

NON-CONFIDENTIAL VERSION

Openreach's response to Ofcom's consultation dated 18 March 2021 on the existing Openreach FTTP offers with geographic pricing

Summary

1. On 18 March 2021 Ofcom issued a consultation document asking for feedback from stakeholders on its proposal to grant consent to Openreach for the geographic pricing variations in relation to FTTP that are contained in three offers (the "**Consultation Document**"). These offers are the 2018 GEA volume offer (the "**2018 GEA Offer**"), the GEA-FTTP Local Marketing Pilot offer (the "**Local Marketing Offer**") and the GEA-FTTP only offer v2 (the "**FTTP Only Offer**"). Ofcom proposes to grant consent under SMP Condition 4.1 until the expiry of each of those offers. Ofcom has made a temporary exemption to the geographic prohibition for each of those offers (in SMP condition 4.8) that is to last until 1 August 2021.
2. Openreach fully supports Ofcom's assessment and conclusions that each of those three offers does not raise competition concerns and that the geographic price differentials contained in them do not deter market entry. Openreach agrees that consent should be granted under SMP Condition 4.1 for each of those offers.
3. [§<]

Background

4. The Wholesale Fixed Telecoms Market Review statement (the "**WFTMR Statement**") issued on 18 March 2021 implements, from 1 April 2021, SMP Condition 4.5 which sets out that Openreach may be deemed to have shown undue discrimination if it charges different prices in different geographic areas for FTTP rental services. This generally replicates the condition introduced in the 2018 Wholesale Local Access market review in relation to FTTC and G.fast rental services.
5. SMP Condition 4.1 allows Ofcom to grant consent for behaviour that may otherwise be captured within the restrictions set by the remainder of SMP Condition 4, including SMP Condition 4.5. Annex 11 of the WFTMR Statement sets out the process Ofcom would expect to follow in considering whether to grant such consent for rental pricing that differs by geographic area and in Section 7 of Volume 3 of the WFTMR Statement, Ofcom provides some guidance on the approach it would take to making assessments and the types of geographic pricing that may be eligible for consent.
6. Ofcom correctly states that there could be benefits from geographic pricing. Generally, Ofcom states that it will consider:
 - a. Any objective justification for the geographic pricing; and
 - b. Whether the geographic pricing is consistent with Ofcom's overarching policy objectives including the strategy to promote network competition.

7. Ofcom would therefore expect Openreach, in requesting consent for geographic pricing, to explain the purpose of the geographic price differentials it wanted to introduce and why any such differentials would not deter new alternative network build. Ofcom notes that it is difficult to provide guidance on the types of geographic pricing that would be eligible for consent but notes that its primary consideration in deciding whether to consent to geographic pricing is whether there could be a detrimental impact on new network build/incentives to build.
8. Ofcom highlights that it will consider consent on a case by case basis. It gives two examples of reasons for geographic pricing that it will take into account. First, pricing to support migration to full fibre, where this is applied in all areas of roll out, but in practice has a geographic element due to the timing of FTTP build in an exchange. Second, where geographic pricing reflects differences in geographic costs.
9. Ofcom has identified three Openreach offers that currently contain geographic price differences for FTTP rental services. These offers are specified in paragraph 1 above. For these Ofcom:
 - a. has disapplied Condition 4.5 until 1 August 2021; and
 - b. proposes to grant consent under Condition 4.1 on the basis that none of the offers raise any significant competition concerns that could deter new network build.
10. Consistent with the guidance provided in the WFTMR Statement, in reaching its provisional decision to grant consent, Ofcom has considered the purpose of geographic price differentials within each of the offers and whether the price differentials are targeted at areas where new entrants are building or are considering building.
11. We support Ofcom's proposal to grant consent for these prices and the focussed analytical approach taken to considering these offers. We acknowledge that Ofcom will consider future proposals on a case-by-case basis and that there may be pricing proposals that are more complex to consider than the three offers Ofcom has reviewed – e.g. where Ofcom may have to consider evidence relating to cost differentials. But with early Ofcom engagement about any future proposals to identify issues before consent is requested, we believe Ofcom can apply the focussed analytical approach adopted in reviewing these offers in assessing other pricing proposals. i. This will allow Ofcom to act efficiently in reaching provisional decisions that can be consulted upon in a one-month window and avoid the consent process delaying the introduction of pricing that is not counter to Ofcom's objectives.

The 2018 GEA Offer

12. This offer was introduced in 2018 and applies to FTTC, G.fast and FTTP. It allows CPs to benefit from discounted prices on those products they purchase from Openreach in Great Britain provided they meet specified volume and forecasting commitments. The principal objective of this offer is to incentivise CPs to migrate their customers from copper products to fibre products and within fibre products to high bandwidths products that are defined in the offer as superfast and ultrafast fibre products. This offer was primarily designed to increase take-up of FTTC services. However, some premises in Great Britain do not have access to FTTC services, and FTTP was included within the offer for these specific premises to ensure access seekers could use

FTTP where FTTC was not available. A more complete description of this offer is set out on the internet link below.

<https://www.openreach.co.uk/orpg/home/updates/briefings/generalbriefings/generalbriefings/articles/gen03618.do>

13. No 2018 GEA Offer discounts are provided to CPs for sales of FTTC, GFast or any FTTP in Northern Ireland. The Consultation Document does not consider the geographical price differential between Great Britain and Northern Ireland. But we do not consider this raises any issues of targeting discounts at new alternative network builders or any other competition concerns. i.e. discounting within the 2018 GEA Offer applies in a consistent way across the whole of Great Britain, covering over 97% of total UK households, and so could not reasonably be viewed as “targeting” an area where competitive conditions were different, noting that there is alternative network build within Northern Ireland¹ as there is in Great Britain.
14. As Ofcom then identifies, for FTTP, the 2018 GEA Offer and therefore the discounted prices available to CPs do not apply to Great Britain in its entirety but only to BDUK areas, new sites and the “legacy” FTTP footprint in place at 2018. The Consultation Document considers whether this geographic differentiation raises any concerns.
 - (i) Application of the 2018 GEA Offer (FTTP) to BDUK areas
15. The Consultation Document is correct that BDUK provides UK Government funding to deliver broadband networks with the aim of improving speeds in eligible rural areas and that BDUK has its own rules and processes to allocate funds to network builders. BT/Openreach has been awarded a number of BDUK contracts and the 2018 GEA Offer provides discounts to CPs in all those areas where it has been awarded BDUK contracts. Ofcom is entirely correct that these areas do not attract commercial overbuild and that therefore there is no impact on alternative network build from the discounts offered in these areas.
 - (ii) Application of the 2018 GEA Offer to New Sites
16. The Consultation Document is correct that decisions about infrastructure supply to New Sites are determined by land developers and not by Openreach. The 2018 GEA Offer discounted prices are available to all New Sites. As correctly explained by Ofcom, it is not the case therefore that Openreach can use the 2018 GEA Offer discounted prices to target areas in New Sites where an alternative network is building new network.
 - (iii) Application of the 2018 GEA Offer to FTTP legacy footprint
17. This area covers the FTTP footprint that was built by Openreach prior to July 2018 (i.e. the entry into force of the 2018 GEA Offer). This footprint covers in excess of [3<] premises² and accommodates Openreach’s legacy FTTP network. The 2018 GEA Offer prices are only available in this relatively small and fixed area which will cover limited build in certain exchanges in different geographies and not in the growing footprint of extensive new FTTP commercial build

¹ Fibrus, a new full fibre broadband provider has recently announced that it is investing over £100m in full fibre broadband infrastructure in Northern Ireland – please see link to press release: <https://fibrus.com/news/the-northern-ireland-digital-revolution>

² Please see Openreach’s response dated 13 January 2021 to FTMR 39 question 2

deployed since July 2018 and we therefore agree with Ofcom that these discounts are not capable of deterring alternative network build.

The Local Marketing Offer and the FTTP Only Offer

18. Openreach fully supports Ofcom's assessment and conclusions on both the Local Marketing Offer and the FTTP Only Offer:

Scale and nature of the geographic aspect

- (i) As noted by Ofcom, the Local Marketing Offer only impacts a limited subset of the WLA market; moreover, CPs select the locations they wish to elect for the offer in full autonomy. Any selection of particular geographies is therefore entirely attributable to CPs' own choice rather than to Openreach. A CP interested in multi-sourcing their FTTP needs could in principle also freely elect areas where altnets have not yet built or are not planning to build. Its purpose is to allow Openreach and CPs to understand how best to encourage the future take-up of FTTP.
- (ii) The FTTP Only Offer covers a wider footprint across the UK, as correctly described by Ofcom. However, the geographic scope of the offer encompasses the whole footprint released for sale up to 31 August 2021 (in the case where the CP chooses to sign the offer in the Primary and Secondary footprint) without any form of geographic selection/targeting of specific areas or locations within that. In other words, the discount applies in each and every qualifying exchange within the released footprint and the geographic element of the Offer is only determined by way of exclusion of (i) footprint which had been built under the demand-led BDUK and New sites programmes and/or (ii) timing of release of the footprint (FTTP legacy footprint prior to July 2018 and footprint to be released after August 2021). The geographic scope of the FTTP Only Offer is not therefore targeted at areas where there is or is expected to be new alternative network build.
- (iii) [REDACTED]

Existence of an Objective Justification

19. As pointed out by Ofcom, both offers' underlying rationale was to stimulate FTTP take up, pilot the impact of local marketing activities or commercial stop-sell on take up and underpin the Openreach FTTP business case.

The offers are in line with Ofcom overarching policy objective of promoting network competition

20. As noted above, the geographic pricing within the offers is not targeted at alternative network build and does not, therefore, raise competition concerns. More generally, we note that, according to publicly available sources³, an increasing number of alternative operators have (and are continuing to) announce plans to build FTTP across the UK, including the footprint covered by the offers under consideration, demonstrating the absence of any potential detrimental impact on new network build/incentives to build arising as a result of these offers being available.

Openreach
29 April 2021

³ See for example information on current coverage illustrated on Thinkbroadband.com - <https://labs.thinkbroadband.com/local/index.php?tab=2&election=1#5/46.332/6.042/> and plans announced by various operators (including Zzoom, County broadband, CityFibre, Full fibre Ltd, Jurassic etc.), as published *inter alia* on ISPreview.com. over the last few months.