision is **unique and circumstantial**, based only on the specific terms offered by Openreach in this instance for the limited set of anchor products (such as 80/20 FTTC, SOGEA, and FTTP rentals and connections). This must not be seen as setting a **precedent** that future necessary regulation against an SMP provider can be routinely replaced by self-imposed contractual caps or voluntary commercial agreements.

Ofcom's statutory duty is to promote sustainable infrastructure competition and confer the greatest possible benefits on end users. While the CFA is assessed as a potentially **proportionate** intervention if it achieves the desired outcome in a "less burdensome way", this lower burden must not come at the expense of regulatory predictability and ultimate enforcement strength. Direct charge controls offer definitive, predictable, and stable wholesale prices, which are crucial for efficient market entry and incentivising AltNet investment.

We strongly caution against normalising a regulatory approach that relies on the dominant undertaking offering contractual promises in place of enforceable SMP charge controls. If the CFA is pursued, Ofcom must ensure that the residual regulatory requirements and mechanisms for addressing disputes are rigorously maintained and enforced to ensure true pricing continuity is achieved throughout the TAR26 period.

Community Fibre’s Primary Regulatory Concern: Focus on Floor Pricing to Prevent Margin Squeeze

Our main concern in the WLA market is **not primarily focused on the maximum price cap (the ceiling)**, but rather on the **urgent necessity of regulating the minimum price (the floor)** to ensure sustainable infrastructure competition.

The competition problem identified by Ofcom includes the risk that BT (through Openreach) could impose a price squeeze between the WLA and PIA markets. The current proposals mainly address the risk of **excessive pricing** by capping the anchor product price. However, the key threat to the development of **sustainable infrastructure competition** stems from Openreach’s incentives and ability to set wholesale prices too low.

We believe **Ofcom should be more focused on imposing a regulated price floor** to address the increasing risk of anti-competitive behaviour, such as margin squeeze and predatory pricing, by the dominant operator.

The Need for a Price Floor (Wholesale Economic Replicability Test)

1. **Risk of Predatory Pricing and Cross-Subsidy:** Openreach currently enjoys substantial returns from legacy copper products, allowing it to cross-subsidise losses in its competitive Fibre-to-the-Premises (FTTP) markets. This provides Openreach with a significant financial advantage that enables it to engage in predatory pricing or margin squeeze tactics. We require **strong ex ante remedies** to protect reasonably efficient AltNets.
2. **Inadequacy of Price Caps:** Openreach’s existing discount schemes, such as the Equinox Offers and more recent discount offers, have demonstrated that it can reduce VULA prices for higher speeds (e.g., 80Mbps, 115Mbps and now also multi-Gig products) below the current 40/10 anchor price. The infrastructure competition threat arises from price reductions, which the maximum price cap does nothing to address.

3. **Ensuring the Fair Bet Principle:** To maintain investment incentives and ensure ongoing network competition, AltNets require confidence that Openreach cannot price below a level that is sustainable for efficient network competitors. This price floor, which is defined as a **wholesale economic replicability test**, is an essential component in supporting the "fair bet" principle for all reasonably efficient operators.
4. **Setting the Floor at REO Cost:** The minimum price must be set by reference to the properly calculated costs of a **Reasonably Efficient Operator (REO)**, rather than Openreach's costs, and applied to all VULA speeds to prevent easy circumvention by discounting higher speed products and distorting the average price.

In conclusion, while the adoption of the CFA for the price ceiling of the anchor product is not inherently disagreed with, Community Fibre cautions that **Ofcom must not allow the technical simplification of price ceiling regulation to distract from the far more critical task of establishing a robust regulatory price floor**. If the core competition concerns related to price floors and margin squeeze are not addressed robustly through mandatory, forward-looking regulation, the long-term viability of infrastructure competition, which Ofcom seeks to promote, will be jeopardised.

If the CFA is adopted, Community Fibre urges Ofcom to clearly articulate that this decision is **unique and circumstantial**

In conceding this point to Openreach we urge Ofcom to dedicate the time saved in developing a price ceiling remedy into focusing its efforts in developing an effective remedy that will prevent a margin squeeze between the WLA and PIA markets.

Apart from the points made above we have no further comments to make on Questions 2 and 3.