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Cc: [REDACTED]

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## **Response to Ofcom: Physical Infrastructure Market Review**

### **Introduction**

As a fibre-to-the-premises (FTTP) network operator that exclusively serves rural areas, our network expansion is often constrained by the scarce availability of existing duct and pole infrastructure. When considering network expansion into any new location, analysis of any pre-existing physical infrastructure that may support network rollout is then a critical element of the design stage. This is because viable access to pre-existing infrastructure has the potential to dramatically reduce the costs associated with network delivery, thereby releasing more funds to connect more premises at the access network level.

In light of DCMS's Future Telecoms Infrastructure Review (FTIR) and its commitment to an 'outside in approach'<sup>1</sup>, it is then critical that any opportunities to bring down the barriers to accessing and utilising such infrastructure are explored. However, at this time, Gigaclear does not utilise any products within the Openreach Duct and Pole Access (DPA) product suite. This is because the pre-existing infrastructure in many areas of historic Gigaclear build has been 'direct bury' copper infrastructure, so would not facilitate the rollout of full fibre infrastructure. In these scenarios, Gigaclear often delivers its own ducted infrastructure.

Yet in light of Gigaclear's future rollout plans and [REDACTED], Gigaclear continues to explore utilising DPA where such infrastructure exists within planned delivery areas. In these locations, BT Openreach infrastructure is often the only viable means of utilising any pre-existing infrastructure (BT only areas).

Gigaclear then welcomes Ofcom's preliminary conclusion that BT Openreach's control over the network providing such services gives it a privileged position; enabling it to dictate changes in the nature of the underlying network and the services delivered on it. Gigaclear then supports Ofcom's provisional significant market power findings.

As we set out below, the high cost of building the physical infrastructure required to deploy fibre, such as underground ducts and chambers or telegraph poles, is a barrier to large-scale network deployment by competing operators due to the substantial capital investment this requires. BT Openreach's control of the largest and most comprehensive duct and pole network in the UK then allows it to deploy fibre more cheaply and quickly than its competitors. Improving access to BT Openreach's ducts and poles for rival operators can then help to address this enduring advantage in deploying fibre.

Gigaclear then welcomes both the general and specific remedies that Ofcom sets out within this consultation.

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<sup>1</sup> 'which aims to ensure that full fibre delivery progresses across all parts of the UK at the same pace, so that no areas are systematically left behind' : <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

With that said, we are concerned that Ofcom is proposing to not deliver a dark fibre remedy, due to a perception that there is little demand for such a solution and that such a remedy would not be effective due to little uptake of such a remedy in comparable markets. In response, we believe that there are some scenarios, [8], where the absence of alternative viable passive access (such as poles and ducting) essentially prohibits network operators from utilising the pre-existing infrastructure, to the extent that network competition within these locations is wholly prohibited. In our response, we set out evidence of these scenarios and ask Ofcom to revisit its decision regarding requiring a dark fibre remedy.

As Gigaclear does not currently utilise third party DPA infrastructure, our response wholly focuses on the questions most relevant to our experience of considering where DPA may be an appropriate means of reducing delivery costs in our future build plans.

**Question 3.1: Do you agree with our proposed market definitions? Please set out your reasons and supporting evidence for your response.**

Yes. Ofcom is right to highlight that at present the telecoms physical infrastructure market is dominated by self-supply arrangements and that non-telecoms physical infrastructure should not be considered as a viable alternative. In support of this position, on multiple occasions Gigaclear has explored whether such alternative infrastructures could be considered as part of the build process, to avoid the high costs of laying our own ducting<sup>2</sup>. However, on all occasions, Gigaclear ultimately concluded to not do so on grounds that the infrastructure available was not suitable to the efficient delivery of full fibre networks.

**Question 3.2: Do you agree with our proposed SMP assessment? Please set out your reasons and supporting evidence for your response.**

Across Gigaclear's future build plan, the only viable scale pre-existing telecoms infrastructure is then that of BT Openreach. We then agree that in these geographic environments there is little direct constraint on BT's capacity to leverage this incumbency in the upstream wholesale market.

Further, Ofcom is right to conclude that there is increasing demand for access to such infrastructure. DCMS's Future Telecoms Infrastructure (FTIR) set out an ambition for 15 million full fibre connections by 2025 and nationwide coverage by 2033. This was grounded in analysis of current build rates, stated rollout intentions of network operators, funds raised across industry to support these measures and expectations regarding the impact of policy improvements designed to enable further rollout. FTIR also set out a 'outside in' approach to rollout, which aims to ensure that full fibre delivery progresses across all parts of the UK at the same pace, so that no areas are systematically left behind. This then aligns with programmes such as the Scottish R100 Superfast Broadband programme, which as a whole seeks to invest £600 million of state aid 'gap-funding' into the expansion of digital infrastructure to ensure that 'every home and business in Scotland has access to superfast broadband by 2021'<sup>3</sup>.

There are then already funded commitments to network rollout expansion and considerable public and private funding being targeted to 'BT only' elements of the telecoms physical infrastructure market. Combined with BT's returns being comfortably above benchmark cost of capital, despite a number of WLA services being charge controlled, there is substantial evidence that BT does and is likely to maintain enduring and significant market power.

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<sup>2</sup> <https://www.ispreview.co.uk/index.php/2016/09/gigaclear-harness-disused-water-mains-uk-fibre-optic-broadband.html>

<sup>3</sup> <https://www.gov.scot/publications/reaching-100-superfast-broadband/>

**Question 4.1: Do you agree with our proposed general remedies? Please set out your reasons and supporting evidence for your response.**

Yes, Gigaclear supports the proposed general remedies as set out in table 4.1. As we set out in further detail in response to question 5.1, BT Openreach’s control of the main telecoms network means it can use its existing network of ducts, poles and subsea infrastructure to deploy new networks upgrades more cheaply and quickly than its competitors. This is because the level of investment required by a third party to replicate BT Openreach’s physical infrastructure network, in order to build a downstream access network (and the time it would take to complete this), is a significant barrier to entry. Improving access to Openreach’s ducts and poles for alternative network operators can then address an advantage of Openreach’s enduring incumbency. Both provision of access on reasonable request and maximum charge controls are then critical to restrict BT Openreach from seeking to leverage its incumbency to stifle network competition and in downstream markets.

Regarding the introduction of the ‘reasonable request for access’, Ofcom should ensure that procedural processes associated with the ‘Statement of Requirement’ (SoR) are objectively necessary and do not function as a barrier to acquiring access to BT Openreach’s passive infrastructure. Many of the emerging network operators, particularly those delivering full fibre networks, are of a significantly smaller operational scale to that of BT Openreach. Ofcom must then guard against BT Openreach utilising the SoR process to place procedural burdens upon alternative networks that are designed to over-burden the alternative operator and purposefully complicate and delay the SoR process and consequently access to the BT Openreach network.

**Question 5.1: Do you agree with our proposed specific remedies? Please set out your reasons and supporting evidence for your response.**

Yes. It is critical that the proposed PIA product (the specific remedy) will have no usage or geographic scope restrictions. As established above, BT Openreach faces an incentive to restrict access to its physical infrastructure and/or, to provide access on unfavourable terms compared to those obtained by its own downstream activities. Further, any networks built now are likely to differ substantially in terms of architecture from BT’s legacy network. Therefore, such a restriction would limit network architecture to that of BT’s network and in doing so deter network investment and impede innovation.

As an example, many of the rural areas Gigaclear invests in generate a significant local income from tourism and these communities are rightly proud of their rural setting. In these areas, there is then a strong preference for infrastructure being delivered ‘underground’, rather than over pole/over ground infrastructure.

For this reason, [REDACTED].

[REDACTED].

For context to these discussions, Gigaclear deploys point-to-point full-fibre networks from Active Ethernet cabinets serving approximately [REDACTED] premises. [REDACTED].

[REDACTED]:

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].

[REDACTED].

[REDACTED].

We also ask that in the design of the specific remedy, BT give due consideration to the role of such a remedy in any future copper switch off process. In many of the rural areas where Gigaclear invests, it is unlikely that there will be a business case for developing competitive full fibre infrastructures, due to the sparsity of these regions. Therefore, in the event of a copper switch off process, services are more likely to transfer away from Openreach and onto competitor infrastructures such as Gigaclear's.

[REDACTED].

In this scenario, any existing PIA arrangements potentially are put at risk. In areas that Gigaclear may have used BT assets to deliver full fibre to an extent that Openreach wish to consider decommissioning their infrastructure, we ask that Ofcom ensure that operators utilising the physical infrastructure would have the opportunity to adopt the Openreach assets rather than face dilapidation and rebuilding costs.

**Question 5.2: Do you agree with our assessment not to impose a dark fibre backstop remedy in this review period? Please set out your reasons and supporting evidence for your response.**

We do not agree, as we believe that Ofcom's initial decision to not impose a dark fibre backstop remedy overlooks a consideration of [REDACTED]. Access to this infrastructure is critical to DCMS's 'outside in' aspirations, particularly in some of the most remote parts of the UK. [REDACTED].

As an example, as set out in [REDACTED].

[REDACTED].

[REDACTED].

[REDACTED].

In response, BT may propose that alternative operators are still welcome to utilise non-dark fibre remedies such as an Optical Spectrum Access Filter Connect. Yet this would effectively prohibit Gigaclear from utilising a Dense Wavelength Division Multiplexing (DWDM) solution, which it would require to enable a viable point to point FTTP solution. A dark fibre solution is then critical to facilitating genuine infrastructure competition and advancing gigabit capable connectivity to rural areas where BT Openreach infrastructure is the only pre-existing solution.

Further, should a dark fibre remedy on uncompetitive inter-exchange connectivity routes become operational, it will be critical that such products offer a contractual length that can support the capital investment required to enable DWDM investment.

Whilst we then acknowledge the timeframe of this Market Review, we ask that Ofcom do all it can to offer reassurance that should this remedy be brought into place, investors are given confidence that such a solution is unlikely to be removed in subsequent market reviews.

As Ofcom stated that 'we would be open to reconsidering [a dark fibre remedy] ... should evidence emerge that the demand and Openreach capacity to supply in the event of the demand are greater than we anticipate', our experience of [REDACTED] is presented to evidence both demand for such a remedy and Openreach's capacity to supply this.

[X].

[X].