

07th June 2019

Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

By email only : approachtoremedies@ofcom.org.uk

Dear Sir/Madam

Response to Promoting competition and investment in fibre networks: initial proposals – Approach to remedies.

BUUK owns both a fibre infrastructure provider, Open Fibre Networks Limited (OFNL) and a fibre only retail service provider business, Independent Fibre Retail Limited, which trades as "seethelight". This response is a consolidated response on behalf of both of these companies. In this document BUUK sets out its response to Ofcom's consultation documents published on 29th June 2019 as part of its Promoting Competition and Investment in Fibre Networks (PCIFN).

BUUK remains strongly supportive of Ofcom's overall approach to the promotion of competition and investment in fibre networks. It remains extremely important to ensure that the balance between consumers continuing to receive a high level of regulatory assurance and protection whilst providing sufficient incentives to promote investment to meet the future demands for broadband connections is set correctly. We agree that competition is the best way of driving investment in high quality innovative services and the regulatory framework should be set appropriately according to the level of, or potential level of, competition in the relative geographical area.

We are surprised that currently Ofcom have not yet identified any areas that already meet the definition of a competitive area (Geographical area 1). We would expect that competition in some geographical areas, particularly in high density urban areas, does exist or will rapidly develop. We would therefore welcome clarification from Ofcom of how a geographical area's classification will change over time and whether any areas of regulation will be retained in competitive areas. We would expect this process to be simple and transparent to ensure that Network Owners are clear, in advance, of the impact of and time taken to change the level of regulation. This will be particularly important to future network investors to ensure that they can balance the risk between potential continued regulation (if any) against the initial capital investment.

We agree with Ofcom's overall approach that for quality of service and transition should be the same for potentially competitive areas and non-competitive areas until competition has been seen to be established. It remains important that Ofcom vary the form and level of charge controls particularly to promote competition through network investment. We believe, however, that this promotion should not pre-determine the business models of new investors. For example, it may be more efficient for a single network to exist that provides open access to all retailers, particularly in lower density rural areas. Another important variation in the form of regulation, as recognised by Ofcom, is the need for increased obligations on BT to offer unrestricted access to its network of ducts and poles. This however, should, also be extended to other BT or Openreach assets, such as fibre or exchanges.

We have provided more detailed responses to the specific consultation questions in Appendix 1. We would be happy to provide any further clarification to our responses if that would be helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Hutton', with a large, sweeping underline that extends to the right.

Keith Hutton

Regulation Director (Heat, Fibre and Water)

BUUK Infrastructure

Appendix 1 - Consultation Questions

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

We remain supportive of Ofcom's overall approach to regulation in potentially competitive areas. The balance between encouraging new investment in Fibre and protecting consumers experience and rights remains key in Ofcom's implementation. We believe further detail is required in the type and form of the regulatory framework before further comment on this balance can be made. We recognise that this will emerge in the forthcoming consultations in 2019.

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

We agree with Ofcom that it is too soon to remove BT's obligations to provide network services with particular reference to metallic path facility and Virtual unbundled access. We also agree that copper-based services should be treated as legacy services and BTs, and other network providers, obligations to provide general access to them should be removed.

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

We agree with Ofcom that BT should continue to be obliged to provide network access where a third party reasonably requests it where it is deemed to have significant market power. However, where there is a change in the rating of BT's market power further clarity is required on BT's obligations to existing customers who are leasing line services.

We recognise, to preserve investment incentives on competitors, that there will be a continued need for Ofcom to specify a price control from 2021. We also believe, to give network competitors sufficient certainty on future returns on investments, particularly whilst competition is established and BT has visibility of competitors network development, that BT should be required to provide sufficient visibility of its investment priorities and plans.

We remained concerned, and our experience is, that BT could change its priorities to drive out or limit competitive entry.

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

We remain supportive of Ofcom's overall approach to regulation in non-competitive areas. We believe further detail is required in the type and form of the regulatory framework before providing further comment. We recognise that this will emerge in the forthcoming consultations in 2019.

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 most appropriate form of price control where competition hasn't and is unlikely to be established is in the form of a regulatory asset base.

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

Within the design of a RAB charge control framework it will be important that BT is sufficiently incentivised to develop the network quickly for existing customers. Specific incentives on speed of roll out and open access will be needed. Further, sufficient obligations will need to be maintained to ensure that open access to infrastructure for neighbouring and new networks is maintained.

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

BUUK remains strongly supportive of Ofcom's continued mandation of a dark fibre remedy to BT's SMP in non-competitive markets. This has proven to be an effective way of ensuring that end customers do have access to alternative services. Further, this will require, a charge control to ensure that BT does not set excessive charges.

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

We agree that existing quality of service obligations should be maintained on BT where it has significant market power. We also believe that BT should be mandated to maintain existing quality of service obligations in geographical areas that are potentially competitive until competition has fully emerged.

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

We are broadly supportive to Ofcom's overall approach to transitioning regulation for the copper network. We remain concerned that BT will not be sufficiently incentivised to roll out new fibre networks at a pace, particularly in areas that have little prospect of competition, that meets the wider needs of society. Additional focus should be given to this in any future RAB charge control.

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

N/A