

Response to Ofcom's consultation on copper retirement-

Supplementary consultation to the Wholesale Fixed Telecoms Market Review

Submission by Colt

The logo for Colt, consisting of the word "colt" in a bold, lowercase, sans-serif font.

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1. Overview

1.1. Colt welcomes the opportunity to respond to Ofcom's consultation on the conditions under which copper regulation could be completely withdrawn in ultrafast exchanges.¹ It is in Colt's interest to encourage Ofcom to develop a better regulatory framework to provide customers with fast, high quality and affordable communications services.

1.2. Colt's view is that Ofcom's proposals to include G.fast connections above 300Mbps within the definition of 'complete' coverage is at odds with its own policy objective of 'transforming the business case for investment in full-fibre'.² Ofcom must exclude all G.fast connections from its definition to ensure that Openreach is fully incentivised to maximise FTTP coverage to limit the number of premises stranded without FTTP.

1.3. Whilst Colt supports Ofcom's aims to ensure that no homes and businesses are left without ultrafast coverage and agrees that the period of regulatory transition is crucial, Ofcom needs to ensure that regulation protects retail customers from harm and that Openreach wholesale customers do not face considerable burdens. It is therefore important that Ofcom maintain the wholesale charge controls on copper-based services for critical national infrastructure ("CNI") to ensure continuity of service and prevent consumer harm.

1.4. Colt is also keen to emphasise that where copper services are phased out, they are phased out unequivocally for all CPs, in order to prevent other CPs, such as BT from being able to use copper to keep serving elevators, industrial machines, backup of fibre lines and backhaul, etc. We note that this would amount to a breach of its SMP condition 4.1 as BT- must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Conditions 1 and 2 (network access/specific forms of network access).³ With this in mind, this response details some concerns that Colt has in relation to Ofcom's current proposals.

2. Ofcom should not include G.fast connections within the definition of Ultrafast

2.1. Colt disagrees with Ofcom's proposals to include G.fast connections at or over 300Mbit/s within the threshold requirements for complete coverage where fibre is not practical, on the basis that G.fast will be an alternative to ensure that customers and businesses still benefit from an 'ultrafast service'. Given Ofcom's objective is to promote fibre rollout by any network builder, including G.fast in the definition of ultrafast effectively discriminates in favour of Openreach and weakens its incentive to build full FTTP. This is

¹ Supplementary Consultation to the Wholesale Fixed Telecoms Market Review, consultation on copper retirement consultation on the conditions under which copper regulation could be completely withdrawn in ultrafast exchanges (the "supplementary consultation")

https://www.ofcom.org.uk/data/assets/pdf_file/0022/204853/consultation-copper-regulation-withdrawal-conditions.pdf

² Ofcom's WFTMR January consultation, volume 1 overview

³ https://www.ofcom.org.uk/data/assets/pdf_file/0030/188931/wftmr-volume-5-draft-legal-instruments.pdf page 33

inconsistent with Ofcom's own stated objective to promote FTTP and the Government's objective for 100% 'gigabit capable' networks.⁴

- 2.2. Should Ofcom continue with its current proposal to maintain G.fast services 300Mbit/s or above within the definition of Ultrafast services, Openreach should be required to publish the number of premises which have had G.fast installed rather than FTTP (for the purposes of calculating 'completed exchanges'). This will provide transparency to industry and consumers so Openreach fibre deployment can be properly monitored which will help to ensure that Openreach is incentivised to deploy fibre wherever possible. It will also help identify any areas which have been left behind in the FTTP roll out and help Ofcom assess any adjustments that might need to be made to its threshold requirements for Openreach. This is particularly important in the context of Ofcom providing BT/OR with significant subsidies for fibre deployment in its WFTMR proposals.

3. Ofcom's approach to CNI

- 3.1. Colt supports Ofcom's proposal to maintain an obligation on Openreach to provide copper-based network access for CNI even where fibre is available.⁵ Ofcom correctly recognises it is important that regulation remains in place for these services.
- 3.2. However, given that copper networks will remain critical to some operators and their customers that will not switch (for a variety of their own and objectively very good reasons), Openreach should not be given pricing freedom once an exchange is declared complete as this enables it to pass the charges on to retail providers and end users. This will cause harm to retail providers and end users, who will end up paying more to access vital services which remain on copper and may even threaten the viability of some services. Ofcom should therefore maintain the charge control for copper services until such services can be safely transitioned to fibre in a competitively-neutral manner.

4. Ofcom's approach to 'complete coverage'

- 4.1. Colt supports Ofcom's proposals to wait to consult on circumstances when premises may be excluded from the completion threshold and a 10% cap on excluded premises.
- 4.2. However, Colt is concerned that, as currently set out, Ofcom's approach is dependent on Openreach deciding which customers it can and cannot serve. The circumstances in which any premises are excluded from the coverage calculation that triggers the removal of the charge control should not be solely within Openreach's discretion given its incentive to harm competition which may leave some areas with partial coverage. Even if in the first instance Openreach are able to self-certify, this should be subject to strict auditing requirements.
- 4.3. The limited exceptions to rollout should be based on genuine barriers such as no listed building consent and, environmental protection issues, with the burden of proof on Openreach to establish that it made 'every reasonable effort' to deploy FTTP in the

⁴ See: <https://www.gov.uk/guidance/building-digital-uk>

⁵ Para 3.36 of the supplementary consultation

affected premises and ensure that end-users are not left behind. No premises should be excluded solely on the basis that it would be costly or difficult to serve them.

- 4.4. Where premises are exempted due to issues that do not pose a permanent barrier to connection, such as flooding or wayleave issues, Openreach should be required to continue to attempt to overcome these issues and commit to revisiting the affected premises within a specified timeframe. We note that with regards to wayleaves these barriers are not necessarily permanent, particularly in the context of legislative reform which seeks to limit such barriers.