



# Telecoms Access Review:

Further consultation on WLA pricing remedies

Virgin Media O2 response

November 2025

**Non-confidential Response**

# 1. Introduction

1. Virgin Media O2 (“**VMO2**”) welcomes the opportunity to respond to Ofcom’s further consultation<sup>1</sup> on Wholesale Local Access (“**WLA**”) pricing remedies under the Telecoms Access Review 2026–31 (“**Consultation**”).
2. We support Ofcom’s overarching objective of pricing continuity, and we recognise the practical issues that have arisen due to Openreach’s existing long-term Equinix pricing offer overlapping with the Telecoms Access Review (“**TAR**”) and Ofcom’s proposed SMP remedies.
3. In response to the concerns raised by Openreach, Ofcom has put forward two possible approaches: a Modified Charge Control (“**MCC**”)² and a Contract Focused Approach (“**CFA**”). Both mechanisms aim to effectively achieve like-for-like price outcomes for the regulated 80Mbps anchor.
4. The remainder of our response is structured as follows:
  - Section 1: Introduces our response;
  - Section 2: Sets out our views on the CFA and MCC approaches, where we make the case for preferring the latter at this time;
  - Section 3: Addresses Ofcom’s proposal for a geographic pricing waiver related to Openreach’s Equinix offer connection charges and our associated concerns about the geographic pricing regime which are relevant to the topics in this Consultation; and
  - Section 4: Contains our responses to Ofcom’s Consultation questions.
5. In VMO2’s view it would be more appropriate to maintain the charge control on the anchor product for the 2026–31 period, rather than adopting the new CFA at this stage. We agree with Ofcom that both approaches are intended to deliver equivalent ‘like-for-

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<sup>1</sup> <https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-3-4-weeks/promoting-competition-and-investment-in-fibre-networks-telecoms-access-review-2026-31/main-documents/consultation-further-consultation-on-wla-pricing-remedies-telecoms-access-review-2026-31.pdf?v=406255>

<sup>2</sup> Used throughout this response as shorthand for Ofcom’s alternative to CFA.

like' price outcomes in the review period and both approaches seek to maintain pricing continuity from the Wholesale Fixed Telecoms Market Review (“WFTMR”).

6. However, we believe the MCC provides more robust and clear safeguards for wholesale customers, investors and end users alike. MCC seems to represent only minimal additional practical burden on Openreach, if any. In contrast, the CFA jettisons up-front guarantees and in-built safeguards associated with the charge control mechanism and undermines the objective of providing legal certainty for the 10-year regulatory period established under the WFTMR. As a result, it relies too heavily on ex post intervention by Ofcom and Openreach's voluntary cooperation and so increases uncertainty about the operation of the regulatory framework.
7. The CFA could be more conceivable in a scenario where material and sustainable competition has taken hold in the market, but as Ofcom's market analysis in the TAR shows, that outcome is not yet assured. It could be the case that such an outcome may be becoming a reality at the time of the 2031 review and so there may be merit in considering the CFA or other alternatives to the charge control mechanism at that time.
8. In TAR, Ofcom noted<sup>3</sup> that (emphasis added):

*“By 2031, our strategy will have allowed a window of ten years for network rollout to occur and competition to develop. We expect competition from new providers to continue to develop as they establish themselves as sustainable competitors. **This will put us on a path to even greater deregulation in the future, allowing competition to replace regulation permanently.** Where effective competition emerges, there will be no need for Ofcom to regulate.”*
9. In our view, mechanisms such as CFA could be consistent with that emerging transition, but if and only if, that pathway to permanent change is sufficiently rooted so that Ofcom can have confidence that competition can take the reins. We consider making such a change pre-empting that outcome would be premature and unduly risky.
10. The regulatory certainty promised in the Digital Communications Review (“DCR”) and taken forward via the WFTMR was intended to provide a 10-year framework for investors; shifting course midway undermines that certainty.

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<sup>3</sup> TAR, Vol.1, §2.59

11. Not only would a shift in the primary regulatory instrument to CFA represent a significant mechanistic change to the regulatory framework, we note that if it resulted in unintended consequences that needed remedying mid-review this could create significant uncertainty for all stakeholders, including Openreach.
12. We are supportive of Ofcom's long-term objective of deregulation once material and sustainable network competition has emerged. Likewise, we also support pragmatic and proportionate remedies where appropriate. For example, we broadly support the proposed geographic pricing waiver that would allow Openreach to honour its existing Equinix contractual terms under the proposed TAR non-discrimination rules. Price continuity is a key feature of the 10-year framework and we accept the logic of adjusting the rules to avoid disrupting Openreach's and Communication Providers' ("CPs") commercial arrangements in the short term.
13. However, we would caution that this should not be viewed as precedent for future market reviews. No expectation should be set that Ofcom will routinely bend SMP remedies to fit Openreach's commercial deals.
14. We also take this opportunity to reiterate broader concerns regarding geographic pricing and discount tactics that Openreach has employed recently via numerous special offers. These tactics, in our view, have not received sufficient regulatory scrutiny and cast doubt on an approach that relies on Openreach's self-restraint and Ofcom's ex post reactive intervention. These examples reinforce our concern that a charge control instrument like MCC is the safer (and still entirely proportionate) course during the 2026-31 period.

## 2. Comparison of the approaches

15. We recognise that both the CFA and the MCC are designed to achieve pricing continuity for the 80Mbps anchor. In principle, if a purely commercial solution (supported by voluntary Openreach commitments to Ofcom) can genuinely deliver the same outcome as a regulated charge control, one might argue that the lighter-touch solution is more proportionate. However, we do not believe the two approaches are equal in practice in terms of providing adequate levels of protection to CPs and additionally the difference in the practical burden of the options on Openreach seem decidedly limited, unless it sought to deviate from mimicking the charge control.

### Regulatory burden

16. As further discussed below, the MCC provides important assurances and practical enforceability that the CFA lacks. Moreover, implementing a charge control with certain modifications would not, in our view, impose significantly greater burdens on Openreach compared to the CFA. Ofcom has already indicated it would continue to require regulatory financial reporting and cost accounting from Openreach regardless. The differences in compliance cost between a formal charge control and a well-overseen contractual arrangement are likely marginal. Openreach would still need to issue price notifications and maintain both list and discount prices aligned with the agreed caps under the CFA.
17. Furthermore, Openreach is well-versed in implementing and updating charge controls as a result of market review outcomes over many years and so has pre-existing resources and processes to meet these obligations and it will need to undertake this work as a result of wider remedies in TAR in any event.
18. As a result, it is not clear to us there is any notable incremental cost or effort to preserving the formal charge control. In contrast, we do foresee non-trivial benefits in terms of clarity and regulatory certainty of maintaining this traditional mechanism as long as the purpose of this regulatory safeguard is needed.

## Regulatory certainty, timing and precedent

19. The current WLA regulatory framework, as set in the WFTMR and supported by prior policy statements like the DCR and Future Telecoms Investment Review (“**FTIR**”), has been based on a 10-year framing of regulatory stability to promote investment.
20. Industry participants, including Openreach, VMO2 and others, have made investment decisions on the expectation that the framework would be stable and predictable within guardrails, and would remain in force through 2031. In our view, switching to a novel regulatory instrument (albeit one intended to have like-for-like effect and with narrow application) halfway through this period could undermine the stability and predictability that Ofcom worked hard to establish and ought to continually reinforce.
21. Given this, VMO2 considers the proportionate and predictable approach would be to consider new methods of regulatory oversight and enforcement once material network competition has been established. This would allow alternative mechanism to be considered and tailored to observable circumstances. For example, by 2031 we expect to have a clearer picture of competitive broadband coverage across the UK. It is possible that by that time Openreach will face material and sustainable network competition in various parts of the country. In such a scenario, where Openreach’s significant market power is more geographically limited or constrained by rival fibre networks, a flexible, contract-centric approach might indeed be reasonable and proportionate mechanism to varying competitive conditions. That is not the case today.
22. In our view, Ofcom should also consider the potential for the precedent this decision might set. If it opts for the CFA and later finds it necessary to revert to a charge control whether in a broad or narrow context, that reversal could face a high hurdle to justify on proportionately grounds.
23. Clearly Ofcom will not consider such a decision will have fettered its future discretion, but in practical terms it may have that effect, given the expectations it has set about permanent changes in regulations stemming from this 10-year regulatory framework. In our view such permanent shifts of this kind ought to be undertaken once competitive conditions have been demonstrated.

## **Proportionate oversight**

24. Both approaches aim to cap the anchor and therefore prevent excessive pricing by Openreach during the period. However, in our view the MCC offers additional and necessary safeguards that make it the more proportionate tool in today's circumstances.
25. Under the CFA, enforcement of Openreach's voluntary commitments would depend on the clauses and dispute processes in Openreach's contracts, whereas under an SMP charge control condition, compliance is straightforwardly monitored by Ofcom and provides the formal, independent and clear regulatory backstop to the terms of the contract.

## **Reliance on voluntary commitments and enforceability**

26. The CFA anticipates that industry is to rely on Openreach's commercial contracts (and Openreach's discretion in modifying or honouring those contracts) as the vehicle of regulation. While Openreach has offered a number of contractual undertakings (such as price caps, waiver of certain rights, and extended terms for FTTC and FTTP agreements), these remain commercial agreements governed by contract law, subject to interpretation or change, and a less direct and explicit role for Ofcom to oversee the SMP conditions it proposes to set and apply.
27. The impact of this change in instrument could be through a variety of mechanisms:
  - Openreach's contracts are lengthy and complex. While Openreach has offered to implement various waivers if CFA were to be adopted, Openreach could still seek further contractual amendment during the review, particularly if circumstances change, for example if the pressure from material and sustainable competitors were to wane during the review period. In that case Openreach could seek to modify or reinterpret some of its prior commitments in that new context, which would then require impacted CPs and Ofcom to potentially react. MCC, by contrast, is a hard ceiling that cannot be unilaterally revisited without formal action from Ofcom.
  - Ofcom has proposed that under the CFA, it would rely on new guidance associated with fair and reasonable pricing obligations to act as a backstop in lieu of an explicit charge control. While this would be a positive addition to address the shortcomings of the CFA in the current context, it risks being inherently subjective and reactive. Depending on the circumstances at the time, there may be debate about whether changes made by Openreach are indeed excessive if there are countervailing

factors to consider. By contrast, under MCC, if Openreach attempted to charge above the cap it would be straightforwardly non-compliant and could be dealt with immediately.

- Relatedly, we note that Openreach's Letter did not provide sufficient detail on how the proposed price changes would be implemented. While we acknowledge that Openreach cannot unilaterally amend Equinix contracts and expects CPs to accept the proposed changes, adjustments to FTTC and SOGEA pricing are made via price lists - over which Openreach retains control. This creates potential future risks and could significantly weaken CPs' bargaining position relative to Openreach, and indicates that the CFA is not subject to sufficient safeguards. If a problem arose under the CFA regime (for example, if a new charge were introduced that CPs believe breaches the like-for-like intent), the primary enforcement avenue would be for CPs to bring a regulatory dispute under Section 185 of the Communications Act 2003, as Ofcom notes in the Consultation. The dispute process under s185 is, by design, an ex post remedy and it can take a considerable amount of time and effort to yield a result. Typically, Ofcom can take up to four months to resolve a referred dispute (and that is after the parties have already spent time attempting to negotiate in good faith and exhausted those avenues). The challenge in relying on s185 is compounded by the fact that any dispute would relate to Openreach's obligation to provide network access services on "fair and reasonable" terms, conditions and charges under SMP 1.3. As Ofcom confirmed in the TAR Consultation, these terms are not defined, leaving their interpretation to be determined on a case-by-case basis which introduces significant uncertainty for CPs and potential burdens for Ofcom in determining this. During that period, any alleged excessive pricing would presumably remain in effect. Additionally, the burden falls on individual CPs to initiate and prosecute the dispute, which involves legal resources and potentially straining their commercial relationship with Openreach. Coordination among multiple CPs could add further difficulty, especially if some CPs stood to benefit from the suite of changes that may have been made that resulted in excessive pricing of the anchor. Furthermore, Ofcom has discretion to refuse to handle a dispute if it believes alternative resolution is available or if it is not deemed an administrative priority. In our view it would be better, and still entirely proportionate, to prevent disputes from arising by having a charge control condition that treats the anchor as an anchor.

28. Given one or more of the above factors could be a source of friction in the application of the SMP Conditions during the review period, we consider the MCC approach would be the proportionate and effective remedy to adopt while Openreach remains in a position to exercise considerable influence on how wholesale terms are negotiated, managed and enforced.

### 3. Geographic discrimination carve-out

29. The Consultation also proposes that alongside the TAR Statement, Ofcom will consider issuing a geographic pricing waiver to provide a narrow carve-out to Openreach from its non-discrimination obligations, to accommodate pre-existing terms under Equinox and the proposed change in the Area 2 boundary under TAR.
30. In our view and in this case, permitting Openreach to maintain its existing connection charges under Equinox 2 terms would seem to have limited adverse effect on Openreach's customers and is supportive of price continuity. The terms of Equinox (and so the included definitions) made clear that the reference point for charges were Area 2 as defined in WFTMR and so customers that signed the agreement would have had the reasonable expectation that these boundaries would remain unchanged absent renegotiation.
31. Similarly, many altnets would have been aware of the form of Equinox as a result of Ofcom's review of the offers, and so may have factored the long-term pricing structure, including prevailing connection charges, into their intended network build.
32. Consequently, we broadly agree with Ofcom's reasoning that a narrow waiver is sensible to maintain price continuity. However, we do have concerns about the potential for this approach to establish an unwelcome precedent as to how Ofcom conducts future market reviews and accommodates Openreach's prior commercial offers.
33. We think it would be reasonable and appropriate for Ofcom to avoid any doubt that a waiver in this case would not fetter its future discretion to disregard long-term Openreach offers that may prevail in the market at the time of the next review; whether in the WLA market or otherwise.
34. In our view it would seem perverse if Ofcom's freedom to impose (and to choose the appropriate form and application of) SMP remedies were to be dictated by Openreach's prior commercial negotiations as a matter of course.
35. Instead, it would be more appropriate that future market reviews, and the corresponding market analysis, SMP designation and remedies Ofcom might consider imposing, should be unencumbered by Openreach's prior commercial constructs. This would avoid the incentive for Openreach to seek to enter longer-term offers with a view that they will

skew future regulatory procedures. This would maintain the reasonable expectation that it is for Openreach to expect to design future commercial offers to fit future regulatory frameworks, not the other way around.

36. By making the carve-out intentionally limited, Ofcom helps ensure it does not permit the waiver regarding geographic undue discrimination to go further than necessary. It is positive in this case that Ofcom has acted, as it demonstrates Ofcom's responsiveness to Openreach's concerns about price continuity and so regulatory certainty and the risks of disruption by inaction. However, this highlights a contrasting issue: in other cases, Ofcom has so far been notably unresponsive to concerns raised by Openreach's competitors regarding certain geographic pricing tactics employed by Openreach via its recent Special Offers.
37. This asymmetry is problematic. We refer to separate correspondence from ourselves and others related to a series of special offers Openreach has launched that appear structured to target competitive areas using constructs that have the effect of geographic targeting whilst avoiding only the narrowest interpretation of the prohibition.
38. This has direct linkage to the appropriateness of CFA or MCC. The CFA would, by design, lean on Openreach 'doing the right thing' and on Ofcom stepping in if something goes wrong. But when we look at the analogous scenario of recent Special Offers, Ofcom has not yet readily intervened.
39. Under CFA Ofcom might become less interventionist, reasoning that commercial agreements are in place and so high prices or discriminatory terms may have some offsetting commercial benefit for contracting parties to have agreed and so ought to be tolerated unless and until a dispute is brought.
40. Therefore, while VMO2 is supportive of the proposed geographic carve-out in this case and could envisage an CFA instrument being considered in future market reviews, following further material and sustainable competition taking hold, this is conditioned on the expectation that Ofcom would balance such flexibility with vigilant monitoring and enforcement. In our view this would be the right and proportionate approach that enables pricing continuity while being aligned with the long-term interests of consumers and competition, as the market continues to develop.

## 4. Consultation question responses

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

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

No, VMO2 does not support adoption of the CFA at this time. While it may be appropriate in future reviews, it currently lacks sufficient safeguards, enforceability, and regulatory certainty and so the MCC approach would be the more appropriate, proportionate and effective remedy for this market review period.

### **Question 2: Do you agree with our proposals relating to charge controlling FTTP connections (where copper-based services are not available)?**

Yes, VMO2 supports the proposal to maintain charge controls for FTTP connections in copper stop-sell areas, as a proportionate and necessary safeguard during the TAR period.

### **Question 3: Do you agree with our proposal to amend the proposed geographic discrimination prohibition by introducing a carve-out that would permit geographic differences in connection charges, where such differences reflect the terms of the Equinox 1 or Equinox 2 contracts (as applicable) and also align with WFTMR21 geographic market boundaries?**

Yes, VMO2 supports the proposed carve-out as a pragmatic solution to preserve price continuity. However, Ofcom should make clear that this is an exceptional measure and does not set a precedent for future reviews.