

Ofcom 6 November 2020 Consultation:

Wholesale Fixed Telecoms Market Review: Further consultation on proposed remedies

Response from Fern Trading Limited, 10 December 2020

Introduction

1. This response to Ofcom's further consultation on proposed WFTMR remedies is submitted by Fern Trading on behalf of Jurassic Fibre Limited ('Jurassic') and Swish Fibre Limited ('Swish').
2. Swish and Jurassic are each backed with £250m from Fern Trading Limited. Fern is an alternative investment group with £9bn of funds under management. It is advised by Octopus Investments Limited.

Why is Ofcom proposing a real-terms *increase* in PIA charges?

3. We recognise that this consultation is about how PIA unit costs should be shared between users, rather than about the PIA cost itself. However, the PIA charges that Ofcom proposes appear intended to provide a glide path to what Ofcom believes are likely to be higher charges in the 2026-31 market review period and beyond. Yet Ofcom offers no evidence for why future charges should be higher.
4. Ofcom talks about how increases in duct usage and the retirement of copper will affect *share* of future costs, but is silent on how/whether the costs themselves will change. Without this analysis, Ofcom cannot determine whether PIA charges will rise or fall in future market reviews. Its proposal to provide an upward price path during this current review period is therefore arbitrary.

A long-term view of BT's recovered PIA network costs should lead to a real-term *reduction*

5. And this is critical, because we believe that, in fact, BT regulatory accounts show that it has already recovered the large majority of the capital costs of building its duct network, most of which was put in place years ago.
6. If Ofcom were to conduct an analysis of BT's *long-term* PIA costs and agree with this view, then it would remove these capital costs. This would lead to a real-terms *fall* in PIA charges after 2031, not a rise. On this basis, it makes no sense to have a CPI+ glide path to a future *higher* unit cost: the glide path should be *downwards*.

Ofcom should at most *maintain* real-terms PIA prices during this charge control period

7. In the absence of Ofcom conducting this analysis, at the very least it should ensure that PIA charges remain flat in real terms for the next five years, pending a detailed review of long-

term duct costs and recovery in the next charge control period. Failure to do this will threaten our business.

We support utilisation-based charging, provided it shares the cost of a modern duct network

8. We certainly prefer a utilisation-based approach to sharing ducts and poles costs with BT, than Ofcom's arbitrary value-based price rise. However, this should be based on utilisation of a theoretical modern, efficiently-sized network.
9. As the fibres and sub-ducts of the entire telecoms industry could be carried in the space available in a single-bore duct, we should not bear any of the cost of deploying or supporting any additional space to this.

Over-capacity in the duct network should have no bearing on the rental prices we pay

10. In particular, we have no use for, and gain no benefit from, the space freed up if copper is retired. This is simply a function of an outdated duct network, built to benefit BT's copper products.
11. BT is free to (and should be incentivised to) find new tenants for any space it makes available. The same applies to the excess capacity in multi-bore ducts. It is not fair to ask us to pay a share of any unnecessary capacity in BT's network.
12. No one is forcing BT to remove copper. If it chooses to do so, this will be on an entirely commercial basis, driven by factors such as:
 - a. the ability to sell higher-value fibre products
 - b. the lower on-going support costs of full-fibre networks compared to copper
 - c. the avoidance of duplicate network costs resulting from supporting two systems
 - d. additional revenue opportunities from selling the extracted copper and renting out the freed-up space.

As PIA users, we play no part in this decision, we gain nothing from it, and we should not pay higher prices as a result of it.

Higher PIA charges will slow down UK fibre coverage

13. Current and proposed levels of altnet PIA usage show that Ofcom's decision to grant access to BT's infrastructure has been a regulatory success. But if Ofcom allows BT to increase PIA charges above inflation, as it proposes, it must recognise that this will dampen PIA demand, and that full-fibre coverage across the UK will slow down as a result. In particular, cheaper PIA can be the difference between a viable and non-viable business case for the harder-to-reach areas of the UK, especially those in Ofcom's proposed Area 3 where altnets are currently building at pace and providing competition to Openreach.

Higher PIA charges could lead to an inefficient duct infrastructure

14. Furthermore, if PIA charges continue to rise after 2026 at the levels proposed for 2021-26, we will quickly reach a point where it would have been cheaper for us to build our own duct infrastructure than to use BT's. This is a terribly inefficient way to build a Gigabit-capable Britain.

We need long-term price stability, not five-year price proposals

15. We recognise that Ofcom is now bound to a five-year fixed telecoms market review cycle. However, like BT, altnets are currently making full-fibre investments at a scale which demands a significantly longer period of regulatory certainty than this.
16. We will be forced to reduce our spend if we believe there is significant risk of a major price hike to PIA after 2026, which is what Ofcom appears to be signalling. We need regulation which looks to the long term - i.e. 10-20-years ahead, not five years - on issues such as PIA pricing, which critically underpin infrastructure investment cases.

A separate Ductco should operate the duct network

17. Finally, we believe that a separate Ductco should operate Openreach's duct network. This would give greater transparency of capital, depreciation, and operating costs, which in turn would make regulatory decisions about appropriate shares of cost, like the decision on which Ofcom is currently consulting, much more robust.
18. It would also make it easier to enforce Service Level Agreements for the proper functioning of the space that we rent. We currently spend a lot of money investing in BT's duct system, so we know they don't maintain it, or offer any meaningful SLAs. In addition, we are not properly or transparently compensated for the duct upgrade work we undertake.
19. In addition, it would ensure immediate equivalence for Openreach and altnets, which should help allay concerns about Openreach dominance and the potential for uncompetitive behaviour.

Insufficient consultation time - yet again.

20. On a point of process, Ofcom has only allowed one month for responses to this consultation. This is completely inadequate for an issue of this nature, which requires long-term thinking about likely costs in the next market review period (which Ofcom seems to have ducked) and interrogation of Ofcom's complex Ofcom BT model. What's more, this current consultation follows the 29 July consultation, which lasted only seven weeks (across the summer holiday period).
21. Ofcom's view on the impact on industry of these short consultations seems to be "tough". However, it is not just industry, but Ofcom - and therefore consumers - who suffer. Failure to conduct proper consultations simply leads to less robust regulation.
22. We, along with all altnets we have spoken to, do not feel that we have had sufficient time to build a case against Ofcom's PIA charge proposals, which seek to impose substantial real price rises on us. We have therefore had to limit ourselves to high-level comments. Your decision-making is poorer for this.