



Existing Openreach FTTP offers with geographic pricing

TalkTalk submission

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NON-CONFIDENTIAL

1 Summary

- 1.1 This is TalkTalk's response to Ofcom's consultation, dated 18 March 2021, regarding Openreach's existing FTTP offers.
- 1.2 Overall, TalkTalk agrees that Ofcom should grant consent to the existing offers. There is no evidence that they have damaged the scope for altnet roll-out of FTTP, which continues to gradually accelerate; and, [REDACTED] there is likely to be little or no impact on altnets' ability to compete with Openreach.
- 1.3 The most important factor for Ofcom to consider when assessing such agreements—whether now or in the future—is the extent to which they are specifically focussed on altnet areas, whether deliberately or merely as a side effect of their construction. As TalkTalk demonstrates in the remainder of this submission, the existing discounts are poorly targeted at altnets, and are therefore unlikely to have either an anticompetitive object or an anticompetitive effect.
- 1.4 [REDACTED].

2 GEA volume offer

- 2.1 Ofcom correctly characterises the terms of the GEA volume offer at §§3.1-3.5 of its consultation. This offer is primarily about FTTC products, rather than FTTP, and the majority of impact on Openreach FTTP pricing comes in BDUK areas, where FTTP has been provided due to Government subsidy.
- 2.2 By their nature, the areas which have received BDUK subsidy for Openreach build are not targeted at altnets. BDUK subsidy was provided in areas which were deemed uneconomic for commercial roll-out, and which did not already have access to altnet services. As TalkTalk has pointed out in previous submissions to Ofcom in the context of the WFTMR, it would be financially irrational for altnets to deliberately overbuild Openreach FTTP in any part of the country, as they are unlikely to be able to obtain a sufficient market share to cover the infrastructure costs. This reflects that once Openreach has rolled out FTTP in an area, the stop sell regulations which have been put in place in the WFTMR mean that the bases of all CPs will migrate to Openreach FTTP. Once a customer has been migrated to Openreach FTTP, it is unlikely that they will subsequently migrate to an altnet FTTP network, as there will be no quality advantage from doing so, while a migration between networks will involve costly and disruptive in-home works. At the same time, there are unlikely to be any 'push' factors driving switching, due to the low fault rates and high speeds associated with FTTP broadband.
- 2.3 [REDACTED]. It is likely to be even less viable for altnets to overbuild Openreach FTTP in BDUK areas where Openreach won the subsidy contract, as these are those areas with the highest cost of construction, and in which competition is therefore least likely to be viable.
- 2.4 The other areas which are covered by the GEA volume offer contract (new builds and the pre-2018 FTTP footprint) are *de minimis* in scale, and in the case of new builds, are likely to

be geographically diffused, with no realistic prospect of deterring entry in an area, even if altnets were foreclosed from serving those specific premises.

3 FTTP only offer v2

- 3.1 TalkTalk agrees that the FTTP only offer results in geographic pricing, as it is only offered within the existing BT FTTP footprint (§3.15) and is not available for any of the premises covered by the GEA Volume Offer (see section 2 above).
- 3.2 TalkTalk agrees that this offer does not constitute a targeted discount (§3.20), as it applies across the entire Openreach FTTP footprint which is not covered by the GEA Volume Offer. Moreover, similarly to the comments above, little of the Openreach FTTP footprint has been overbuilt by altnet FTTP [§3.18]. This means that, at this stage of Openreach's FTTP roll-out, where Openreach has not engaged in widespread overbuild of altnet FTTP, there is likely to be little switching from altnets to Openreach FTTP.

4 Local marketing offer

- 4.1 The local marketing offer permits CPs to obtain discounts in up to 500,000 premises, in up to four conurbations, for meeting various criteria around local marketing, local sales presence, and the ARPU which is achieved across the CP's FTTP base (§3.21).
- 4.2 This differentiates this offer somewhat from the other two discount schemes outlined above, as it does not automatically apply across all locations on the Openreach network, but can be specifically chosen to target (or avoid) areas of overlap between Openreach's FTTP and altnet FTTP.
- 4.3 This means that, in principle, a CP which has not signed a wholesale agreement with a particular altnet could use the local marketing offer to specifically in-fill their networks, obtaining lower prices in areas where they have to compete with other CPs. This would be likely to reduce the incentives on those CPs to enter into agreements with the altnets. As such, even though it is the CP, rather than Openreach, choosing which areas to adopt the local discounts, it could still have exclusionary effects against altnets.
- 4.4 At the present time with limited overlap between altnet and Openreach FTTP networks, there is little scope for this agreement to in practice lead to exclusionary effects. As such, on the trial basis which it is currently operating on, TalkTalk agrees with Ofcom that there will not be an exclusionary effect, and it should be permitted.
- 4.5 However, over time there is likely to be an increasing overlap between Openreach and altnets, initially due to overlapping edges of rollout areas, and later due to Openreach overbuilding altnets as it begins to run out of urban areas where no FTTP is present; as such the scope for this offer to have an anticompetitive effect is likely to increase over time, which should be taken into account when assessing any successors to this agreement which might have a similar structure.

- 4.6 Moreover, a permanent agreement of this type has the potential to lead to a discriminatory impact in downstream markets, and to be used by BT to avoid non-discrimination commitments with respect to CPs. For example, it could be made easier to fulfil targets for firms with a physical shop network, enabling BT Retail to leverage its EE shop network in order to meet thresholds which would not be viable for Sky or TalkTalk.
- 4.7 TalkTalk consequently considers that while this trial is acceptable, this offer is considerably more likely to have distortionary effects than the other two offers, if it were rolled out on a more widespread basis. [X]