

FCS Response to Further consultation on WLA pricing remedies

Summary

FCS strongly believe that Ofcom should continue with the charge control approach as described in the TAR and abandon any proposed Contract Focused Approach.

We consider that the Contract Focused Approach is more difficult to enforce than the charge controls for which compliance is monitored by Ofcom. We are also concerned that the Contract Focused Approach is more easily circumvented by Openreach through additional contract changes or commercial offers.

About FCS

The Federation of Communication Services (FCS) represents companies which provide professional communications solutions to business users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest private enterprises and public sector users. Some FCS members also have some consumer customers. FCS is the largest trade organisation in the professional communications arena, representing the interests of around 350 businesses, which supply B2B services nationwide.

Comments

FCS welcome the opportunity to comment on 'Further consultation on WLA pricing remedies' (the 'Consultation'). The Contract Focused Approach has been proposed in a letter to Ben Harries of Ofcom from Mark Shurmer MD regulation Openreach dated 6th October 2025 (the 'Letter'). The Consultation and the Letter follow from the

consultation 'Promoting competition and investment in fibre networks: Telecoms Access Review 2026-31' (the 'TAR').

We consider the Consultation is a very important as not only is it dealing with a specific issue of a charge control but also the approach of accepting contractual commitments in lieu of formal *ex ante* regulation which marks a change in the regulatory approach by Ofcom.

We note that under the comms act Ofcom is required to ensure that any SMP remedies are proportionate to the problem they address. It is therefore appropriate that Ofcom consults on the proposed changes to the charge control and the Contract Focused Approach.

We do not agree with the Letter that the charge control measures proposed in the TAR are disproportionate. Under a conventional charge control Ofcom would monitor compliance with the control via financial regulatory reporting such as compliance statements submitted on an annual basis. For an organisation the size of Openreach regulatory reporting is not an undue burden and the transparency it brings allows Ofcom to ensure that the remedies are working as intended.

Ofcom's oversight through regulation of this market and indeed all the Openreach products has been invaluable to the industry to date, and the market would not have developed to the extent it has given power that Openreach yields in negotiations with CPs. We are therefore concerned that Ofcom's oversight of the market will be diminished if the charge controls are removed from the legal obligations and included in the Openreach contract.

In our response to the TAR, we asked Ofcom to continue the obligations to monitor QoS in WLA2, as we consider it is too difficult for the industry to monitor it and to hold Openreach to account.

A downside of the Contract Focused Approach is that in effect it leaves Openreach to police itself, which is something that FCS have very little confidence in. Regulatory price controls contain an overcharge mechanism which is used to correct prices when the regulated party fails to comply with the control. These generally act as an effective control as well as forcing certain corrective behaviours. We have not found any evidence in the Consultation or the Letter of any remedies for Openreach failing to comply with the contract in relation to the products being moved from the charge control to a contractual obligation.

We also question the Letter assertion that CPs freely enter into agreements with Openreach. Openreach has been found to have SMP in these markets and so has an obligation to supply on a no undue discrimination basis. Openreach is forced to offer a contract and CPs have little choice but to accept it.

Presumably, if Openreach were to later offer an updated contract or other offer, with terms in it that did not comply with the charge control but offered a different benefit to CPs, the control could be circumvented. This could result in discrimination against and between certain groups of providers.

In the event that Openreach does breach its contract terms it is not clear what remedies exist to compensate the industry accordingly. We assume it will be for the industry to try to raise a contractual dispute with Openreach, which we consider to be almost impossible for smaller providers given the mismatch in financial, legal and regulatory resources that exists between Openreach and other providers. Ofcom should not underestimate the importance of its *ex ante* regulation in safeguarding the interests of other CPs and the development of a competitive market.

While Ofcom does have powers under the Comms Act 2003 to intervene in SMP access disputes, we consider it will be a lengthier process for Ofcom and other providers. We are therefore concerned that traditionally *ex ante* regulation that has been proposed in the TAR is being diluted through the contract approach. We consider that harm could be caused to smaller providers if Openreach were to fail to meet the contractual obligations and Ofcom were to intervene later to remedy the situation.

Our preferred option is therefore that Ofcom continues with the charge controls as were consulted on in the TAR. Ofcom should also continue to monitor the controls through the submission of compliance statements on a yearly basis.

We note that Ofcom has recently published its statement on the A2P SMS market in which it concludes that the commitments offered by the industry will meet the requirements of the charge control it had proposed in that consultation. However, some parts of the prices have been redacted leaving some pricing opaque. We consider that regulation in the form of SMP remedies is more robust than commitments from providers.

Summary

In summary we consider that if some of the products are removed from the charge control to the Openreach contract, there is a high risk of regulatory and fair competition failure. In our view it will be extremely difficult for CPs to take enforcement action against Openreach.