

**Wholesale Local Access Market Review
Consultation on Duct and Pole Access Remedies**

TalkTalk's response to Ofcom's consultation document

15 June 2017

NON-CONFIDENTIAL VERSION

This is TalkTalk's response to Ofcom's consultation on Duct and Pole Access remedies ("the consultation") published on 20 April 2017.

1 Introduction

- 1.1 Effective duct and pole access (DPA) has the potential to unlock significant benefits for UK consumers and businesses by enabling competitive communications infrastructure investment at scale. TalkTalk supports Ofcom's commitment to ensuring Openreach provides a viable Passive Infrastructure Access (PIA) product so that other CPs can access its ducts and poles to support the roll-out of alternative ultrafast broadband networks. An effective PIA remedy has the potential to bring down capital costs by at least 50%¹, reduce disruption and support quicker network deployment.
- 1.2 PIA is therefore central to Government and Ofcom's strategy to encourage the roll-out of full-fibre networks offering a step change in speeds to 1 Gbit/s and greater reliability than traditional copper networks. As we stated in our response to the previous DPA consultation, we believe that a large-scale, nationwide roll-out of fibre-to-the-premises (FTTP) is critical to future-proofing the UK's broadband infrastructure and supporting a 21st century digital economy.
- 1.3 [REDACTED].
- 1.4 [REDACTED].
- 1.5 Ofcom must ensure that its decisions on PIA maximise certainty for CPs about how they can use PIA efficiently at a low cost within short timeframes and minimise BT's discretion to stall and frustrate the process. Failure to deliver swift improvements to PIA would undermine the potential for large-scale investment in FTTP by alternative network providers.
- 1.6 Whilst effective PIA will be important to investment in FTTP, so too will low GEA FTTC prices. Low prices will both drive investment by competitive operators (since they will have the scale to make FTTP investments viable) and also by BT (since FTTP investments will not cannibalise high returns on FTTC).
- 1.7 This response includes:
- Section 2: [REDACTED];
 - Section 3: the proposed remedy, including mixed usage and geographic scope;
 - Section 4: equivalence of inputs;
 - Section 5: process and systems improvements; and

¹ See 'Best practice for passive infrastructure access' report by WIK for Vodafone, 19 April 2017: <http://www.wik.org/fileadmin/Studien/2017/best-practice-passive-infrastructure-access.pdf>

- Section 6: pricing regulation.

1.8 We also refer to our joint response with Sky and Vodafone, which has been submitted under the umbrella of the Passive Access Group (PAG). The PAG response puts forward our shared views on the steps Ofcom needs to take to ensure the PIA remedy is effective.

2 Scaling FTTP roll-out depends on a viable PIA product

2.1 As Ofcom notes in the consultation, we plan to extend our FTTP trial in York from 14,000 homes to a further 40,000 premises. The first phase of our trial has showed that it is possible to bring the cost per home down (to under [REDACTED]), achieve significant penetration ([REDACTED]), and excellent customer satisfaction ([REDACTED]). [REDACTED].

2.2 [REDACTED].

2.3 [REDACTED].

2.4 [REDACTED].

2.5 [REDACTED].

2.6 [REDACTED].

3 Ofcom's proposed remedy

Question 4.1: Do you agree with our proposals for a specific access obligation, which includes an obligation on BT to make adjustments to its physical infrastructure when its network is congested? Please provide reasons and evidence in support of your views.

3.1 We agree with Ofcom's proposal to impose a specific network access remedy requiring BT to allow other CPs to deploy networks using its ducts and poles and provide ancillary services necessary to support PIA use. We also agree with Ofcom's view that the Access to Infrastructure (ATI) Regulations are too generic and not sufficient to address the relevant competition concerns. While the voluntary changes that Openreach has made to improve the PIA product in response to pressure from Ofcom have been welcome, considerable further changes and formalised requirements on Openreach need to be enshrined in a significant market power (SMP) condition. Therefore, a PIA remedy is required to address the competition concerns arising from BT's SMP in the wholesale local access (WLA) market, alongside the other remedies outlined in our separate response to Ofcom's 2017 WLA consultation.

3.2 Ofcom's proposal that Openreach should be required to conduct and pay for work to relieve congested sections of physical infrastructure to support the use of PIA is a critical part of ensuring the product is viable for use by CPs and therefore is an effective competition remedy. We support the justification

for requiring Openreach to carry out enabling works to relieve congestion that Ofcom sets out at §4.28 and agree that it will be more efficient. Placing the requirement on the CP to build its own infrastructure to bypass congestion would not be appropriate as it would be inefficient, make the remedy ineffective and continue Openreach's competitive advantage.

- 3.3 Ofcom recognises that it may be better for CPs to carry out network adjustments themselves and be reimbursed by BT for the work (in certain circumstances). We agree with this since it has the potential to reduce cost and delay. The terms on which CPs can carry out this work – e.g. the need for prior approval and reimbursement - should be equivalent with the terms which BT's own contractors face.
- 3.4 We note that Ofcom proposes to limit the requirement on Openreach to relieve congestion in order to facilitate CPs' use of PIA. Rather than including the requirement and associated limitations in the SMP condition, Ofcom proposes to apply a general network access condition with supplementary guidance on the extent of the requirement on Openreach to relieve congestion. Ofcom states that defining the extent of the requirement in the SMP condition would pose a risk of regulatory failure given the range of circumstances that may need to be considered. Ofcom sets out examples for inclusion in the proposed guidance to illustrate when the obligation to relieve congestion applies and when it does not.
- 3.5 While we understand why Ofcom does not consider it appropriate to define prescriptive limitations in the SMP condition, we think that the guidance should be made more explicit so that it is easier to follow and to reduce the likelihood of disputes. For example, the examples appear to indicate that the following would be included:

- Unblocking or repairing existing physical infrastructure which is blocked or damaged (apart from underground lead-in when new duct is best option as there is no obvious benefit of Openreach providing it instead of the CP);
- Providing a new footway box so that the CP can make use of the spine duct between the property and the distribution point; and
- Adding capacity where there is insufficient capacity on distribution poles for overhead lead-ins.

The examples suggest that the following would not be included:

- Adding capacity where there is insufficient capacity in underground lead-in ducts; and
- Extension of the existing network footprint.

We particularly support the inclusion of the requirements on Openreach to provide new footway boxes and provide sufficient capacity on distribution poles for overhead lead-ins. We understand from discussions with Ofcom that Openreach will also be required to provide junction boxes as part of the

enabling works, in line with our previous submission. The guidance would be improved by making these and other requirements clear general rules, with the onus on Openreach to justify why any exception would be required.

- 3.6 The example that Openreach would only be required to address insufficient capacity up to the final distribution point when “this is a genuine augmentation of its infrastructure network” is not particularly clear (§4.38). Ofcom indicates that the greater the capacity and duct length required, the less likely it will be considered to fall within the obligation. We think this aspect of the guidelines needs to be refined to make Ofcom’s meaning more explicit and reduce the risk of differences in interpretation.
- 3.7 Ofcom proposes that Openreach will have the flexibility to decide how to relieve congestion. It considers that the non-discrimination requirements, requirement to produce a Reference Offer, and cost recovery proposals, mean that Openreach will not be able to use this flexibility to undermine the effectiveness of the remedy. In addition to these measures we consider that rigorous monitoring and enforcement of the rules will be required to ensure that Openreach does not use its flexibility to frustrate the process and as noted above, the rules must be made as explicit as possible while allowing for particular circumstances to support this. The guidelines must define the point in the process when decisions on the approach to congestion will be made and by whom (perhaps through a decision tree) in order to manage uncertainty and reduce the risks of delay.

Question 4.2: Do you agree with our proposals on the scope of PIA: (1) To broaden usage through a mixed usage generic rule; (2) To modify the PIA condition to define geographic scope by reference to telecoms providers’ local access networks. Please provide reasons and evidence in support of your views.

- 3.8 We support Ofcom’s proposal to lift the current PIA usage restriction to allow mixed usage for broadband and non-broadband (i.e. leased lines) services. Ofcom proposes to apply a mixed usage restriction so that the purpose of the network deployment must be primarily the delivery of broadband to homes and businesses but mixed usage will enable the investment. We do not consider that application of the mixed usage rule will pose any meaningful risks to BT’s overall cost recovery (especially given its excess profits on ISDN and other products) and in any case Ofcom can monitor this through the market review period. Ofcom has indicated that it may consider recovery of any shortfall in future market review periods – this could be considered a form of retrospection which Ofcom has generally avoided in the past.
- 3.9 The PAG response discusses the mixed usage rule in more detail, including requirements for Ofcom to make the rule clearer if it proceeds with this

proposal and comments on improvements needed to ensure effective implementation.

- 3.10 We welcome Ofcom's proposals to broaden the geographic scope of PIA so that CPs are not bound by BT's existing network topology in their use of PIA and consider this is appropriate for addressing the competition concerns. Ofcom proposes to continue to restrict use of PIA to the local access network but extend the scope "such that telecoms providers will be permitted to use PIA between network termination points (i.e. customers' premises) and their local access node serving those network termination points" (§4.87). We understand that this means that CPs will be able to use BT ducts to connect customers and to connect nodes within the local access segment of its own network.

Enforcement and disputes

- 3.11 We are very concerned that Ofcom's proposal to address disputes on the application of these rules through the dispute resolution process under the Communications Act 2003 is not fit-for-purpose. We do not agree with Ofcom's expectation that most cases will be clear cut, thereby minimising the burden of administering the rule. We consider that the range of possible scenarios and the degree of flexibility Ofcom is proposing to maintain in the rules mean there could be a large number of circumstances where disagreements may arise. The scope for interpretation, combined with BT's incentives to frustrate the process and track record of doing so, presents significant risks to the effectiveness of the remedy. Proactive, bespoke processes for monitoring and enforcing compliance with the rules must be established. We consider that a formal process should be developed through the OTA, as set out in the PAG response.
- 3.12 We consider that where Ofcom decides to issue guidance (rather than including obligations in the SMP condition), the guidance must be given formal status, either through inclusion in the legal text in the condition or as a secondary document accompanying the condition. This is based on previous experience of Openreach's disregard for following guidance, especially when it is not formalised outside the consultation process.

4 Equivalence of inputs

Question 5.1: Do you agree with our proposed imposition of a no undue discrimination SMP condition on BT? Please provide reasons and evidence in support of your views.

- 4.1 We note that Ofcom stops short of introducing full Equivalence of Inputs (EOI) because it considers that requiring BT to re-engineer legacy products, processes and systems would not be proportionate due to the costs, disruption and lengthy implementation timelines. However, despite this perceived barrier to introducing EOI immediately Ofcom confirms that it considers EOI is the most appropriate way of imposing non-discrimination obligations on a provider with SMP in network access. In light of this, we

consider that Ofcom should ensure that Ofcom's pragmatic proposal not to introduce full EOI now does not compromise achieving EOI wherever possible now and moving to full EOI in the long run.

- 4.2 We therefore welcome Ofcom's intention to interpret the non-discrimination condition as requiring strict equivalence unless BT can demonstrate that differences in respect of a particular process or sub-product is justified. It is crucial that, as Ofcom notes, other providers should not be put at a disadvantage in terms of extra cost, time or uncertainty when compared with BT internal processes. We think that Ofcom needs to be clearer about what the non-discrimination condition will mean in practice. It is possible that a number of small instances in which application of the rule is compromised, add up so that CPs are materially disadvantaged compared with Openreach over time, thus undermining the effectiveness of the remedy. By nature, CPs are unable to monitor or review Openreach's internal processes so Ofcom must put in place provisions for appropriate transparency of BT's internal processes and oversight. It must therefore set up arrangements for third party monitoring of BT's compliance with the rule to ensure that CPs have access to the same products, processes and information that Openreach consume themselves.
- 4.3 Ofcom indicates that it will consider introducing a transparency obligation and also setting KPIs on non-discrimination following the publication of the Reference Offer. We think that Ofcom must go further and develop firm proposals for the transparency obligation and KPIs on non-discrimination in the statement, even if the full KPIs are only confirmed after the Reference Offer. Both aspects are not optional and vital to the success of the remedy.
- 4.4 The PAG response includes further comments on how Ofcom should improve its proposals on non-discrimination to ensure CPs are not unduly disadvantaged now and to pave the way for full EOI in the future.

5 Process and systems improvements

- 5.1 We welcome Ofcom's proposals to improve the process and systems for using PIA in order for it to become a viable product, suitable for use at scale by a range of CPs. We think that the proposals could be enhanced by Ofcom reviewing the full package of proposals from end-to-end to ensure they are fit-for-purpose as a whole. It may be appropriate for Ofcom to contract a third party consultant to carry out the necessary business analysis. At present, we are concerned that each element of process and systems change is being assessed individually, which could result in inefficiencies or unanticipated points of failure in the process if it is not fully reviewed from end-to-end to assess whether it supports Ofcom's objectives and meets the needs of CPs.
- 5.2 As expanded on in the PAG response, Ofcom must be ready and able to amend the process in future if necessary. Given the complexity of the processes and range of different scenarios involved, it is not possible to plan for every eventuality in advance of making the improvements. Ofcom must be

able to intervene to ensure its policy objectives are being met later in the process.

PIA service establishment, accreditation and forecasting

- 5.3 Ofcom proposes to maintain the condition in the Reference Offer that CPs must meet training, certification and authorisation requirements in order to access PIA. We expect the Reference Offer to include full details on the activities that CPs must complete in relation to training, certification and authorisation in order to become accredited as a PIA user. For example, we would expect that if a process for registering operatives to work on Openreach infrastructure is maintained, the process must be automated online. Manual processes would not support scale use of PIA. We would also expect Openreach to detail the scope of any accreditation audits required and levels of security checks for contractors. Openreach must use the Reference Offer to formalise which of the changes it put in place from January 2017 that it plans to continue. It must consult with industry on its proposals through the PIA Working Group convened by the OTA2.
- 5.4 Ofcom notes that there is currently a contractual requirement for CPs to submit three month demand forecasts for their use of ducts, poles and requirements for enabling works as part of the on-boarding process. In the contracts, Openreach is not bound by delivery timescales if the actual PIA demand from the CP over this period is more than 20% above forecast. This means that Openreach will have no requirement to deliver any PIA product in a reasonable timescale and will be able to avoid paying any SLGs. [§<]. Three-month forecasting requirements would be more reasonable in terms of our planning, noticing and build cycles and would enable greater forecasting accuracy.
- 5.5 Instead of the current contractual commitments, Ofcom is proposing that forecasting requirements should be reviewed in light of the PIA changes and included in the Reference Offer. Ofcom's suggestion that forecasting requirements should be the same for Openreach as for CPs is meaningless as it cannot financially penalise itself for inaccurate forecasts through SLGs. Forecasting requirements may therefore result in discrimination by Openreach against CPs. We are concerned about the implied level of flexibility for Openreach in setting forecasting requirements and suggest that there must be a requirement for Openreach to prove why the proposed length, detail and accuracy of forecasts is required to improve cost efficiency, resource planning and performance. To date, we have not seen evidence to demonstrate the necessity of requirements for forecasting accuracy that Openreach imposes.
- 5.6 Confidentiality of any forecasting information provided by CPs is crucial in order to protect information that would provide BT with a competitive advantage. We note that Ofcom states that the confidentiality of this information is protected under General Condition 1.2 but we would also expect Ofcom to put in place rigorous processes to monitor and enforce this

rule, including ensuring the information is appropriately anonymised as part of Openreach's processes.

Planning and Surveying

Question 6.1: Do you agree with our proposed approach to the processes and systems relating to planning and surveying? Please provide reasons and evidence in support of your views.

- 5.7 Along with the other factors set out elsewhere in this response, the success of PIA is dependent on Openreach:
- Fully implementing the Digital Mapping Tool access and system capability requirements including integration with other systems; and
 - Replacing the manual ordering process with a digital one.

Without these changes, PIA will not be suitable for scale FTTP deployments due to the complexity of the manual processes and the drain on time, costs and resources inherent in using them.

- 5.8 It is therefore appropriate for Ofcom to update the Reference Offer requirement on BT with regard to PIA database access in order to specify the requirements for the Digital Mapping Tool including API functionality. [X]. While Ofcom may not play an active role in this development, we would expect it to monitor delivery timescales and the provision of new systems capabilities to ensure they meet its expectations. We also expect to have the opportunity to feed into the development through Openreach liaison with industry through the PIA working group. It is vital that these requirements are set out in the Reference Offer as well so that Openreach can be held to account for the performance of the Digital Mapping Tool.
- 5.9 In addition to improvements in the functionality of the Digital Mapping Tool and the granularity of information provided, Openreach must also be required to improve the accuracy of the mapping information and include these in the Reference Offer. Without sufficient accuracy of mapping information, planning PIA use will take longer and cost more as a result of the need for multiple surveys and site visits.
- 5.10 Ofcom appears to be relying on Openreach to implement the Mott MacDonald proposals to improve operational processes to support better ordering systems rather than imposing any specific obligation on Openreach at this stage. We consider that it would prudent to include a Reference Offer requirement for better ordering processes, rather on relying on Openreach to deliver the improvements independently. It is not clear from the evidence Ofcom presents why this critical element of the PIA process improvements would warrant a different approach from the Digital Mapping Tool.
- 5.11 We strongly support Ofcom's proposals to make it easier for CPs to survey poles by allowing the work to be undertaken by its own accredited engineers.

This would help avoid costly joint site visits and save time allowing customer installations to take place within shorter timeframes. We also acknowledge the steps Openreach has already taken to relax the requirements to measure cables and submit duct space calculations; extend the reservation period to 6 months; and allow a deviation from the route of a build without prior approval. These are positive changes which will contribute to more efficient planning and build processes.

- 5.12 Capacity management is an important consideration for CPs planning to use PIA, therefore, as stated above, we support Ofcom's proposal to require Openreach to relieve congestion to make PIA ready-for-use. We agree that the Reference Offer must be updated to reflect the new requirements and the need for the development of SLAs/SLGs to support their delivery. We expect that this process will be undertaken by Openreach and CPs, facilitated by the OTA2.

Question 6.2: Do you agree with our proposed approach to the processes for build works and enabling works? Please provide reasons and evidence in support of your views.

- 5.13 We support Ofcom's proposals to incentivise efficient, timely build works. These include: only starting PIA rental charges when Openreach has completed the build works required for a specific order (subject to a limit on order size) and adding SLAs and SLGs for build works. The Reference Offer must also include commercial terms on which CPs may complete build works on behalf of Openreach.
- 5.14 We also welcome the flexibility Ofcom is proposing to introduce for CPs so that they can choose between the following options when enabling works are required: self-provide at own cost; self-provide and recharge to Openreach (if approved); or request Openreach carry out the work. To support this flexibility the Reference Offer must include detailed technical specifications and SLAs/Gs for responding to requests. We think that CPs should be able to self-provide and recharge without prior approval provided certain operational conditions are met (this could reflect the approach Openreach use with its own contractors).

Connecting the customer

Question 6.3: Do you agree with our proposed approach to processes relating to the connecting the customer stage? Please provide reasons and evidence in support of your views.

- 5.15 We agree with Ofcom that SLAs for customer connections must be appropriately short in order to meet customer expectations and minimise the time taken for provisioning. The Reference Offer must include:
- SLA/Gs to underpin the process and timescales for relieving congestion on poles;

- SLA/Gs relating to installation of footway boxes when spine duct is accessible but lead-in is not; and
- Details of how the Openreach obligation to ensure capacity for additional dropwires is available will be implemented.

5.16 The obligation on Openreach to relieve dropwire congestion is particularly important. While we understand Ofcom's reasoning for not stipulating the method of relieving congestion that Openreach must use, we consider that this aspect of the Reference Offer must be carefully reviewed to ensure the process facilitates timely and smooth customer connections.

Implementation and timescales

5.17 It is important that Ofcom requires Openreach to implement the changes swiftly to ensure that PIA is fit-for-purpose for use at scale as soon as possible. We welcome Ofcom's intention that the charge controls, non-discrimination obligations and "mixed usage" rule will apply from 1 April 2018 when the decisions from the statement come into force.

5.18 To manage the risk of delay in Openreach implementation of the other changes required, Ofcom is proposing to set deadlines for the publication of draft Reference Offer (within 4 months) and publication of final Reference Offer (within one year). We think that Ofcom could set a more ambitious timeframe for conclusion of the Reference Offer process in light of the fact that:

- Openreach is already required to supply PIA (and has been for several years);
- Ofcom's expectations that the product must be improved have been clear since the publication of the initial conclusions from the Digital Communications Review in February 2016; and
- Openreach has already started making improvements to the product and these are less onerous than the changes required to implement a completely new product such as Dark Fibre Access which is subject to similar timeframes.

We encourage Ofcom to explore options for speeding up Openreach's development process as set out in the PAG response.

5.19 We agree that the SLA and SLG negotiations must be facilitated by the OTA2 and Ofcom must remain closely involved.

6 Price regulation

6.1 Ensuring the availability of PIA at a low price while allowing BT to recover its costs is fundamental to the success of the remedy. Certainty and predictability

around the price of PIA are also important to ensure that investors are able to develop effective and financeable business plans for network roll-out involving the use of PIA. If successful, we expect PIA to materially bring down the costs of third party network deployment. Price regulation of PIA is therefore required in order for it to be an effective SMP remedy as BT would otherwise have both the ability and incentive to set excessive prices for PIA to deter its use by competitors, protect its market power in broadband infrastructure, and maximise its profits.

- 6.2 We note that Ofcom plans to issue a further consultation in the summer including specific details on its approach to PIA pricing regulation and proposed SMP conditions. We provide comments here on the broad approach that Ofcom sets out in the consultation and look forward to responding on the specifics in due course.

Question 7.1: Do you agree with our proposed form of price regulation for PIA rental and ancillary charges? Please provide reasons and evidence in support of your views.

- 6.3 We agree with Ofcom's provisional view that a price cap on PIA rental charges is required. A basis of charges condition is not sufficient to ensure low PIA prices and provide certainty on pricing. We agree with basing PIA rental price cap based on current prices (prior to a cost-based charge control being applied). The price cap should be based on the current price less productisation costs (which make up a material portion of the PIA rental price). Continuing to allow BT pricing flexibility would be inappropriate and present a risk of price distortion given its increased incentives to raise prices to undermine alternative infrastructure investment in response to Ofcom's increased strategic focus on enabling competitive infrastructure investment at scale.
- 6.4 We note that Ofcom proposes to maintain the current basis of charges condition for ancillary charges, supplementary services or activities carried out by Openreach on behalf of PIA customers, apart from network adjustment charges which it considers separately. Ofcom indicates that it expects that some of the ancillary charges will no longer be applicable due to changes that Openreach has already implemented to the PIA product and other changes proposed in the consultation. We will consider our position on the proposals on ancillary charges when Ofcom sets out more detail in the next consultation, including specifying the categories of ancillary charges that will fall away.
- 6.5 Ofcom sets out some reasons why it considers that it will need to use BT's current methodology as a starting point for setting the price cap on PIA rental

charges, rather than using an assessment of BT's fully allocated costs (§§7.23-7.27):

- BT's accounting systems do not currently report the relevant cost data to the required level of granularity and improving the granularity would take a significant amount of time to implement.
- the cost data does not currently reflect the costs of physical infrastructure assets consumed by BT to the same level of detail as the PIA products consumed by other CPs. It states that this means there would be a risk of other CPs being disadvantaged until Openreach's financial accounting systems are updated to account equally for PIA consumed internally and externally.
- a cost allocation approach would be dependent on forecasts of PIA costs and volumes, which would present a risk of error given the uncertainty around levels of take-up.

6.6 While we accept that conducting an assessment based on fully allocated costs will require greater granularity of data, we question the extent of this limitation given that Openreach is already required to show that its prices are compliant with current basis of charges obligations. Ofcom's approach also risks creating perverse incentives: delaying the introduction of a cost-based charge control due to the lack of granular data means there is a risk that BT will intentionally not develop systems to provide detailed cost data on products where charge controls may be introduced in future. We also note that Ofcom already conducts forecasting as part of cost modelling to set the prices for other products, even in circumstances where there is a high degree of uncertainty such as Dark Fibre Access (DFA). In any case, given that few fixed costs will be recovered in PIA charges (productisation costs are excluded) the risk from inaccurate forecasts is pretty low.

6.7 We would encourage Ofcom to review the prospects for a price cap assessment based on fully allocated costs in its forthcoming consultation. We expect Ofcom to make improvements to the current methodology where possible and to pave the way for moving to a fully allocated costs methodology in the future. To achieve this, as set out in the PAG response, Ofcom must:

- Establish a project to determine the appropriate pricing level for PIA and PIA pricing methodology in time for the next market review.
- Direct Openreach to increase the granularity of data so that it includes the required level of detail (for example, the costs of duct, manholes and joint boxes must be accounted for separately rather than in aggregate).
- Direct Openreach to update its regulatory financial statements so that the contribution of CPs' use of PIA to BT's cost recovery can be compared with the contribution of BT's own consumption.

- Ensure Ofcom has the power to change prices during the market review period if necessary.

6.8 If Ofcom does not make these changes, there is a risk that PIA prices may be unduly high, which could deter the use of PIA and therefore investment, and affect the overall effectiveness of the remedy.

Question 7.2: Do you agree with our proposed approach to the recovery of network adjustment costs? Please provide reasons and evidence in support of your views.

6.9 We support Ofcom's proposal to change the approach to the recovery of network adjustment costs so that rather than a CP paying for the build and enabling works associated with its use of PIA, BT bears the cost and these costs are recovered across all BT SMP products. The current approach of requiring the CP to pay all the upfront costs of any build and enabling works through ancillary charges is a significant deterrent to large-scale PIA use and puts CPs at a competitive disadvantage to BT (as it already recovers the costs of network adjustments to support its own network deployment across all users). We think that the proposed approach will support competition, better incentivise Openreach to minimise costs and plan ahead to make the necessary network adjustments, some of which would be needed regardless of PIA use.

6.10 We note that Ofcom plans to set a financial limit for network adjustment costs and to require CPs to pay costs above this limit through ancillary charges. We understand that Ofcom is proposing a financial limit in order to mitigate the risks associated with the recovering network adjustment costs across all users while ensuring there is sufficient certainty for CPs. In particular, we consider that this will address the concern that CPs will not have incentives to consider the level of network adjustment costs when planning their use of PIA which would otherwise result in inefficient expenditure.

6.11 We will review Ofcom's specific proposals for the financial limit in response to the summer consultation. However, we welcome Ofcom's intention to set the limit so that it will only be exceeded in exceptional cases where the network adjustment costs are significantly higher than average for that particular type of work (§§7.58-7.59). We expect Ofcom will provide further detail on how the areas to which the individual financial limits will apply will be defined. We also expect that payments for ancillary charges above the financial limit will be reflected by reducing the costs BT recovers elsewhere.

Question 7.3: Do you agree with our proposed approach to the recovery of productisation costs? Please provide reasons and evidence in support of your views.

- 6.12 We support Ofcom's proposal for Openreach to recover the PIA productisation costs – the costs of setting up and managing PIA (e.g. digital mapping and ordering systems) – from all users of its SMP products rather than including them in PIA rental charges. This change will contribute to levelling the playing field between BT and other CPs so that they are exposed to the same costs for productisation of PIA, rather than CPs facing disproportionate costs.
- 6.13 It is important that the productisation costs are robustly monitored to ensure that they are efficiently incurred, and that Openreach does not use this as an opportunity to recover costs which would otherwise have been allocated to unregulated products. We are concerned that there is an apparent inconsistency between the estimated productisation costs for PIA as set out in this consultation (£7m), and those set out in the WLA consultation (£30m) upon which the recovery of PIA costs from MPF and GEA will be based. Ofcom should ensure that there is consistency between the costs used in the various consultations which it is undertaking. Furthermore, it should ensure that the PIA productisation costs are depreciated over an appropriate period, which, reflecting the long lifetime of PIA projects, should be a decade or more.