

Non-confidential

KCOM - Response to Wholesale Fixed Telecoms Market Review 2021-26 supplementary consultation: Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network

1. Introduction

- 1.1 KCOM Group Limited ('KCOM') welcomes the opportunity to respond to Ofcom's supplementary consultation for the Wholesale Fixed Telecoms Market Review (the 'Area 3 Pricing Consultation')¹. This consultation sets out Ofcom's pricing proposals in Geographic Area 3 which take account of the commitment by BT to deploy a fibre network.
- 1.2 KCOM previously responded to Ofcom's consultation on the Wholesale Fixed Telecoms Market Review (the 'January Consultation')². For Ofcom's ease of reference, we have set out the key points of that submission below.
- 1.3 KCOM considers that Wholesale Fixed Telecoms Market Review (WFTMR) presents Ofcom with a unique opportunity to ensure that rival networks can compete effectively against BT in the provision of very high-speed wholesale services, and by extension to offer alternative downstream retail solutions.
- 1.4 The WFTMR will play a key role in shaping the competitive landscape for the future, and it is therefore essential that the review provides a level playing field for the industry so that consumers and business can fully benefit from the growth and innovation drivers obtained from full fibre deployments, and Multi-Service Networks (MSNs) more generally, both now and into the future.
- 1.5 KCOM's fibre investment, and those made by competing providers, will play a critical role in the economic development of the UK and in Yorkshire and Humberside and the North East region more specifically. Full fibre networks provide the only future-proof Next Generation Access (NGA) solution that is capable of effectively meeting the future broadband demands of customers in the UK both in terms of scalable bandwidth and in terms of their reliability.
- 1.6 KCOM currently provides fibre broadband services to a range of businesses and consumers outside the Hull Area and is in a period of network expansion, as set out in our response to the January Consultation. As a full fibre provider KCOM is committed to providing material support to the Government's target of delivering "gigabit-capable broadband" nationwide by 2025, and we are reviewing our deployment plans accordingly. However, to turn our ambitions for further material

¹ Ofcom (2020), Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-6, Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network, 29 July 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0030/199155/consultation-bt-commitment-area-3-fibre-network.pdf

² Ofcom (2020), Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26, 8 January 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0037/188956/wftmr-volume-1-overview.pdf



deployment in Area 3 locations into a reality, we need a level playing field with Openreach.

- 1.7 As explained in our response to the January Consultation, it is not necessarily the case that Openreach has to be the sole full-fibre provider in Area 3 locations and therefore the regulatory inducements being proposed for Openreach are unlikely to be needed to ensure deployment(s) in all Area 3 locations identified in the Consultation.
- 1.8 KCOM current committed deployment plans are [redacted]. Considering both the current level of material investments that KCOM is making, and the need to achieve the Government's ambitious targets, it is important for the regulation proposed in the Consultation to facilitate complementary network roll-outs by committed Communications Providers (CPs) in addition to Openreach, rather than chilling these initiatives.
- 1.9 KCOM therefore welcomes Ofcom's proposal in the Area 3 Pricing Consultation to extend the ban on the use by Openreach of geographic discounts on FTTPs rentals to Area 3 locations. This is an important measure that will prevent Openreach from deterring competitive build. However, we remain concerned that this will not be sufficient to facilitate complementary network rollouts by CPs in addition to Openreach.³
- 1.10 To this end KCOM sought the following modifications to Ofcom's proposals in the January Consultation:
- First, where there is a commitment from an alternative provider to deploy on commercial terms this should result in the removal of the specific regulatory dividend (e.g. the FTTC cross-subsidy) that is designed to promote Openreach's investments in Area 3.
 - Second, Openreach should be held to a strong transparency obligation in relation to its network roll-out plans. If there is any evidence it is altering its planned deployment in an Area 3 location for anti-competitive reasons (for example, targeting an area which was not in its original build plan), Ofcom should make clear that it will take swift action (e.g. through an ex-post Competition Act investigation).
- 1.11 KCOM considers that these measures will ensure network roll-out in Area 3 takes place in a complementary manner, keeping potential overlaps between Openreach and other CP networks (and therefore deployment costs) to a minimum and mitigating the risk of investment hold-up. KCOM remains keen to work with Ofcom [redacted].

³ See paragraph 1.8 of KCOM's response to the January Consultation, available at https://www.ofcom.org.uk/data/assets/pdf_file/0013/201424/kcom.pdf



1.12 Set out below is a more detailed summary of the key points of KCOM's response to the Area 3 Pricing Consultation. The representations contained within this response are solely concerned with KCOM's business outside the Hull Area. If Ofcom would find it helpful to discuss these representations further, we will be happy to meet to do so.

2 KCOM's comments on Ofcom's revised proposals in the Area 3 Pricing Consultation

2.1 Following Openreach's commitment to reach 3.2m premises in Area 3 by March 2026, Ofcom has decided to set price controls in Area 3 using a forecast RAB approach and to align its price regulation across Areas 2 and 3. Ofcom's proposals in Area 3 are:

- Openreach's rental charges for copper-based MPF services will be indexed to CPI-0%.
- Openreach's rental charges for FTTC 40/10 Mb/s services will be indexed to CPI-0%.
- Pricing flexibility for higher speed FTTC services and on FTTP services.

2.2 Ofcom states that all other proposals set out in the January Consultation, including those relating to leased line services and dark fibre access in Area 3, are assumed to remain unchanged. KCOM assumes that Ofcom has not yet decided on those matters and that if those proposals change that these will be appropriately reflected in its pricing proposals.

2.3 KCOM is in broad agreement with Ofcom's proposed approach in the Area 3 Pricing Consultation. We welcome the proposal to prohibit Openreach from offering geographic discounts on FTTP services in Area 3. However, KCOM considers that Ofcom should apply a restrictive approach to permitting any exceptions under the proposed consent process. KCOM also remains of the view that Ofcom should put in place effective measures to prevent strategic overbuilding of rival networks in Area 3 by Openreach.

2.4 KCOM's specific comments in relation to Ofcom's three consultation questions are set out below.

Proposed approach to assessing the BT Commitment and proposals for pricing WLA services in Area 3

2.5 KCOM broadly agrees with Ofcom's proposed approach to assessing the BT Commitments and proposals for pricing WLA services in Area 3. In particular:



- KCOM agrees with the proposal to align the charge controls on MPF and FTTC 40/10 rentals across Areas 2 and 3 at CPI-0%. Ofcom's proposals provide a predictable price path over the review period and align Ofcom's charge controls in Area 2 and 3. This will protect customers from excessively high prices. Alongside the proposal to provide Openreach with pricing flexibility on higher bandwidth and fibre products, it is also likely to promote fibre investment and take-up.
- KCOM also agrees with Ofcom's proposed decision to extend the ban on geographically targeted discounting by Openreach to FTTP products in Area 3. As noted in our response to the January consultation, KCOM considers that Openreach could use such discounts to deter competitive fibre deployment which would otherwise bring value to consumers through more extensive or faster FTTP coverage and/or more choice.
- Ofcom proposes that Openreach may be able to offer discounts on FTTP rental charges within Area 3 subject to Ofcom's consent. As noted above, KCOM considers that it is essential that Ofcom seeks stakeholder comments prior to reaching a decision on whether to consent to geographic discounting by Openreach, and that Ofcom should require Openreach to demonstrate that its proposed discounts do not harm the investment incentives of other FTTP investors.
- KCOM considers it important that Ofcom has outlined its proposed approach post 2026 (e.g. re-basing of relevant forward-looking forecasts, incentivising efficiency improvements, setting any charge control by giving regard to allowing BT a fair bet on its investment). While we recognise that Ofcom cannot fetter its discretion, and it will consult on this at the relevant time for future regulatory periods, it provides an appropriate degree of certainty and clarity to support long-term investments of this nature.

2.6 Finally, as noted above, KCOM remains of the view that, where there is a commitment from an alternative provider to deploy on commercial terms this should result in the removal of the specific regulatory dividend (e.g. the FTTC cross-subsidy) that is designed to promote Openreach's investments in Area 3.⁴

Proposed approach to basket design and implementation of a forecast RAB

2.7 KCOM agrees with the basket design and implementation of a forecast RAB. We also agree with Ofcom's proposals in relation to the duration of the charge control and the proposal to have separate controls for MPF and 40/10 FTTC services.

⁴ See paragraph 2.16 of KCOM's response to the January Consultation, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0013/201424/kcom.pdf



Proposed reporting requirements

- 2.8 KCOM notes that Ofcom is proposing to require Openreach to publish information regarding the number of homes passed with FTTP by exchange area, and the level of investment that has supported its rollout. KCOM agrees with this. It is important that Openreach is required to maintain this information to provide an up to date public list of its committed fibre build locations with new locations and/or amendments added in a timely manner. KCOM considers that it is important that Ofcom keeps build activity and announcements under careful review.
- 2.9 As stated in our response to the January consultation, KCOM also considers that it is essential that Ofcom puts measures in place to address the risk of strategic overbuilding by Openreach to deter rival investment in Area 3.
- 2.10 We remain of the view that Openreach should be held to a strong transparency obligation in relation to its network rollout plans. If there is any evidence Openreach is altering its planned deployments in an Area 3 location for anti-competitive reasons (for example, overbuilding an area of planned or actual deployment by an alternative network that was not in its original build plan), Ofcom should make clear that it will require Openreach to explain any such deviations, and that it will take swift action if necessary (e.g. through an ex-post Competition Act investigation). Ofcom has not addressed this issue in the supplementary consultation. KCOM considers that it is essential that Ofcom addresses this issue as it finalises the regulations for the final statement.

