



E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Ofcom  
Physical Infrastructure Market Review Team  
[pimr@ofcom.org.uk](mailto:pimr@ofcom.org.uk)

31 January 2019

*Dear Colleagues,*

**CONSULTATION – PHYSICAL INFRASTRUCTURE MARKET REVIEW: ACCESS TO DUCTS AND POLES TO SUPPORT INVESTMENT**

I welcome the opportunity to respond to this consultation from Ofcom on proposals for regulation that will allow all telecoms providers to access the ducts and poles owned by BT.

As Ofcom is aware, it is my ambition and that of the Scottish Government for Scotland to become a truly digital nation; one that is underpinned by high quality connectivity which supports innovation and growth. To this effect, the Scottish Government has committed to ensuring that 100% of premises in Scotland have access to superfast broadband and 21<sup>st</sup> Century mobile infrastructure, so that everyone can share in the benefits that this brings. We also seek, in doing so, to take every step feasible to ensure that the digital infrastructure that results is future proofed for anticipated advances in services.

The Scottish Government and Ofcom have enjoyed a strong and collaborative relationship thus far, and I look forward to that continuing. It is vital, however, that Ofcom's regulatory framework builds in sufficient flexibility to provide the best possible opportunities for the Scottish Government to support infrastructure deployment in Scotland, and that your approach supports optimisation activity in Scotland.

Therefore, I welcome the advancements that Ofcom is proposing in relation to physical infrastructure access (PIA), particularly the move to unrestricted access and efforts to address anti-competitive behaviour through the treatment of BT as a significant market power (SMP).

Ensuring competition through our £600 million Reaching 100% (R100) programme procurement is a priority to ensure the very best deal for Scotland, and we want to encourage new market entrants to the process. It will come as no surprise that access to

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Openreach infrastructure for any other suppliers is an absolute necessity for making it cheaper and easier to deploy networks, thereby supporting competition through establishing a level playing field for bidders. In light of this, I am particularly pleased to note the removal of backhaul restrictions in relation to duct and pole access which has the potential to deliver significant efficiencies, both for our R100 programme and wider commercial deployment in Scotland and across the UK.

Whilst I consider Ofcom's plans to extend access to Openreach's ducts and poles would be a positive step, should the proposed remedies be implemented, it is crucial that Openreach conducts itself in manner that supports access and that underpinning details are provided to support ease of use by access seekers.

I note the requirement for BT to publish a Reference Offer to assist with the monitoring for anti-competitive behaviour and to make clear terms and conditions to other providers. This should support large and small operators alike, ensuring clarity on how duct and pole access works and the associated products and underpinning systems are as simple as possible to access. I would also be keen to ensure that any redundant fibre or cables currently left in ducting should not be regarded as a potentially legitimate reason to block duct sharing and would welcome any clarity on that point in case it ever became a factor

I also note that the specifications of such a reference offer are not outlined in the proposals. I would, of course, anticipate that this would be informed by the responses of telecoms operators and negotiated with industry. Lessons from the R100 procurement, however, should be taken into account to ensure that the information available to the wider market, on BT's network, is sufficiently detailed and accessible and well communicated to industry stakeholders to support robust planning.

Under the proposed remedies, required data should be easily accessed within appropriate timescales, provided in an electronic format which can easily be imported to Geographical Information Systems (GIS) and planning tools, and accurate with respect to the condition and capacity (e.g. not regarding redundant cables as a reason to classify ducts as being at full capacity). On the issue of capacity, it is crucial that Openreach provides information on capacity to allow R100 bidders to accurately develop deployment plans and associated cost models, ensuring that deployment on the ground can progress as planned.

In terms of general obligations outlined, I would expect Openreach to proactively manage and expand capacity, carry out preventative maintenance, and that there would be no charge to access seekers for survey, repair or expansion of duct routes.

I am pleased to note the aim to implement remedies within one month from the date of your final decision statement in Spring of this year. This welcome degree of urgency would enable the successful R100 suppliers to take advantage of this remedy throughout the course of deployment.

Finally, we have received representation from a mobile network operator which asserts that merely unrestricted access to ducts and poles is insufficient, and that for the UK to be leader on 5G, it also seeks unrestricted access to BT's dark fibre. Whilst I appreciate that this is outwith the scope of the PIA consultation, I ask that Ofcom considers this MNO's case and seeks to develop a dark fibre remedy which delivers on the the needs of all parties.

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I would ask that the Ofcom continues to engage with the Scottish Government as the proposals are developed and implemented.

*Kindest regards*



PAUL WHEELHOUSE

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