



Vodafone

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Response to Ofcom's Consultation:
Wholesale Local Access Market Review
Promoting network competition in superfast and ultrafast broadband

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Promoting competition is the right ambition

Investment in high speed connectivity is vital for the UK economy and rightly a key plank of Ofcom's strategy. Ofcom set out that "...there are significant benefits to consumers from competition based on rivals investing in their own networks, compared to competition based on regulated access to BT's network and wholesale services".¹ In order to promote infrastructure competition, Ofcom is proposing an additional wholesale SMP obligation to be placed on BT to guard against targeted pricing discounts aimed at geographic locations with network based competition.

Vodafone fully supports Ofcom's plans to implement this remedy.

The Wholesale Local Access Market

Wholesale Local Access is the market for wholesale fixed broadband connectivity. In March 2017, Ofcom provisionally concluded that BT continues to have SMP in this market across the UK (excluding Hull), and proposed to put in place a number of remedies. Those remedies focused on the protection of consumers by establishing, among other things; price controls, obligations to supply and quality standards. Ofcom attempted to balance the need to control and reduce prices to protect consumers, with the need to provide sufficient flexibility in the market to enable and support future investment, either by BT or third parties. To do this, Ofcom proposed an anchor pricing regime to lock down prices of the low speed wholesale product, whilst providing regulatory pricing freedom for higher bandwidths products.

Vodafone has made no secret of its desire to enter and re-energise the fixed broadband market in the UK. We launched a consumer broadband product 2 years ago and have since then championed the consumer by abolishing line rentals and have become the UK's fastest growing Broadband provider through innovative customer offerings. Our current retail products are based on Openreach's wholesale broadband products.

We recently announced a further commitment to consumer broadband through a strategic partnership with Cityfibre. Both parties have committed to a project to deliver 1 million homes passed with FTTP connections. However, in announcing this partnership we are identifying to BT (and others) areas where it might wish to focus its competitive attention at a subnational level. This agreement will cover ~4% of the UK's homes once it has completed the roll out. This is a small volume in comparison to BT's FTTC footprint of 95% of the UK and its proposed investment plans to upgrade 10million homes passed with G.Fast technology and 2 million premises with FTTP. Therefore, and particularly given its resources, BT could change its plans to target Vodafone/Cityfibre footprint with little impact on its overall plans.

Why do we need this remedy?

It would be straightforward for BT to propose price cuts in locations where it faced more intense network competition. This could be viewed as a rational response to competition. However, it creates the risk that it

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0021/108381/consultation-wla-competition-superfast-ultrafast-broadband.pdf para 2.2



"...deter[s] rivals from investing in competing networks"² and would be to the long-term detriment of consumers and the digital economy.

BT could easily sustain price cuts where it faces more intense competitive pressure, but given the relatively small footprint where it would need to do this, commercially would feel few effects in the short run: enough time to deter future network based competition. This would be harmful to competition in the longer term. Therefore, Ofcom proposes to make clear that such activity would be a breach of BT's SMP conditions by putting in place a new condition that explicitly excludes non-national pricing, as a result of the WLA market review.

There is currently no explicit regulation which sets out national pricing obligations. SMP regulatory obligations such as price controls, obligations to price on a cost oriented basis and obligations to publish regulatory financial statements setting out costs, have driven the use of a national cost base and hence national prices.

In the 2017 Wholesale Local Access Market Review, Ofcom does not propose to impose charge controls or cost orientation obligations on the majority of BT's superfast broadband products. Ofcom has proposed an anchor pricing structure that means that just a single wholesale product (40/10) is subject to price regulation. The higher bandwidth products have significant pricing freedom, and therefore in absence of Ofcom's proposed national pricing obligation, BT could consider sub-national pricing, whether through discounts, special offers or more permanent prices to target its competitors, whilst leaving prices higher where BT faces less intense competition.

Such targeted pricing might be attractive to consumers in the short term but would be quickly deter infrastructure investment, impacting competition and consumer choice in the medium term. This would not just affect the geographic locations where BT was targeting customers, but would impact customers more widely – where investment might have otherwise taken place in the future.

Ofcom's proposals are necessary and proportionate

Ofcom therefore proposes that BT will be required to comply with an SMP obligation (proposed Condition 4.4) that will eliminate its ability to price on a sub-national basis. This is a very specific and targeted regulatory intervention, but makes the compliance standard clear.

An alternative approach of relying on competition law to address any problems is unlikely to address Ofcom's fundamental concern with the anti-competitive effects of a targeted pricing strategy in that it could foreclose network-based competition. Competition law generally requires a body of evidence that could only be collated after the event, whilst ex ante regulation sets out expectations, and enables Ofcom be able to respond quickly if necessary.

If BT has no intentions of varying prices by geography, then these obligations create no burden on its business. If on the other hand BT wished to retain the option to consider pricing on a sub-national basis and in particular, in order to target potential network competitors, then this obligation would prevent them from doing that. However, as we have previously stated, the benefits are considerable if it safeguards future fibre network investment. Sustainable infrastructure based competition will deliver a better long term outcome for all consumers. Therefore, the long term benefits of infrastructure competition should be valued over short term pricing flexibility provided to BT.

² Consultation document: para 4.2



Ofcom's proposed Legal instrument

Ofcom sets out in a new paragraph in Condition 4 of the proposed SMP condition:

"4.4 In this condition, the Dominant Provider will be deemed to have shown undue discrimination if it charges different prices in different geographic areas for rental services used to provide network access to VULA other than VULA that is provided over GEA-FTTP, or for other rental services where those services are being provided in conjunction with such a VULA service for the purposes of providing electronic communications services to end users."

We understand that the term "rental services" (which is undefined), is not limited to rental charges but for any charges relating to the rental of services including but not limited to connection charges, modify charges or migration charges as well as rental charges. We would welcome clarity on this matter from Ofcom.

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