



# Vodafone response to Ofcom's

## Consultation: Copper retirement - process for determining when copper regulation can be removed

September 2020



1. In this consultation, Ofcom is seeking views on its revised proposal to delay defining the circumstances in which premises can be excluded from the definition of a completed ultrafast exchange until after it has published its Wholesale Fixed Telecoms Market Review (WFTMR) decision. It now proposes to define those circumstances by giving a direction under the WFTMR SMP conditions at a later date.
2. In the initial Ofcom WFTMR consultation, Ofcom said it would consult separately on how to define an exchange as “complete”, including on which premises could be excluded from the definition of a completed ultrafast exchange and how this could be reflected in the SMP conditions in the Statement.

### **The Need for Certainty**

3. We are not clear as to why Ofcom are seeking to delay making a decision on this matter and believe it would be beneficial for all stakeholders, and indeed the end consumers that may be impacted, to get clarity on how Ofcom intends to classify customers and what wholesale regulatory remedies may exist in the future to serve those customers. We would urge Ofcom to make a decision, at least in principle, at the earliest possible opportunity, in order to promote certainty and provide assurance to communication providers and end users, including vulnerable customers around the circumstances (if any) for premises to be excluded.

### **Encouraging inclusive Fibre coverage**

4. Ofcom should do all it can to encourage fibre coverage. However, it should not create a mechanism that allows Openreach to strand customers on copper within an exchange area with no migration path to fibre. Given that stop-sell triggers can be reached whilst up to 25% of an exchange area can be left only with a copper option, it would appear that Openreach already has ample room for manoeuvre to accommodate those premises that they are unable to serve with fibre at the first attempt.
5. We fully accept that some premises are likely to prove problematic to serve due to their location, access restrictions, physical barriers or a lack of local authority consent. However, these should only be a minority of locations within an exchange area and certainly far less than 25%. It was Openreach that proposed fibre roll out based on existing exchange area footprints and the 75% coverage threshold is set sufficiently low to allow a significant minority of copper connections to remain before trigger levels are reached. There really should be no need to exempt additional premises.
6. At its broadest level, we would be opposed to any administrative process that allowed premises to be airbrushed from an existing exchange area, through their exclusion from any ultrafast coverage threshold. If this was to occur at any scale, it may well result in the 75% exchange coverage threshold trigger for a stop-sell being set considerably lower. For example if Openreach sought to exclude a large housing development that makes up 15% of connections to an exchange, the effective stop sell threshold would be as low as 63.75% of the original exchange area.



7. Ofcom must consider the likely materiality of the issue before any action was taken that might provide a route to excluding premises. If Ofcom genuinely do not anticipate that there would be circumstances in which some premises should be excluded from the proposed threshold for the stop-sell, then there is no need to create a mechanism for this to occur.
8. It is illogical for Ofcom to determine remedies without first properly defining criteria for which premises fall within the scope of that remedy. Whilst it may be appropriate to leave the detailed drafting to a subsequent Direction, we consider that at least the principles of what constitutes an excluded premise should be agreed prior to the WFTMR being concluded – otherwise it is impossible to meaningfully comment, as we do not know which customers will fall within scope of the regulation.

#### **Providing Certainty to Consumers left on Copper**

9. The transition from copper to fibre will bring considerable connectivity benefits to consumers. It will expand the range of services that can be accessed online, vastly increasing the available bandwidth to greatly improve the end user experience. Faults rates are likely to be lower, with a more weather resilient network that is better able to cope with our climate. Consumers will benefit from a wider choice of bandwidths, facilitating adaptability to reflect their individual and changing needs.
10. These benefits will not come without some level of disruption and inconvenience as new networks are delivered; equipment within the home is changed and existing home wiring set-ups are reconfigured. It is important that consumers clearly understand both the benefits of fibre and the work and changes necessary to enable them to benefit from fibre connectivity. As Ofcom recognise, there will be a number of consumers who, at the end of the investment cycle have not benefited from fibre and will remain on a copper access connection. For many, this will be a source of frustration and disappointment, limiting the range of services that can be offered to these end users. In a double whammy, they also may end up paying more for the copper service they receive, as Ofcom grants Openreach flexibility to charge more for connections to these premises. While contributing extra perhaps in a belief that they are funding future fibre investment, they may never be beneficiaries of fibre as a result of their location.
11. It is therefore vital that that these consumers continue to have access to a range of retail providers who are able to offer services at competitive prices across the services they are able to access. In common with Fibre-only customers who continue only to require basic telephony and broadband services that could be satisfied by copper alone, these consumers will require ongoing regulatory safeguarding. This will require the continuation regulation of wholesale access offerings to these consumers to enable retailers to serve these premises and hence maintain consumer choice, this being one of Ofcom's fundamental statutory duties. This must extend to all mainstream bandwidths, up to and including 80/20.
12. Consumers remaining on residual copper connections will be spread across all parts of the UK, urban, suburban and rural, but they will all have a common need, requiring them to benefit indirectly from a range of suitable wholesale access products provided by Openeach.



### **Safeguarding Wholesale Charges – for Copper only and Fibre only Customers**

13. For fibre only customers who consume lower speed broadband (80/20 or below) or remain telephony only, Ofcom need to clearly substantiate why they would be paying more to access these services when they are delivered over fibre. The fibre surcharge highlighted by Ofcom of up to £1.80 per month needs to be justified in an evidenced based way. To date Ofcom has not advanced any real quantification for the existence of this surcharge. Ofcom need to remain mindful that in many instances, this surcharge will be paid by some of the most vulnerable consumers.
14. From a consumer policy perspective, Ofcom can't legitimately concern itself with the issue of broadband affordability, while simultaneously creating a framework that will see wholesale prices rise for existing copper services by substantial amounts over the next few years (particularly if CPI rises substantially due to macroeconomic factors). Ofcom need to act consistently on this matter, recognising their own significant role in safeguarding consumer broadband affordability, seeking to do all it can to minimise wholesale pricing for services of 80/20 and below. Taking a proportionate approach to safeguarding wholesale pricing at copper speeds, strikes the right balance between protecting the consumer interest, whilst leaving higher speeds only capable of being delivered over fibre unregulated, thus encouraging build.
15. For those consumers who, through no fault of their own and only by virtue of their location, find themselves only able to access the legacy copper network. This results in them being severely restricted on the range of services they can access (which may in turn limited their choice of retailer), robust wholesale regulatory price and quality safeguarding is required. This should extend beyond the 40/10 speed and cover at least the mainstream 80/20 product that is now the most popular broadband speed by sales volume. The only way to achieve this is to mandate cost based wholesale access to copper based GEA on the Openreach network for these consumers' at all available bandwidths, thus ensuring there is enough volume to continue to attract a range of retail broadband suppliers and preserve retail competition for these consumers as far as is possible.

### **Vulnerable Customers**

16. With a proportion of vulnerable customers expected to be left on copper only access connections, Ofcom need to continue to work collaboratively with industry to refine the concept of vulnerability, helping communication providers to identify end users in genuine need of additional support. Casting the net too widely risks diluting resources, limiting the practical help that can be offer to the most vulnerable consumers and creates significant issues for broadband retailers who are seeking to do the best for their customers, while remaining mindful of their cost to serve and the wider issue of broadband affordability for all. Ofcom need to continue to guide industry on vulnerability, ensuring measures are fair and proportionate, targeted at those in most need.

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