



# Supplemental Response to Ofcom Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26

December 2020



We are Hyperoptic. And we go beyond the expected.



## Response summary

Hyperoptic welcomes the opportunity to respond to the Ofcom WFTMR Consultation - Further consultation on certain proposed remedies.

We believe that the proposed changes run counter to Ofcom's broader objective of supporting investment in fibre networks through promoting network competition. We believe that logic underlying the proposed changes is open to challenge. We are aware of alternatives being proposed by other industry players and suggest that these should be explored over a more considered timeframe.

## Consultation response

In the Volume 4 of the January 'Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 Consultation', Ofcom set out that it is clear that the approach to regulating access to Openreach's network (including price regulation) plays an important role in incentivising (or disincentivising) rival network investment. Ofcom also set out that following a consistent approach over successive market reviews would send important signals that will influence what telecoms providers currently reliant on access to BT's network expect in terms of future regulation.

Hyperoptic agree with Ofcom that greater pricing stability and predictability will incentivise greater use of ORs Physical Infrastructure Access (PIA) offering beyond the timeframe of the regulatory cycle being consulted on (i.e. beyond 2026). However, the proposal being consulted on appears more likely to reduce stability and predictability for CPs building investment cases.

By increasing prices in a material way compared to those proposed in the January Consultation, as well as proposing to change the methodology, Ofcom appear to be signalling to Industry that there is no firm basis upon which investment cases can be made. Given the long payback period of digital infrastructure, CPs would welcome Ofcom giving similar certainty to alternative network providers to that stated by Ofcom's CEO, Dame Melanie Dawes during a speech to the FTTH Council Europe Conference on December 3<sup>rd</sup> where she said that Ofcom "recognise there must be a compelling investment case. Shareholders and fund managers have plenty of choices over where to put their money," as she was confirming that Ofcom don't expect to introduce cost-based prices for fibre services until at least 2031.

At Para 3.16 of the current Consultation, Ofcom refer to the use their judgement based on their assessment of how competing telecoms providers might use the physical infrastructure over the medium term, the opportunity to earn revenues related to that usage. Such a change would be a departure from cost causality with no real justification, but increasing uncertainty as set out above. As of today, the way the PIA product is set is agnostic to the revenue opportunities for a CP from a network deployment. OR has refused to implement a revised forecasting regime that would take into account the requirements of reactive build for a CP offering a leased line to a customer. SLAs, such as they are, bear no relationship to



expectations differing customer segments or the impact on different revenue opportunities that might be harmed. Furthermore, during SLA negotiations OR expressly rejected incorporating any aspect relating to differing revenue opportunities of the harmed CP, citing the fact that PIA is a low-rental product making such changes would not be appropriate.

Changing the basis for changing in this way, must not be done in isolation. If Ofcom were to take revenue opportunities into account, they would need to ensure that this change in approach flows through to the whole of the product. Based on experience during the reference offer and post the PIMR (OR have refused to incorporate changes to the product that are necessary for it to function as a fully unrestricted product), it would be necessary for Ofcom to set out explicitly the changes which OR need to make to the product within the legal instrument. Failure to do so will result in a product that is charged on one basis but operates in a completely different way.

The rationale for the proposed changes is open to challenge. Ofcom set out that using the latest utilisation figures to determine the precise share of unit costs risks setting an expectation that the share of unit costs will fall in future review periods. OR's arguments that that trend might subsequently be reversed if OR were to remove copper cables from its network post-copper retirement were also referenced. In calculating the cost allocation for multi-bore duct, Ofcom appears to have attributed 50% of the costs of one bore to the CP, as it is the case for single bore duct. The CP will bear only 50% of one bore, the costs of the remaining bores are attributed to the costs of OR and their downstream services. However, this cost allocation ignores the fact that OR will have recovered costs for many of these bores via other services such as copper-based services like WLR, where OR has already recovered beyond the cost of capital. It is therefore unclear why a PIA CP would bear the cost of the other bores even in the event that copper has been removed. Ofcom has also not provided a robust explanation why this change to cost recovery methodology is required at this particular point.

We are concerned by the timing of this consultation and the short response window that Ofcom has afforded industry for respond given the implications. Whilst we understand and appreciate the importance of concluding the WFTMR 2021-2026 in a timely manner, so as to allow Ofcom to publish a Statement in March 2021, it has come at a time when Industry are fielding multiple s135 Information Requests from Ofcom teams picking up projects that were initially on hold due to Covid-19. This has resulted in significantly reduced bandwidth for Industry to fully model the implications of the proposed changes and respond in detail. We are aware that there are alternative models being presented by industry and believe that the status quo should remain for now and that Ofcom should return to this post-



WFTMR having gathered additional evidence from industry. This would lead time to debate other options and would not have significant downside risks given the relatively low PIA volumes.

## Conclusion

As set out above, we believe that the proposed changes were consulted on too late and for too short a timeframe to allow industry to properly model the changes and respond in detail. The analysis we have been able to carry out suggests that the logic that underpins the proposals is flawed and open to challenge. Given that other industry players are working on alternatives we believe that the status quo should remain for now and that Ofcom should return to this post-WFTMR, allowing opportunity to gather additional evidence from industry. This would also allow lead time for a full debate on the merits of other options whilst would not have significant downside risks given the relatively low PIA volumes.