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1st February 2019

Dear Georgi,

Passive Infrastructure Market review

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. We welcome the opportunity to comment on Ofcom's proposals in the Passive Infrastructure market. We note that Hull has been excluded from this market review, and would like to make clear that this response is submitted on the basis that there is no read over to any review of the infrastructure market in Hull¹.

Ofcom are proposing to extend the availability of duct and pole to all communication providers, removing the artificial restrictions in place today that only allow residential ultrafast providers make use of the product. UKCTA broadly supports the proposals set out in Ofcom's Passive Infrastructure Market Review Consultation.

The UK has low levels of residential fibre deployment and there is a need for investment in UK infrastructure to upgrade from BT's copper connectivity with an ultrafast connection. Likewise, although most enterprise locations have access to leased lines today, it is important for any new sites to have greater choice in future infrastructure provision, and an unrestricted Duct and Pole as remedy will make it easier to roll network out in the future, helping to overcome in part the substantial economic and practical barriers faced by alternative communication providers seeking to extend their own networks.

¹ Please see KCOM's submission in response to the PIMR.

There is a market for Passive Access which is upstream from the current service markets of Wholesale Local Access and Business Connectivity Wholesale Local Access and Business Connectivity will remain individual relevant markets for some time to come. Ofcom's forthcoming access review will seek to take a more holistically position in respect of regulation for these markets, however it remains to be seen how this can take account of the very different circumstances in each market (where business connectivity is a mature high capacity market and local access is informed by a different set of market dynamics). There are many other aspects of Ofcom's wider programme of work which will need to be carefully considered to ensure consumers are protected and competition can flourish.

It is likely to take some time before the impact of an extended Duct and Pole remedy are felt in the market and it is important to ensure that other regulatory remedies and safeguards aren't removed prematurely, if competition has not taken hold. To do so early risks destabilising the market and weakening future competitive restraint on Openreach. In addition, Ofcom must consider the impacts of this change in regulation on the whole of the competitive market including network builders and access seekers.

UKCTA broadly agrees with Ofcom's product market definition. The duct and pole product is key to fixed telecoms specific physical infrastructure. UKCTA agrees that BT has SMP in the physical infrastructure market, across the geographies Ofcom defines. Existing competitors, the scope for entry, wireless infrastructure do not provide an effective constraint (or a practical substitute) to BT's upstream market position.

We agree that the general and specific remedies introduced for WLA PIA should be carried over into the PIMR PIA. The PIMR proposes a PIA remedy be available without geographic or usage restrictions. This is welcomed and a practical evolution in the product, particularly in light of the issues that UKCTA members have experienced in negotiating the implementation of the mixed use rule in WLA PIA Reference Offer negotiations.

UKCTA members make use of Openreach accommodation services and the ability to share the costs of accommodation across services is necessary for enabling competition across various markets. UKCTA members have established accommodation areas within BT exchange buildings for the collection of regulated services, the siting of their aggregation equipment. It is fundamental to the economics of these services that accommodation can be accessed and shared across the breadth of services.

WLA PIA Reference Offer negotiations will conclude after the response window for PIMR. It is reasonable to expect that the outputs of those negotiations will form the basis of the PIMR Reference Offer. It is important that adequate time is allocated to resolve/agree any material issues that were not concluded during the previous negotiations. UKCTA is disappointed that matters remain outstanding a full 10 months since the WLA concluded. We believe Ofcom should take a more direct role in the negotiations to ensure a swift conclusion. UKCTA members are very willing to participate in CEO/ senior management meetings with Openreach and Ofcom to

ensure that the spot light remains on the need for the negotiations and subsequent implementation to be concluded in a meaningful and timely manner.

Ofcom needs to be mindful of the issue of non-discrimination, in particular where BT itself is not following the exact same processes which CPs are required to follow. At this stage it is difficult to determine whether CPs are at a disadvantage due the lack of full EoI. However, as the product becomes more widely used, any differences are likely to become apparent and Ofcom should be ready to act to prevent discrimination.

Regardless of EoI, it is clear that a full and robust set of KPI metrics should be made available to CPs and the OTA. At the time of our response, this is something Openreach has resisted.

A full complement of KPIs² would ensure, at a minimum, that the OTA and PIA CPs are cognisant of overall capabilities of the PIA product. Ultimately this is an important tool for CPs to identify and evidence our concerns.

Ofcom notes in its consultation that an important aspect of its oversight arrangements will be informed by feedback from OTA and/or CPs. A vital tool to achieve this is the ability for CPs to have transparency about how the PIA product is consumed. Without this, CPs would not have the data that would help to inform Ofcom's investigation activities.

Ofcom proposes to maintain PIA rental charges consistent with those specified in the WLA. Stable pricing arrangements are important for CPs to develop their infrastructure investment business cases. CPs using Openreach passive services need long term pricing certainty in order to consume passive products with confidence. In the past, BT has been able to revalue its network assets by a material amount (through commissioning hypothetical re-build studies). If such behaviour were repeated it could have a serious impact on the price of passive services in the longer term (potentially introduction price shocks), removing certainty and harming their use over the longer term. We would seek assurances from Ofcom that their revised approach to regulatory report would prevent this from occurring and thereby remove a very significant business risk from CPs' investment models.

It is important that there is appropriate consistency in the regulatory accounting approach taken between passive and active services in order to prevent gaming and over-recovery between the products. As Ofcom focuses more on passive regulation, the need for accurate, transparent cost-based passive product reporting is ever more important. Alternative investment and competition will be hampered if BT leverages excessive SMP profits to drive down prices in contestable markets. For example, in the treatment of cumulo rates for active products, the active product cost stack should include the passive infrastructure asset costs. For example, Dark fibre products sold to CPs will include infrastructure costs in their price and thus CPs will pay the cumulo rates or the equivalent on the passive access products indirectly.

² CPs involved in the WLA PIA Reference Offer have proposed an initial, minimum, set of metrics to monitor Openreach's activities. CPs would expect these would be supplemented as the need arises.

This pass through of costs needs to be robust and fair, allowing no opportunity for over-recovery or double counting. The prospect of this arising is particularly concerning in light of the fact that BT lines of business generally exclusively procure active services from Openreach, with external CPs likely to use both active and passive services. Separately Ofcom have set out proposals which effectively reduce the active product regulatory reporting that BT is expected to publish and confidentially submit to Ofcom whilst proposing to replace it with enhanced passive product reporting. We believe it is vital that adequate report on both active and passive services is retained to ensure consistency.

Yours sincerely

Domhnall Dods
UKCTA Secretariat