

External



WIGHTFIBRE RESPONSE TO
CONSULTATION ON OFCOM'S GENERAL
POLICY ON INFORMATION GATHERING

VERSION 9
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INTRODUCTION

1. Since 2001, WightFibre has owned and operated its' own telecommunications infrastructure. WightFibre provides phone, tv and broadband services to homes and businesses on the Isle of Wight. The WightFibre Gigabit Island Project will see full-fibre broadband deployed to over 70,000 homes and businesses across the Island by 2024. Ultimately the WightFibre network will offer FTTP connectivity to over 80,000 homes in the Isle of Wight.
2. WightFibre has recently received a number of S.135 information requests from Ofcom and welcomes the opportunity to respond to this timely consultation. Although it appears that this consultation is presented as a draft statement of the 2015 consultation, many operators, including WightFibre, were not receiving information requests from Ofcom at that time so we hope Ofcom will take the opportunity to take into account our views and experiences before making any final decisions.

WIGHTFIBRE'S EXPERIENCE WITH OFCOM'S INFORMATION REQUESTS

3. WightFibre has experienced two different types of Ofcom information requests. Those for general and ongoing market monitoring and those for specific purposes, such as the current telecoms Access Review (TAR).

COLLECTION OF GENERAL ONGOING MARKET MONITORING DATA

4. WightFibre has for 6 years responded to Ofcom's regular information requests for the purposes of general market monitoring and the publication of the Connected nations reports.
5. It is our experience that the data requested by Ofcom overlaps significantly with the data requested by BDUK for the purposes of its Open Market Reviews (OMRs), but the format and specification of the data requested by Ofcom and BDUK differs to the extent that the compliance burden with both is significantly higher than if the two sets of information requests were aligned. Additionally, the timing of the two data requests is also different and further adds to the compliance burden.
6. Although WightFibre understands that the purposes for which Ofcom and BDUK collect the data are not the same, it is difficult to understand why the formats cannot be aligned. In the consultation, Ofcom refers repeatedly the principle of proportionality, reducing the burden of compliance for operators and the use of information from other sources. However, despite the issue of the duplication of data collection by Ofcom and BDUK having been raised several times in the past, WightFibre is not aware of any efforts having been made to align and coordinate data required in those two collections.

COLLECTION OF DATA FOR MARKET REVIEWS

7. Ofcom commenced the TAR in April this year and has since then issued a number of s.135 and s.136 information requests. WightFibre has received the following:

- S136 - Annual Returns
 - S135 TAR 2.1
 - S135 TAR 2.2
 - S135 Connected Nations Fixed Technology
8. WightFibre is pleased to be included in Ofcom's TAR information collection process, as this was not the case for the Wholesale Fixed Telecoms Market Review that Ofcom completed in 2021. WightFibre is, however, a small company, with less than 20 employees¹ and very limited resource available for responding to Ofcom and government information requests and the requests listed above appear to be partially overlapping in the data requested as well as in the periods allowed for responding to them.
9. The TAR 2.1 and 2.2 include a considerable amount of duplication, but with questions varying slightly. Both requests ask for WightFibre's business plan, funding arrangements, revenues and there is also overlap within other data requested. This unnecessarily increases the compliance burden and may also result in lower quality responses as small CPs struggle to resource the production of the responses.
10. Given Ofcom's focus in the consultation of having created the Information Registry to avoid duplicative information requests and to ensure that the information gathering causes the least possible compliance burden and intrusion on the respondents' normal operations, WightFibre considers that there is considerably more work to be done for the Information Registry to achieve its stated objective.
11. WightFibre is aware that its trade association, INCA, has on several occasions asked that the TAR process be started earlier. If that had happened, then there would have been more time for Ofcom to coordinate its information requests and potentially also longer lead times for CPs to respond.

¹ Excluding network deployment and customer care staff.

OFCOM'S PROPOSALS

12. As the proposals contained in the consultation essentially seek to consolidate Ofcom's existing information gathering powers and processes in a single document,² WightFibre does not disagree with the overall framework.
13. WightFibre is committed to providing data to Ofcom and to contribute constructively to Ofcom's consultation processes and agrees that it is essential that Ofcom has the powers to collect data and information to support the exercising of its duty and to ensure that its analyses and decisions are evidence-based.
14. It is, however, essential that Ofcom feels accountable to its stakeholders for minimising the compliance burden and ensuring that information gathering intrudes as little as possible on the stakeholders' normal business operations.

PROPORTIONALITY

15. Whilst WightFibre welcomes that Ofcom now includes it in its market review data gathering, the level and nature of data requested by Ofcom in the TAR process is such that it has required significant resources to produce the responses.
16. Beyond the presentation of the draft information requests, the TAR information requests were not forewarned, so WightFibre had no resources lined up ready to start the data collection and analysis. This has meant that resources have had to be moved, at short notice, from normal operation and business critical activities, creating an overall negative perception of the compliance process.
17. WightFibre considers that, for smaller stakeholders and, in particular, stakeholders included in market review data collection for the first time, Ofcom should adopt a managed approach in which it contacts the relevant stakeholders to explain the process and, if necessary, agree a phased delivery timetable.
18. During that proposed managed process, Ofcom should also be able to assess whether all questions are relevant to each individual stakeholder. A verbal engagement would likely result in a significant reduction in the questions applicable to individual smaller stakeholders and ease the overall burden on Ofcom as well as on respondents.

THE USE OF DRAFT INFORMATION REQUESTS

² Noting that there are some specific exceptions pointed out in the consultation document.

19. Ofcom proposes to depart from its policy to issue information requests in draft form, before sending the formal request with which the stakeholder has a legal obligation to comply.
20. WightFibre considers that, where the information gathering is time-sensitive (such as for investigations or enforcements) or where the data requested is exactly the same as has been requested routinely before, Ofcom should have the freedom to issue formal information requests without issuing a draft version first. For the latter, this should be subject to a published timetable to allow the stakeholders to allocate resources accordingly.
21. WightFibre does not agree, though, that Ofcom should have the very wide-ranging scope for not issuing information requests without first presenting them in draft format.
22. For example, in paragraph A1.32 of the consultation, Ofcom lists scenarios where it proposes to not (or not always) use draft information requests where Ofcom has collected similar data before or where similar data has been provided voluntarily with the relevant stakeholder. It is a mistake to assume that 'similar information' is equally easy to produce as what has been provided before. It is also a mistake to assume that a verbal statement on a particular point can always be supported by the level of data and analysis Ofcom expects in its information requests. In such cases, WightFibre considers that Ofcom should always issue a draft information request to enable the respondent to explain to Ofcom (if required) why some of the data requested is not available in the format or structure requested.
23. WightFibre also does not agree that Ofcom should have the opportunity to waive the use of a draft information request in "any other scenario in which Ofcom does not consider it appropriate to issue a statutory information notice in draft in the specific circumstances".³
24. WightFibre further considers that, if Ofcom wants to waive the use of the draft information request, then it should explicitly set out its reason for doing so and allow the recipient a short period to object.⁴

THE ROLE OF THE INFORMATION REGISTRY

25. WightFibre welcomes the set-up of the Information Registry but considers that it still has some considerable way to go to achieve its objectives of coordinating, aligning and avoiding duplication of information requests by Ofcom. WightFibre would be pleased to participate in constructive

³ Paragraph A1.32(g).

⁴ This should not apply to investigations and enforcement activities.

engagement with Ofcom to develop approaches and processes to streamline and reduce the compliance burden resulting from Ofcom statutory information requests.

CONFIDENTIALITY AND DISCLOSURE OF INFORMATION COLLECTED

26. Some information requested by Ofcom is extremely sensitive. WightFibre understands that Ofcom has the right to ask for the information it considers necessary, and that respondents should only redact the individual words/figures/tables that are confidential, but there is a deep concern at the board level that extremely sensitive information is being provided without explicit confidentiality provisions in place.
27. The consultation helpfully sets out the process Ofcom goes through when accessing which data to publish and which to redact due to confidentiality. It would be helpful if that process were to be included in statutory information requests.
28. With regards to information disclosure, the consultation states in paragraph A1.57 that Ofcom “normally first explain our intention to disclose the information and give that person the opportunity to make representations about the proposed disclosure” [emphases added]. WightFibre considers that Ofcom MUST first explain its intention to disclose and give the person the opportunity to make representations. WightFibre finds it neither acceptable nor appropriate that Ofcom could disclose information from WightFibre (or any other stakeholder) without having first notified of its intention to do so.
29. Additionally, WightFibre is concerned that the publication of overall market data (such as FTTP coverage) for small geographic markets such as the Isle of Wight is effectively tantamount to publication of individual operator data. With only BT Openreach and WightFibre deploying FTTP in the Isle of Wight, BT Openreach can easily deduce the WightFibre FTTP network coverage by simply subtracting its own coverage from the total. WightFibre, therefore, requests that Ofcom not publish separate data for such small geographic areas but include those into larger areas to ensure proper anonymisation of the data provided.

STANDARDISED PROCESS

30. WightFibre believes that the proposed document will become a very helpful reference document for stakeholders to explain to investors and board members why it is mandatory for the business to respond to the statutory information requests. That helpfulness and clarity is, however, significantly diluted by Ofcom’s statement that:

31. “We are required to have regard to this statement of policy when exercising these information gathering powers. We reserve the right to deviate from this policy in appropriate circumstances.

Where we consider it appropriate to do so, we will generally explain our reasons.”⁵ [emphasis added]

Whilst the consultation appears to attempt to create clarity and certainty to stakeholders and recipients of statutory information requests, the statement in paragraph A1.4 appears to dilute that substantially. WightFibre considers that Ofcom should have a duty to follow the policy finally published and should always provide a full rationale for when that is not appropriate.

⁵ Paragraph A1.4