

Ofcom Advisory Committee for Wales
Response to Ofcom Consultation:
Promoting Competition and Investment in Fibre Networks
(Closing date for responses: 7 June 2019)

Introduction

The Advisory Committee for Wales strongly supports Ofcom's aim to upgrade the UK's broadband infrastructure to ensure it will be able to handle the growing demands for fixed and mobile connectivity, both for businesses and consumers. We recognise and support Ofcom's central goal to retain incentives for operators to invest in super-fast networks while at the same time protect the interests of consumers. In particular, we note the importance of fibre as 5G backhaul, especially in rural areas, and we believe this is a further reason for the need for Ofcom's approach to succeed, especially where BT is the only provider and has Significant Market Power (SMP). We note the market analysis in the consultation document which shows that, geographically by post code, most of Wales is situated within 'non-competitive' areas of the UK, where only BT fibre networks are likely to be built. However, Wales' cities and surrounding areas, Cardiff, Swansea, Newport and Wrexham, are within potentially competitive areas as classified by Ofcom, where alternative fibre networks to those owned by BT could be built. Virgin Media has already deployed fibre within the cities in South Wales and in 2018 it announced that 4,000 premises in Wrexham would be able to access its Ultrafast Broadband network. We have therefore considered the proposals within the consultation that apply to both potentially competitive and non-competitive areas as they are both relevant for citizens and businesses in Wales.

Responses to the Consultation Questions:

Question 2.1: Do you agree with our overall approach to regulation in potentially competitive areas?

We agree with Ofcom's overall approach, reflecting its duties to promote competition by ensuring that alternative networks will benefit from appropriate regulatory conditions to encourage investment while also ensuring that BT also has the incentive to invest. Central to this is the proposal for unrestricted access to BT's ducts and poles (DPA). In Wales, however, there may be instances where such access may not be feasible, for example, in some urban areas where ducts may already be heavily congested.

However, we agree that protecting consumers against excessive prices and poor quality is also vital and that a balance should be maintained between this requirement and the need to stimulate investment. Similarly, it is essential to ensure that access to Openreach's network is maintained on fair and reasonable terms while investment in alternative networks is developing. We accept that it is too soon to remove this requirement now and to do so now would risk damaging retail competition. The range of other remedies proposed by Ofcom, such as ensuring Equivalence of Input (EOI), securing transparency in BT's terms and conditions, Quality of Service (QoS) requirements and financial reporting regulations will also provide important safeguards in our view.

Question 2.2: What is your view of our access and charge control proposals for wholesale local access services in potentially competitive areas?

In our view the market would benefit, in terms of stability and certainty, from Ofcom's proposed approach of maintaining specific charge controls for the Metallic Path Facility (MPF) and General

Ethernet Access (GEA 40/10) 'anchor products' rather than the less defined requirement for fair and reasonable terms in the context of Wholesale Local Access (WLA). We note that charges will be set by reference to BT's costs, based on a Hypothetical Ongoing Adjustment (HON) which takes account of the costs of maintaining the existing network. Ofcom's approach is to set prices at a level above BT's costs. We believe this is important as it will enable other new network providers, facing initial high up-front costs, to compete. However, we note that Ofcom will not be setting charge controls on higher speed products, therefore encouraging roll-out of these networks by BT through pricing flexibility. In our view this is the correct approach as it will help to incentivise network investment and roll out.

Question 2.3: What is your view of our access and charge control proposals for leased line services in potentially competitive areas?

We have been aware anecdotally of issues facing small and medium sized enterprises in accessing suitable business broadband products from BT at reasonable prices. However, it is possible that these issues are more prevalent in the non-competitive areas identified by Ofcom. But we believe that it will be important to retain network access in potentially competitive areas to leased lines and the charging cap for services of 1Gbit/s and below should also continue as proposed, which we note is consistent with Ofcom's approach to WLA service charge controls.

Question 3.1: Do you agree with our overall proposed approach to regulation in non-competitive areas?

We support Ofcom's ambition to secure investment by BT and ensure widespread availability of fibre across the UK's rural areas including Wales through relevant regulatory incentives aimed at protecting consumers and retail competition, balanced with the need to create investment incentives for BT.

Question 3.2: Do you agree that a RAB charge control framework is appropriate for non-competitive areas? If not, please explain why you think an alternative is more appropriate.

We agree that the new proposed Regulatory Asset Base (RAB) model could provide a greater incentive for BT to invest in new fibre networks in rural areas compared to the traditional cost-recovery model used in the past. However, we are concerned that price increases that could result from applying the RAB approach do not impact excessively on the cost of BT's wider product range. We therefore agree that Ofcom should maintain charge controls on MPF, FTTC Copper 40/10 and FTTC higher bandwidth products. We also agree that, where BT has significant market power (SMP), it will be essential to maintain the requirement for wholesale network access on fair and reasonable terms in order to maintain retail competition.

Allowing for these safeguards we believe the RAB approach is an innovative solution which hopefully will provide a greater degree of incentive to BT, although we recognise that significant barriers, such as the additional infrastructure costs in Wales related to its mountainous terrain and sparsely populated rural areas, will remain. In this context, we note Ofcom's intention to work closely with policy makers to design interventions that take account of the interaction between public fibre roll-out schemes and the proposed charge controls, including for example, the Gigabit Voucher Scheme operated by the Welsh Government. In our view such schemes will continue to have a key role in supporting fast broadband connectivity in hard to reach areas, but we would be concerned if there was any adverse impact resulting from the exclusion of costs in areas being served by public schemes when calculating the cost base for the proposed charge controls.

Question 3.3: Do you have any comments on the design of a RAB charge control for non-competitive areas?

We agree that in non-competitive areas Ofcom should not propose a HON adjustment in setting its charge controls as the new RAB framework should provide a stronger incentive to invest, given that there is likely to be far less competition and far less investment in rural areas by alternative network providers. We also agree, as stated above, that the impact on consumers should be minimised by only including costs within the RAB that are necessary to incentivise investment by BT. Other financial controls, such as linking a proposed RAB mark-up on copper charges to agreed new fibre network investment targets agreed between Ofcom and BT could also provide an effective incentive for network roll-out. But we appreciate that this is a complex undertaking which would have to take account of such factors as network coverage, take-up of fast fibre services and average download speeds.

We are aware of concerns, expressed to us by business groups in Wales, over the relatively high cost of leased lines and the absence of lower cost alternative high-speed broadband products for smaller businesses, compared for example, to the costs of services accessible by domestic consumers. The existing regulation regarding charge controls both for above and below 1 Gbit/s services should therefore be retained in our view.

As with the potentially competitive areas we agree that Ofcom should apply the same general requirements on BT in relation to WLA and leased line provision in non-competitive areas such as securing EOI and transparency in BT's terms and conditions, Quality of Service (QoS) requirements and financial reporting regulations.

Question 3.4: Do you agree with our proposal to introduce dark fibre in non-competitive areas?

We recognise the potential competition benefits of enabling alternative network providers to access BT's dark fibre network, with the associated cost benefits of allowing providers to use their own equipment and be able to manage service delivery in new more flexible and innovative ways than would be possible via the active leased line products provided by Openreach. But we recognise that there is potential for dark fibre access to reduce the incentive for alternative providers to invest in their own physical networks. But in many parts of rural Wales, the deployment of new build fibre networks by alternative providers is unlikely so that the impact of dark fibre availability would be limited. We agree therefore that BT should be required to provide access to dark fibre networks and that charge controls would also be needed. We understand that, due to historical factors such as investment by the MOD, there may well be extensive amounts of dark fibre already available across Wales.

Question 4.1: Do you agree with our proposed overall approach to QoS?

We recognise that where BT has SMP and in the absence of extensive competition, it is essential to protect the quality of service it provides and we agree with Ofcom's broad approach to ensure that QoS standards are maintained in the transition from copper to new fast fibre networks. Although Ofcom notes improvements in the performance of Openreach in the provision of leased line services, we know from some discussions with business groups in Wales that there are still significant service issues that impact on small and medium enterprises. We would therefore welcome any new deployment of fast fibre networks by alternative providers which in our view would help to drive competition and create further incentives to maintain and improve service

standards in this area and we would also support proposals by Ofcom for the development of a specific set of QOS standards for dark fibre access as this new market develops.

Question 5.1: Do you agree with our overall approach to transitioning regulation as BT deploys its new fibre network?

We agree that once fast fibre networks become extensively deployed across the UK, including rural areas of Wales, Ofcom's regulatory emphasis should move from copper based WLA services to the new fibre networks. This might require a shift in emphasis on an exchange by exchange basis following the roll out of fibre networks by Openreach. Price differences between copper and fibre-based services are likely to continue during this transition period and although we appreciate the need for Openreach to have pricing flexibility, we believe that Ofcom should ensure that consumers and SMEs are properly protected and that their level of choice is not reduced.

Question 5.2: Do you agree our proposal not to require BT to offer new forms of wholesale access to its copper network?

Looking ahead we accept that copper-based services will be less relevant in future with the move to fibre and that an access requirement for new copper networks should therefore become unnecessary.

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