



# Ofcom's Business Connectivity Market Review Consultation



## UKCTA Response to Ofcom

**Submitted to Ofcom: 18th January 2019**

## Introduction

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. Its role is to develop and promote the interests of its members to Ofcom and the Government. Details of membership of UKCTA can be found at [www.ukcta.org.uk](http://www.ukcta.org.uk). We welcome the opportunity to comment on Ofcom's proposals for the business connectivity market.
2. Many UKCTA members supply telecommunications services to UK enterprise and public sector clients. As an organisation we therefore have considerable collective market experience in business connectivity, appreciating first hand both the challenges and the opportunities in the market today.
3. The views expressed in this submission don't necessary reflect those of Virgin Media.
4. Despite this Business Connectivity Review covering a shorter period than usual, and in which Ofcom states its intention to give stability and certainty to investors, Ofcom's proposals appear radical and lacking in an appropriate evidence base; proposing a quick transition where the underpinning for established regulated products are being removed or substantially weakened. Rather than stability and certainty, Ofcom's policies appear likely to lead to reduced stability and certainty due to the perceived regulatory risk they will engender.
5. It is critical that the immediate issue of significant market power within the market is addressed to protect the interests of UK business. Ofcom must have plans in place for a lacuna period if it fails to implement new regulation before the end of the BCMR Temporary Conditions.
6. In the remainder of this submission we set out our views on:
  - a. Ofcom's approach to the bandwidth market;
  - b. Ofcom's cost model and implications for dig distances;
  - c. Ofcom's approach for determining the level of competition in the market;
  - d. Ofcom's proposed remedies;
  - e. Ofcom's Charge Control Proposals;
  - f. The importance of Dark Fibre;
  - g. Quality of Service safeguards; and
  - h. Regulation of TI services.

## **A Single Market for bandwidth**

7. UKCTA supports Ofcom's proposal to define a single market for CI access services at all bandwidths.
8. On the supply side, UKCTA agrees that there is strong evidence for finding a single market. This is because CI access services rely on the same physical infrastructure and, once a CP is connected with their fibre to a customer site, it is easy and cost effective to switch between different leased lines bandwidths. We also agree that the propensity to dig to connect new leased lines is low and does not differ materially according to bandwidth (if prices are set at competitive levels).
9. On the demand side, UKCTA welcomes Ofcom's acknowledgement that any market definition test must be applied at competitive prices and that this is currently not possible. Currently, the fact that only lower bandwidth services are price regulated means that existing pricing differentials between bandwidths are not helpful evidence of different demand-side constraints across bandwidths, as it is more expensive to switch to higher bandwidths (which, therefore, artificially reduces switching rates).

## **Ofcom's cost model that results in the geographic markets**

### **Dig distance Cost model**

10. UKCTA agrees with the use of this model and considers it a positive development in ascertaining SMP in the business connectivity market. However, we consider that the model needs to include the actual evidenced costs that operators incur, and whilst we understand why Ofcom has based its costs on Openreach's Excessive Construction Charge price list this does have issues and is not the relevant evidence Ofcom should base decisions on. If the purpose of the model is to assess the costs to operators of extending their network versus Openreach supply of active services, then the relevant evidence for the costs of network extension are an alternative operators costs contrasted against the up to date Openreach price list for active services.
11. When true CP costs are used, it is clear that Ofcom has overestimated the commercial viability of extending alternative provider networks. When Ofcom's model is correctly populated with actual data from a network operator that carry out network extensions, it demonstrates that for mass market, Ethernet services network extension (based on Openreach's current bandwidth gradient) it is only cost effective when a CP already has network running to a building (i.e. just subject to the additional in-building wiring costs). All other network extension activity will incur costs greater than the most economical alternative (Openreach circuit = £6,000)

## **Ofcom's methodology of determining competition**

12. A 65% network coverage threshold and 50m radial dig distance buffer are inappropriate for this market. In the experience of our members who compete within this market, if a customer does not already have connections from multiple suppliers in situ, then the customer will not benefit from rival network infrastructure. We find it erroneous to conclude that there are areas for which a customer has the option to obtain competitive service provision from where this

includes rival infrastructure that is not connected to the site. A market definition that proposes 50 radial meters will be regularly dug and which only covers of 65% of premises in the postcode sector is unrepresentative of market behaviour. Ofcom identifies that CPs will only dig in a small minority of cases (less than 10% on average) with the median UK dig only 18 route meters and lower median dig distances within the CLA and HNR. Based on factual evidence it is shown that the non-connected customer will only be a constraint where the rival network and customer site are extremely close.

13. Including self-supply (i.e. CPs with network but not wholesaling) means that we are not considering like-for-like alternatives for access seekers to BT. The extent of competitors and the constraint on BT is therefore again over-estimated.
14. Little weight has been put on to important factors such as the demands for UK wide connectivity coverage by retail customers and the ubiquity of BT's network which strongly increases their SMP. This is especially true when you consider that enterprise customers have preference to limit the number of suppliers (i.e. simpler solutions, less cost of managing multiple supplier networks, coverage, consistency, ability for diverse routes for security/resilience).

## Remedies

15. Ofcom should set out a full impact assessment which looks at the advantages and disadvantages of different models of competition (e.g. network competition versus Ethernet-based access competition and DFA-based access competition) and the impact of different regulation approaches. UKCTA are particularly concerned that Ofcom barely mentions access seekers in the consultation. Access seekers provide the majority of competition today, being the key contributors in the market and are critical to its success, particularly in key segments such as large enterprise business customer connectivity.
16. UKCTA is concerned that Ofcom is reducing remedies to combat BT's SMP based on over-estimated competitive levels and without other remedies or alternatives to BT being ready and available for access seekers.
17. In particular, those providers who serve key segments (such as large enterprise) will not be able to take advantage of some of the other remedies proposed, such as passive access simply due to the way their model works (i.e. bespoke, one-off, complex bids for enterprise customers, not large rollouts or connection numbers). As such we note the following issues:
  - a. **Lack of economies of scale/scope** – Enterprise-focused CPs serve bespoke enterprise customers who require bespoke solutions of connectivity to one or more sites, over which other value-added services are provided. In that sense, such CPs are not engaged in rollout programmes or mass market solutions, as the expense of having far-reaching network to multiple areas or premises does not make economic sense. Instead they will have limited

network reach and will always therefore be reliant on wholesale providers to connect to customers, the largest of which is BT (and is the most effective given all the reasons that Ofcom highlights as evidencing BT's SMP<sup>1</sup>). Such CPs cannot therefore take advantage of the economies of scale or scope that BT do. Ofcom notes that for the BT-only and BT+1 areas for the CI Access market, BT is really the only supplier. By reducing or easing active remedies based on self-supply presence, Ofcom is fundamentally neglect this sector of the market, and the benefits they bring to end-customers.

- b. **Network infrastructure but not wholesale services substitution** – While Duct and Pole Access (DPA) will allow some of the larger CPs to expand their network more quickly, unless they are also going to wholesale those services to third party CPs, they will not provide a boost to the competitive pressure on BT. It is not clear to Ofcom if this will occur.
- c. **Cost/complexity of managing multiple suppliers** – This increased time, cost, and complexity of connecting customers, and requires a greater amount of resource to manage relationships with multiple suppliers. Strangely, Ofcom recognises this fact in the PIMR but not in the BCMR. The issues are clearly the same for active services too. Furthermore, as Ofcom briefly notes, the ubiquity of the BT network means that it has an even greater advantage for bespoke enterprise customer solutions in terms of coverage, consistency, and diversity of the network (which is useful for other solutions such as new technologies such as SDN or security – the latter was also noted by Ofcom).

## **Charge Control, CLA and DFA**

### SMP in central London

18. When competition and regulatory authorities determine whether an operator holds SMP, and is therefore potentially subject to economic regulation, one of the core pieces of evidence that they will generally consider is the market share of the firm. European law (notably the AKZO case) has consistently determined that there is a rebuttable presumption of SMP if the market share of a potentially dominant firm, in a well-defined economic market, is over 50%.
19. UKCTA agrees that the most appropriate market share measure for Ofcom to consider is the share of new connections, rather than the stock of existing connections since this better reflects prevailing competitive conditions. BT's share of new connections in the CLA is above 61%. As this share of new contracts is greater than BT's stock of existing contracts, BT's market share appears to have risen in recent years. Both BT's high share of new connections, and the fact that BT's share is rising, support a clear presumption that BT hold SMP.

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<sup>1</sup> E.g. Ubiquitous network presence (and knock-on effect on pricing, timing and certainty of delivery); resilience/diverse route options; large set of wayleaves in place etc.

20. Ofcom has not provided any relevant evidence to rebut the strong presumption that BT holds SMP in the CLA. The pricing discussion set out by Ofcom—that prices may be lower by up to 10%— is inconclusive as it fails to adjust for cost differences, and is, in any case, distorted by short term special offers. It is therefore unclear whether BT's margins are lower in the CLA than in the rest of the UK. The other arguments Ofcom raises that network is more extensive and share lower in London than elsewhere in the UK do nothing to demonstrate whether BT holds SMP in CLA – rather they merely indicate that BT's market power is less in London.
21. It is also worth noting that while it is true that there are more operators in the CLA according to Ofcom's methodology, there are huge differences between presence in the vicinity (i.e. Ofcom's 65% of premises within 50m) and being able to reach a customer premise. This fact is particularly evident in London given the property ownership issues, complexity of the networks and other infrastructure (which make network extension complex), as well as the costs of digging and local government restrictions on street works in dense urban areas.

#### Charge control on active services

22. Ofcom's well-established policy is to set cost-based price caps unless higher prices would stimulate efficient investment. This is for good reason – prices at cost maximise consumer benefit, whilst allowing BT to recover its efficient costs.
23. Ofcom's own evidence is that in BT+0 and BT+1 areas that there will be no new investment in market review period. UKCTA agrees that investment is unlikely in the next two years. Therefore, Ofcom's policies in this review period should primarily be to ensure prices to consumers are in line with costs, rather than to increase prices above cost in order to (ineffectively) incentivise investment.
24. Therefore, on the basis of Ofcom's own evidence, prices for active leased lines should be cost-based in the forthcoming review period.
25. In BT+2 areas (or any areas where Ofcom asserts that there may be material increased investment as a result of relaxed regulation), Ofcom should undertake a cost benefit analysis to ascertain that the benefit from increased investment outweighs the harm from higher prices. It should consider whether higher prices are actually needed to incentivise investment over and above that which is already planned.
26. In addition, a the 'fair and reasonable' pricing obligation for BT+2 areas is an unclear remedy, which is untested in practice, at least in terms of

disputes. Ofcom provides guidance that it would assess the fair pricing obligation in a similar fashion to the ex post margin squeeze test.<sup>2</sup> This begs the question of what additional protection this SMP condition offers above that already provided by Competition law and whether it will promote competition (rather than merely protect competition). The whole purpose of ex ante SMP conditions is to address SMP where competition law offers insufficient protection and provide certainty, whereas this proposal appears to broadly replicate competition law.

27. Ofcom currently proposes no charge control in HNR areas (those areas where Ofcom believes there to be at least two competitors to BT). UKCTA believe this is an inappropriate approach. Instead, given BT's SMP and the lack of prospect for increased competition over the current review period, Ofcom should impose a cost-based charge control in the current regulatory period.
28. Ofcom's stated reason for not imposing cost-based price caps, but rather setting caps at CPI-CPI is to give flexibility, certainty to market participants, and to encourage investment. However, along with CPI-CPI pricing for rental charges, it also proposes CPI-CPI controls for ancillary services such as TRCs and Accommodation. Ofcom has not justified this in detail, and it is unclear why prices above cost for ancillary services are required to incentivise investment. In the absence of incremental investment, such high price caps are likely only to impede competitors' access to BT exchanges and services.
29. UKCTA's clear position in the current regulatory period is that price caps for all active services irrespective of the bandwidth should be set at cost. This will maximise benefits to consumers. In the case of VHB services, since prices have not previously been price regulated there should be a starting charge adjustments (SCA) to bring prices in line with costs (currently prices are about 30% above cost). Use of a SCA is consistent with Ofcom's established policy on SCAs.
30. There is a substantial difference between Ofcom's proposed price caps, and the caps which would prevail under cost-reflective pricing. Over the course of the review period, and across products at all bandwidths, this difference is about £200m. Setting prices above cost will both result in higher end user prices and weaken downstream competition.

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<sup>2</sup> See 11.10 to 11.11 of Volume 1 of the Consultation.



31. With SMP present there is a need for clear, high quality financial reporting. Ofcom should give considerable focus to ensuring that all stakeholders can clearly assess for themselves whether BT is complying with price control obligations. There is a lot of flexibility in the sub-caps at CPI+5%. This could particularly hurt smaller competitors who take a small amount of services in the basket and do not see the offset benefit of a reduction on a product elsewhere.
32. UKCTA's interpretation of Ofcom's proposals is that the BCMR remedies are at least in part designed to segue to the remedies that Ofcom thinks might be imposed in the forthcoming Access Review. This is concerning as the Access Review remedies have yet to be outlined, consulted on, let alone finalized, resulting in Ofcom taking decisions on a prejudiced basis. Ofcom should set the current review without reference to its expectations of the precise remedies which it will set in the Access Review; based on evidence available today. If this means that prices fall in the current review period, but are increased in the next review period when the situation is different, this should not be a problem but a feature of adopting evidence-based regulation.

### Discounts

33. We agree with Ofcom's provisional view that short-term discounts on products should no longer count towards BT's compliance with the charge control caps. While discounts can be useful for competitors, in the past, they may have been used to game the controls through reductions on one-off costs such as installation and Excess Construction Charges (ECCs) which do not deliver long-term customer benefits. Discounts by Openreach on installations to incentivise new business is welcomed, but this should be a commercial decision for Openreach to take (as it has to be for other alternative operators), and not counted as part of its compliancy obligations, especially as inclusion would make it even harder to assess compliance..

### Efficiency requirement for BT

34. BT should be encouraged to optimise its active services as well, especially when network utilisation drops below a certain level. Currently it is not incentivised to do so. For example, where a customer reduces its estate with BT, it should be encouraged to better manage and consolidate its handover infrastructure (e.g. mux equipment and bearers). This would be beneficial from a cost and space perspective, but also would reduce BT's power usage which could have further environmental and cost benefits.



### Dark fibre access (DFA) scope

35. In its proposals, Ofcom has correctly identified that DFA is a superior remedy to Ethernet since it exposes more of the value chain to competition, particularly the active layer which is the source of most innovation. UKCTA agrees with this analysis and thus DFA should be the default downstream remedy (with active regulation being phased out when DFA becomes an effective constraint). However, Ofcom only proposes to introduce a dark fibre remedy on inter-exchange connections with one end of the circuit at a BT+0 exchange. It therefore will only impact around 3% of leased lines provided by BT across the UK.
36. Ofcom should propose a much more wide-ranging DFA remedy. DFA should be available not only for inter-exchange connections, but also in access circuits, particularly in BT+0 areas. Such a remedy will substantially increase the proportion of the value chain which is subject to competition, benefitting consumers and increasing innovation in leased line markets. Further, DFA will not deter investment in most areas since Ofcom's own evidence is that in Access BT+0 and BT+1 areas that there will be no new investment in this market review period.
37. In any case, DFA is superior to network based competition in most cases. While DFA makes use of BT's existing passive assets (duct), network based competition which involves digging will replicate existing passive assets, duplicating assets which have natural monopoly characteristics, and increasing the average cost to serve customers. This will lower productive efficiency with the costs ultimately being passed through into higher end-user prices. Network based competition will have little innovation benefit versus DFA since the majority of innovation originates in the active equipment layer.

### **Quality of Service**

38. UKCTA is supportive of a continued remedy regime which includes Quality of Service (QoS) SMP conditions. There was a clear deficiency in BT's performance in previous years which has improved following Ofcom's remedies and enforcement action. Ofcom should look to be continuing this trajectory of QoS improvements. However, we do have some concerns regarding the proposed remedies, as follows:
- a. HNR areas and CLA
  - b. Unambitious standards
  - c. SLG payments
  - d. No Charge Control adjustments
  - e. Other areas which could improved

### HNR Areas and CLA

39. Given our view set out above, we disagree with Ofcom's proposal to no longer apply QoS in HNR (BT+2) areas. BT has been found to have SMP in these areas, and as such this SMP should be addressed, including through QoS remedies.
40. We understand that Ofcom believes that greater competition will encourage BT to improve its QoS performance. However, firstly as discussed above, those two operators in competition may not be full direct substitutes for BT's wholesale services given that Ofcom has included self-supply CPs in its analysis and its methodology over-estimates the level of competition which will actually be seen in the market. Access seekers will therefore be at risk of having poorer QoS even though a large part of the relevant geographic areas will not in reality have an alternative provider (either through lack of wholesale offering to third parties or lack of real presence at the premises).
41. Also, there are practical concerns for multi-site customer bids which span the geographic areas. It is simply impractical for an access seeking CP, relying on the BT network, to respond to a customer bid and ensure consistent QoS to meet the customer's needs when the QoS and compensation effectively varies by geography when the customer is looking for a streamlined, singular connectivity solution. QoS which differs by geographic area is unnecessarily complex and does not meet customer needs, and therefore the QoS Standards should be applied to all geographic markets where BT holds SMP.
42. The removal of QoS Standards in these areas is therefore premature, impractical, and has a greater, unrecognised impact on access seekers. We therefore urge Ofcom to impose the full suite of QoS remedies to both the HNR areas (including the six metro areas) and (in the case that Ofcom corrects its no SMP finding in the CLA) the CLA.

### Unambitious standards

43. While the levels are broadly in line with the Temporary BCMR conditions, we note that two QoS standards have been downgraded with little justification. Specifically:
- a. Upper Percentile Standard for provisions - reduced from no more than 3% or orders delivered in **118** working days under the BCMR Temporary Conditions, to **130** working days by Year 2 of this Market Review Period.<sup>3</sup>

<sup>3</sup> See 15.68 of the Consultation.

- b. Percentage of Orders Completed on/before the initial Contract Delivery Date (iCDD) – given an extra year to hit 88% by March 2021 (which BT should have met by 31 March 2019).<sup>4</sup>

44. Ofcom provides little justification for these changes, even dismissing Openreach’s evidence<sup>5</sup> to a certain degree,<sup>6</sup> yet still sees fit to lower these two standards. We find this illogical and Ofcom must re-consider its position on this.

### SLG payments

45. UKCTA is comfortable to transpose the SLG obligation from the 2008 SLG Statement to the Reference Offer. However, we are strongly concerned that Ofcom is proposing to no longer specify the level of SLG payments made. Ofcom’s own account of the difficulties that industry has had with negotiating fair compensation with Openreach is evidence that regulation is needed.<sup>7</sup> This suggests that Openreach is only constrained by the SMP Conditions, clearly demonstrating its ability to harm competitors. We believe that a fair way to provide BT with some flexibility but continue to provide the necessary protection to competitors is to require the same level of SLG payments today.

46. In that sense, the current regime, including the current level of SLG payments, should therefore remain given the short duration of this market review period (i.e. 2 years). Once the “Reimagining Ethernet” changes have bedded in and CPs have had operational experience of the changes, then perhaps a future regime can be considered – which would most likely be sensible to discuss in the next Market Review.

47. The current SLG payments are fair, and reasonably compensate providers for the loss and harm they face due to BT delays. But they also serve to incentivise improvements in QoS by BT. Without it, we could see greater delays as BT finds it more profitable to pay small compensation payments than to improve its quality of service, ultimately harming competition in the process.

48. Furthermore, and notwithstanding our view that cost-based charge controls should be imposed, given that Ofcom is proposing no charge control adjustments and a CPI-CPI control, it does not seem unreasonable to expect the same level of SLG payments to be made by BT without any risk to BT’s cost recovery. If Ofcom retains its proposal for a charge control set at a level above costs, it should consider stringent quality controls, far above present levels, to reduce the

<sup>4</sup> See 15.83 of the Consultation.

<sup>5</sup> See 15.63 to 15.65 of the Consultation.

<sup>6</sup> See 15.65 to 15.68 of the Consultation.

<sup>7</sup> See 15.169 to 15.176 of the Consultation.

detrimental impact on consumers from higher prices and encourage step changes in BT's behaviour.

#### No Charge Control Adjustments

49. Given our view above that a cost-based price control should be imposed, we believe that an adjustment should be made to reflect the loosening of some of the QoS Standards and removal of QoS Standards requirements in certain geographic markets, and therefore the potential cost savings for BT. We note that Ofcom is not proposing to do this.<sup>8</sup> .

50. Instead, if Ofcom imposes a CPI-CPI control as proposed, then we consider that the QoS arrangements should as a minimum remain stable and the same as under the Temporary BCMR Conditions. However, the most appropriate outcome is for Ofcom to impose QoS remedies in all SMP markets, and the CLA (which we consider should be a market where BT has SMP), and to continue to specify SLG payment levels at levels well in excess of today's.

#### Other areas which could be improved

51. We still consider there to be a number of areas that BT can avoid compensation payments or game the QoS Standards which Ofcom should consider:

- a. Delays to committed date: Delaying giving committed dates until it is sure it can meet the target (and thereby avoiding SLG payments). We suggest a target number of days for provision of the committed date should be added to the regulated QoS standards.
- b. Ancillary or provisioning process delays: Delays to scheduling surveys and other steps along the categories of work (CoW) scale can add up, despite being routine processes. We suggest new Standards for the intervals could encourage BT to making its processes more streamline and quicker. An overall Standard for number of days taken to complete the order could also be useful. Specifically, it would discourage BT from accepting orders which it cannot supply within a reasonable amount of time (e.g. BT should not accept orders where there is no fibre spine cable as this may take many months to complete).

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<sup>8</sup> See 15.197 of the Consultation.

## TI Services

### We disagree with market analysis

52. We disagree with the proposed further de-regulation in the Traditional Interface (TI) market,<sup>9</sup> and view that ex ante regulation is no longer appropriate. We do not agree with the premise that regulation is somehow less necessary in markets where the customer base is low or declining. While TI customers have declined, we believe that we have now reached the critical pool of dependent customers and applications who will not consider migration (for good reasons). We therefore would say that demand is stable – small but neither increasing or decreasing – and disagree with Ofcom’s view of the market.<sup>10</sup>

53. Although Ethernet may be an appropriate alternative in some cases, that is not true for all customers, some of whom simply do not want to migrate away. Such migration decisions are driven by many reasons other than cost, as discussed in the consultation.<sup>11</sup> Many customers therefore have a variety of reasons to remain with TI services, and need more rather than less protection from price increases, which is the likely outcome of Ofcom’s proposal.<sup>12</sup>

### Regulation will not stifle migration

54. We do not understand Ofcom’s view that regulation will somehow stifle a managed migration away from TI.<sup>13</sup> This assertion is not explained at all, and in any event is no basis on which to make regulatory decisions. In our view, decreasing the existing regulation is far more likely to lead to greater uncertainty, a reduction in stability a less-smooth migration for remaining customers, who may find that they are forced to migrate earlier that they want to or who feel they cannot migrate and will be hit with higher costs.

55. Indeed, Openreach has now announced the withdrawal of WLR and the move to an all-IP network in 2025, and work is ongoing across industry to meet this. This may mean that the end of TI services is expected, but this does not mean that the SMP issues simply go away in the remaining

<sup>9</sup> Up to 8Mbit/s

<sup>10</sup> As set out at 8.19 to 8.24 of Volume 1 of the Consultation.

<sup>11</sup> See paragraphs 8.34 onwards in Volume 1 of the Consultation.

<sup>12</sup> See paragraph 8.62 of Volume 1 of the Consultation.

<sup>13</sup> See paragraph 8.61 of Volume 1 of the Consultation.

years before switch-off. Ofcom should be looking to protect such customers until the managed cease of the services.

Three criteria test *is met*

56. We strongly disagree with the assertion that the three criteria test is not met.<sup>14</sup> It clearly is, and this is especially the case given that the period that this review will cover is only two years, during which short time it is impossible to assert that effective competition will emerge.
57. Ofcom themselves claim that the market will “tend” to effective competition in the “longer term” given price convergence with EAD and availability of alternatives to TI services<sup>15</sup> – yet this is no basis on which to remove ex ante regulation especially in the face of such a short, two-year review. Furthermore, we fundamentally disagree with this view that the market is tending towards competition.
58. Firstly, we believe we have hit a core number of customers with demand stabilising. This is unlikely to attract new competitors or innovations.
59. Secondly, we strongly disagree with the evidence presented to show that there are alternatives to TI available.<sup>16</sup> Firstly, the alternative solutions proposed (Ethernet (EAD), GEA-FTTC and GEA-FTTP) have been around for several years, yet we still see a core group of customers unwilling to take these due to a variety of factors.
60. Specifically, in relation to broadband, while it may be being requested by business customers for certain use cases, it does not always act as a suitable alternative to TI services. Firstly, the coverage of superfast broadband is notably poor for business customers. Far from the inaccurately reported 95% coverage from the Connected Nations Report (which we understand does not even include figures for large businesses), our members have much lower levels of superfast availability in recent bids – sometimes as low as 41%. This is even lower than the 73% suggested by Openreach’s own evidence used in the consultation. Ofcom must address the pressing issue of broadband availability for large businesses in the UK – something it has so far failed to do.
61. This means that Ofcom’s view that there are alternatives available in the form of GEA FTTC or FTTP is simply inaccurate just in terms of

<sup>14</sup> See paragraph 8.65 of Volume 1 of the Consultation.

<sup>15</sup> See paragraph 8.65 of Volume 1 of the Consultation.

<sup>16</sup> See Table 8.5 of Volume 1 of the Consultation.

availability. Furthermore, FTTC and FTTP simply do not offer the same reliability as they are contended services. Unless BT offers a dedicated fibre-broadband product, with guaranteed quality of service and speeds, it will never be an adequate substitute.

62. Furthermore, in discussing quality of service, Ofcom only relies on Openreach's evidence that parts and knowledge are no longer available. Rather than question BT's excuses for poor performance, nor actually even provide any evidence to show that fault rates have increased, Ofcom just accept this evidence as fact. Ofcom should again look to cross-check these assertions with those of CPs and customers (who ultimately, from our experience, still value TI services for their low latency and good quality).

#### BT "commitments" to CPI+8%

63. Ofcom appear to be comforted by BT's "commitments" to maintain TI services availability where there is sufficient demand and to not increase prices by more than CPI+8%. We are not however convinced by these. The commitments made have no legal or regulatory basis and therefore fuel further uncertainty for CPs and customers alike.
64. Product decommissioning takes substantial time, at least three years if not more, as evidenced by the WLR transition process where we have been given over 5 years notice. The link to maintain the service where there is "sufficient demand" further increases certainty and takes it out of the hands of providers and customers alike. A price increase of CPI+8% would be highly damaging and is in itself further proof of BT's dominance in the provision of TI services.
65. We are also concerned that Ofcom is relying on redacted cost data from Openreach to argue that switching costs for moving away from TI services are lower than before.<sup>17</sup> Firstly, we note that Ofcom doesn't cross-check this information from Openreach with a view from an alternative provider or indeed TI service customers own cost-analysis. Furthermore, given that it is redacted information, it is impossible for us to scrutinise this data in our response. However, we consider that switching costs can often be prohibitive for customers.
66. With a potential increase in costs due to a lack of remedies and lax commitments from BT (as discussed above), these customers will be hit with a double-whammy of higher rental charges and high migration costs. Ofcom should

<sup>17</sup> See paragraphs 8.39 to 8.40 of Volume 1 of the Consultation.



instead look to continue with a managed migration and fair, cost-based charges until the product hits its end of life as part of the transition to an all IP network, which is certainly not going to happen in the market review period.

**- END -**