

Consultation response - review of the wholesale broadband access markets

Question 3.1: *Do you agree with Ofcom's proposed product market definitions? If not, please explain why.*

We agree with the proposed 4 separate geographic markets.

Question 3.2: *Do you agree with Ofcom's view of the relevant criteria for assessing the geographic market boundaries? If not, please explain why.*

We agree with the criteria for assessing the geographic market boundaries

Question 3.3: *Do you agree with Ofcom's geographic market definitions? If not, please explain why.*

We believe market definitions should include cabinets, not just exchanges. Ofcom refers to "exchanges" – this should read "exchange areas" and exchange areas should be defined clearly to include any FTTC/SLU deployments. Furthermore, we would like to see inclusion of any intermediate access into the local loop, which may even include unbundling SCPs and DPs in future which could be targeted by SLU Operators or BT Openreach. This is because a cabinet with DSLAMs is effectively a mini telephone exchange and we believe that BT is developing significant market power in this area through its FTTC/NGA deployment.

Market power assessment

Question 4.1: *Do you agree with Ofcom's proposal that BT holds SMP in Market 1? If not, please explain why.*

Yes agree

Question 4.2 *Do you agree with Ofcom's proposal that BT holds SMP in Market 2? If not, please explain why.*

Yes agree

Question 4.3: *Do you agree with Ofcom's proposal that no operator has SMP in Market 3? If not, please explain why.*

Yes but we believe BT Openreach may develop SMP through FTTC/NGA rollout.

Question 4.4: *Do you agree with Ofcom's proposal that KCOM holds SMP in the Hull Area? If not, please explain why.*

No comment

Remedies

Question 5.1: *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on BT in relation to the market for wholesale broadband access in Market 1? If not, please explain why*

Yes but we would like to see a move to tackle the implicit conflict of interest BT Openreach has in its obligations to SLU operators and its own interests in deploying FTTC-NGA. This could be partly achieved by a combination of cost-orientated price controls in SLU; improving access to ducts and poles; publishing fibre maps and PCP data and general non-discrimination clauses. However, we feel a more fundamental review of control and operation of the BT infrastructure is required with a view to making BT Openreach independent of BT PLC and allowing other operators to compete with BT Openreach as infrastructure providers. Only through effective competition at this level can there be genuine transparency and efficient commercial delivery to CPs looking to invest in NGA

If regulation cannot lead to equivalence between BT FTTC/NGA and SLU, then we would look to Ofcom to look at ways in which CPs and private investors can assess risks and make informed decisions. e.g. to prevent BT deploying FTTC in areas for a fixed period where SLU CPs invest, or for BT to declare exchange areas where they will not be deploying FTTC

Question 5.2: *Do you agree with Ofcom's proposal to impose a basis of charges obligation and a charge control on BT in relation to the market for wholesale broadband access in Market 1? If not, please explain why.*

Yes agree assuming SLU charges are reduced (or FTTC/NGA wholesale charges regulated) to an extent that allows equivalence between SLU and BT NGA/FTTC allowing CPs to fully assess the risks of investing in NGA.

Question 5.3: *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on BT in relation to the market for wholesale broadband access in Market 2? If not, please explain why.*

Yes but our comments in 5.1 are also relevant

Question 5.4: *Do you agree with Ofcom's proposal to impose a basis of charges obligation on BT in relation to the market for wholesale broadband access in Market 2? If not, please explain why.*

Yes agree but our comments in 5.2 are also relevant

Question 5.5: *Do you agree that Ofcom should allow a period of notice in the exchanges that move from Market 2 to Market 3 in which the above conditions should apply? Do you agree that 12 months is an appropriate period of notice? If not, please explain why.*

Yes agree

Question 5.6: *Do you agree with the general access and non-discrimination remedies Ofcom proposes to impose on KCOM in relation to the market for wholesale broadband access in the Hull area? If not, please explain why.*

No comment

Question 5.7: *Do you agree with Ofcom's approach to price remedies in the Hull area? If not, please explain why.*

No comment

Question 5.8: *Are there other remedies that, if imposed by Ofcom, would promote entry into the market in the Hull area by other providers?*

No comment

General comments

Whilst we support Ofcom's attempts to use regulation to stimulate investment in NGA, we believe a fundamental review of control and operation of BT's infrastructure is required. Ideally we would like to see CPs have a choice of infrastructure operator – all competing at the same level as BT Openreach. BT Wholesale/Retail might be required to use these alternative operators whilst BT Openreach remains part of BT PLC. This restructuring and associated regulatory restriction would remove the fundamental conflict of interest which we see developing as BT Openreach rolls out FTTC/NGA.

Due to the lack of EOI and the very general nature of non-discrimination clauses, BT Openreach remains in a position whereby it could, through lack of transparency and availability of fibre and PCP data, be limiting the ability of SLU CPs to invest in NGA. It remains difficult for SLU CPs to compete with BT Wholesale, and offer improved NGA services to home users and businesses, particularly in Market 1 & 2 exchange areas, whilst the details of the BT Openreach fibre network and PCP premises data remain unpublished.

We believe BT FTTC/NGA should be operated by BT Wholesale, not Openreach. BT Wholesale should then consume FTTC through SLU from BT Openreach (or as we have suggested above, from another operator which competes with Openreach to prevent any conflict of interest). Similarly backhaul would be consumed through the Ethernet portfolio. EOI for SLU, including fibre backhaul, can only work under such circumstances and so we would be looking for a variation in the Undertakings to take this into account. Until such changes take place, there will be limitations on investment in NGA by companies wishing to compete with BT.