

1. Telefonica UK Ltd ("Telefonica UK") welcomes the opportunity to respond to Ofcom's consultation on the Physical Infrastructure Market Review ("PIMR")¹
2. As Ofcom is aware, Telefonica UK is a mobile network operator with around 25m retail customers, through its O2 and giffgaff brands. Telefonica UK is also a major wholesale mobile provider, with customers including Tesco Mobile, Sky and Lyca.
3. Telefonica UK has supported Ofcom's strategic approach, adopted in its review of digital markets in 2015/16 and culminating in its July 2018 approach to future regulation document². In particular, we agree with Ofcom's goal to require BT to provide unconstrained access to its ducts and poles, as a means of boosting investment in fibre; Telefonica UK's principal interest in this is to generate greater competition in the provision of mobile backhaul services. The rollout of 5G networks in the UK relies heavily on the provision of high capacity, cost effective mobile backhaul. Ofcom is aware of the importance the Government attaches to the roll-out of 5G networks in the UK³.
4. Accordingly, Telefonica UK supports Ofcom's proposals in this consultation document, to require BT to provide such access, from 1 April 2019.
5. Ofcom should proceed without delay to implement these proposals:
 - Unconstrained duct and pole access is no more than Ofcom had promised in its strategic review and is supported by the Government in its Future Telecoms Infrastructure Review⁴;
 - The current "mixed usage" regime arbitrarily discriminates against communication providers that want to access BT's infrastructure to invest in fibre, if the primary purpose is not to provide fixed broadband services (e.g. to provide mobile backhaul services); and
 - A successful unconstrained duct and pole access regime would stimulate competition between communication providers for the provision of high capacity, cost effective mobile backhaul, which is vital for the success of 5G in the UK
6. Our response to specific questions contained in the consultation document is set out in the attached Annex.

¹ Physical Infrastructure Market Review, Ofcom, 2 November 2019. See:

https://www.ofcom.org.uk/data/assets/pdf_file/0014/125420/PIMR-consultation.pdf

² Ofcom, 2018. Regulatory certainty to support investment in full-fibre broadband – Ofcom's approach to future regulation, Ofcom, 24 July 2018. See: <https://www.ofcom.org.uk/...../investment-full-fibre-broadband.pdf>

³ See, for example Next Generation Mobile Technologies: An Update to the 5G Strategy for the UK, DCMS, 19 December 2017. See: <https://www.gov.uk/government/publications/next-generation-mobile-technologies-an-update-to-the-5g-strategy-for-the-uk>

⁴ DCMS, 23 July 2018. See:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future Telecoms Infrastructure Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf)

ANNEX

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

We do not agree with Ofcom's proposed geographic market definition. In our view, the market is national in nature (with the exception of the Hull area), because competitive conditions are broadly similar. Ofcom's SMP assessment (with which Telefonica UK agrees) makes clear that BT will not face competitive constraints from alternative infrastructures for very similar reasons in the areas that Ofcom proposes are distinct.

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

We agree that BT has significant market power in the market for the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network, for the reasons set out in section 3 of the consultation document.

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

The proposed general remedies appear to be appropriate.

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

Yes, we agree that PIA in the Physical Infrastructure markets should be in the same form as the WLA physical infrastructure access obligation, but without the usage restrictions. We agree that there should be no restrictions on the use of PIA, on the basis of usage or geography, for the reasons given in paragraphs 5.27 - 5.31.

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.

No. Given the uncertainty about the extent to which network adjustments might not be feasible and/or would not promote economic efficiency, we think that it would be prudent to include a requirement on BT to make available any existing spare unlit fibre in cases where network adjustments are not available. Such a remedy would make better use of existing assets and would seem to impose no additional costs on BT.