

**Response to Ofcom
Consultation:
Wholesale Fixed Telecoms
Market Review 2021-26:
Further Consultation on
certain proposed remedies**

8th December 2020

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Introduction

1. Community Fibre welcomes the opportunity to respond to the consultation document published by Ofcom on 6th November.
2. Community Fibre is one of the largest customers of BT's PIA product with over 600km of sub-duct installed using this service. As such we have a particular interest in the fair and stable regulation of the PIA service in which BT has been adjudged to have Significant Market Power.
3. Our response focuses on the modifications Ofcom has proposed to the PIA remedies.
4. Ofcom has proposed to change the basis of PIA pricing from the method it has used since 2017, where pricing has been a share of the regulated cost based on the occupancy of the asset used, to a new method where it attempts to set the price, for some PIA components, based on the value of the market that asset serves.
5. Although we appreciate that Ofcom is working to tight deadlines to complete the WFTMR It is unusual that such a fundamental change to the basis of the regulated pricing should be subject to a short 30 day consultation period.
6. It is fair to say that, from the perspective of a busy Altnet, it has been difficult to fully analyse the history and basis of Ofcom's proposals within the time provided. To help us in this matter we have commissioned, jointly with INCA and other AltNets, further research to help us better understand your proposals. Further details of this research will be made available to Ofcom within the next few days.

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Findings

7. In this response we would like to highlight the findings from that research which we think are particularly important for Ofcom to consider before coming to a final conclusion on these matters.
8. Ofcom have consistently stated the importance of stable regulated long-term prices in order to attract investment into the full fibre networks required in the UK. Ofcom has also previously recognised the criticality of the PIA service in fostering infrastructure competition within the UK.
9. It seems that this late notice increase to PIA prices, as opposed to the previously announced long-term reductions in PIA prices, runs counter to these previous statements.

Actual Regulatory Asset Value

10. Ofcom's 2017 WLAMR acknowledged the lack of transparency surrounding the cost base of the PIA product and stated that OFCOM would improve transparency over time as it collected more relevant data.
11. Given the age and condition of many of the ducts Community Fibre has been using in London we assume that BT will already have written off the value of most of these assets and so going forward should only be allowed to recover its operational costs and any investments it makes in new assets, noting that third party property developers often contribute to some of BT's installation costs of new assets. BT should only recover costs incurred by them and not those that have been paid for by third parties.
12. We anticipate that when Ofcom carries out a full assessment of the relevant regulatory asset value of the components making up the PIA service these will be less than those currently assumed. This will lead to a drop in the regulated PIA prices.

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Modern Equivalent Assets

13. A full fibre network will not require the multiple bores that BT have built for its tree and branch copper network.
14. Community Fibre has only used a single 25mm sub-duct in a single bore at each location during its extensive network build across London. Research commissioned by Ofcom in 2010, conducted by Analysis Mason¹, indicated that up to 7x25mm sub-ducts could be installed within a single bore.
15. Once copper is removed (which is unlikely to happen before 2026) we anticipate that the modern equivalent asset for full fibre networks will be a single bore duct in all locations accommodating up to seven operators. Although this might indicate that multi-bore PIA prices would then inflate towards the current single bore price this inflation will be countered by the reduced cost of the asset base. This is because the costs of installing, maintaining and operating multiple bores will be removed. It will be further reduced due to a larger number of operators sharing the same duct and hence the associated costs.

Ofcom's Proposed Value Approach

16. Ofcom have proposed to change the basis for determining the price for some PIA components from the well established 'occupancy' approach, where operators pay a fair share of the costs associated with the asset used, to a 'value' approach, where operators pay for use based on the assumed value they can derive from that asset use.
17. We have been unable to find any evidence to support Ofcom's assumptions that in a 2 bore duct an operator can compete for 25% of customer connections and in a multi-bore duct an operator can compete for 10% of customer connections.

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0023/33971/duct_pole.pdf para 75

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18. The 'occupancy' approach has been deployed by Ofcom consistently for the past 10 years. Although discussions will continue around the cost of the Regulated Asset Value (irrespective of which model is chosen) and the appropriate cost share for each operator this approach is easy to understand and calculate.
19. The 'value' approach seems to have no hard evidence base and according to Ofcom's proposal would be inconsistently applied to some components of the PIA service but not others.

Manhole and Joint Box Pricing

20. We do not accept that there is a link between spine duct occupancy, constrained by the physical parameters of the duct, and manhole and joint box capacity which do not have the same constraints.
21. The space used by an operator in a manhole or a joint box is a function of the number of cables that are entering and exiting the enclosure and hence we believe this continues to be the appropriate basis for pricing.

Conclusions

22. We understand and accept that PIA pricing should:
- Ensure that BT can recover its efficiently incurred costs but it should not be able to over-recover those costs and it should not be able to recover the costs of inefficient legacy network assets that are not required by PIA operators.
 - Be transparent, evidence based and cost-oriented; and
 - Be stable and enable long-term planning for PIA customers to increase investment certainty and hence accelerate fibre deployment.

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23. We do not think that BT's proposal nor Ofcom's counter-proposal can achieve the above objectives.
24. Ofcom should immediately introduce a Regulated Asset Value (RAV) adjustment based on the remaining and unpaid for value of BT's PIA infrastructure and use this as the new basis of PIA pricing.
25. This RAV adjustment should be used for the 2021 - 26 review period and Ofcom should commit to using this approach in future market reviews. Ofcom should undertake this work as a matter of urgency although we accept that the analysis, modelling and consultation work is unlikely to be complete by March 2021. As such implementation of WFTMP will need to be delayed and existing prices continued until the new pricing model can be introduced.
26. Ofcom should adopt Modern Equivalent Access principles to the existing PIA asset base and remove the investment and operational costs associated with additional bores from the asset base altogether. It should assume an average of three operators will share each single bore (as proposed by BT) and share the costs of the residual asset base accordingly.
27. The above two exercises will reduce the size of the asset base value that BT recovers via PIA pricing and act as a deflator to existing PIA pricing. This may or may not be counterbalanced by growing evidence of the actual number of operators sharing ducts.
28. If Ofcom decided that neither of the above two options can be completed in a timely fashion then it should consider the market review period 2021- 25 as a "holding" period whilst the proper evidence is collected and models created in support of the above two options with a view to the new asset based value being introduced for the review period starting in 2026. As such the prices proposed in the January 2020 WFTMR consultation should be maintained with a CPI-0% inflator applied.

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29. Conducting this work early in the 2021 - 25 review period will provide operators with early warning of the expected price change in 2026 and enable them to adjust their investment plans accordingly.
30. With regards the setting of PIA ancillary services pricing we agree with Ofcom's revised proposals. However to ensure that the external charges applied are reasonable we would recommend that Ofcom undertake a benchmarking exercise to verify the charge levels. Community Fibre would be prepared to share in confidence with Ofcom some of its terms with its own external contractors to assist with this benchmarking exercise.

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