



Vodafone response to Ofcom's Consultation on:

Existing Openreach FTTP offers with
geographic pricing

April 2021



Introduction

1. Discounts and special offers remain an important feature of the wholesale market. They can help to promote new services, encourage migration from legacy products and are used as a tool in assisting wholesalers when competing for business. Wholesale discounts can often provide considerable consumer benefit when they flow through to underpin offers in the retail market.
2. Given Openreach's ubiquitous access network and its resulting significant market power, Ofcom must remain mindful of the consequences that flow from poorly conceived wholesale discounts and Openreach's ability to undermine competition, either in the retail or wholesale markets. For example, discounts that act as a barrier to buying from another wholesaler damage competition. Likewise, those that offer terms which only appeal to selective retailers (based on the ability to meet certain eligibility criteria) will result in some retailers being effectively be locked out, thus impairing what can be offered in the retail market.
3. These negative consequences from discounting were recognised in Ofcom's WFTMR Statement, with Ofcom deciding to prohibit geographic pricing for some services to address concerns that Openreach could use targeted discounts to undermine new alternative network build.
4. Ofcom's 90 days pre-notification requirement for all future offers is a proportionate step to help safeguard both retail and wholesale competition. Openreach remains free to apply for consent to use different geographic prices where these would otherwise be prohibited and Ofcom can decide upon the merits of each application. We believe stakeholder feedback is vital in such cases and we would encourage Ofcom to consult with retailers and other stakeholders before making any final decision on the approval of any future discounts.
5. By creating two separate geographic markets in the shape of Area 2 and Area 3, Ofcom has permitted a route to allow Openreach to avoid offering the same discounting opportunities in Area 3. This is a disappointing outcome for consumers in Area 3, who will not benefit from alternative access network competition, and Ofcom have offered no means to transfer the benefits of access network competition in Area 2 into uncontested Area 3. Indeed, Ofcom also took the decision to step back from offering charge control protection on 80/20 services in Area 3. The inevitable conclusion from this regulatory shortcoming, is that while on the surface regulatory remedies in Area 2 and 3 are, for practical purposes, identical, the outcome will be that consumers in rural Area 3 will enviably pay higher retail prices than those elsewhere in the UK. It is inevitable that Openreach



will seek to rationally confine its discounting activities to Area 2, the geographic market defined by Ofcom where it faces or is likely to face, access network competition. We urge Ofcom to investigate how this harm can be averted.

Existing Discounts

6. There is a clear case that where existing wholesale discounts exist, having already been deployed in the market and upon which retailers have invested time and effort into building retail propositions, these offers must be preserved to ensure certainty and retain commercial continuity (having been reflected in retailer terms and conditions). Indeed, prohibiting them at this point is likely to harm retailers, rather than Openreach.
7. Withdrawing or modifying in full or in part, established long term offers at this point would undermine retailer confidence and would have a direct negative impact on UK consumers. With discount certainty undermined, retailers may seek to create a cushion in pricing ahead of market reviews to reduce their commercial risk. To take such radical action, there would need to be clear evidence of harm and that the disruption caused from removing the discounts would be outweighed by the expected benefits to competition.
8. In the examples cited in this consultation, we believe no such evidence exists. We therefore share Ofcom's view that the established offers considered within this consultation should remain in place and that there are no significant competition concerns arising as a result of these offers, which were signaled into the market some time ago. Ofcom should grant consent under SMP Condition 4.1 in relation to these offers, permitting the existing geographic pricing to continue until the current offer period ends. All future offers should follow the process set out in the WFTMR and assessed on their individual merits. We would urge Ofcom to encourage Openreach to deliver pricing certainty and continuity into the market, allowing retailers to have wholesale price confidence, avoiding price cliff edges (with headline wholesale pricing often tracking materially above the effective prices paid in the market).

Q & A

GEA volume offer

9. This is the most significant offer in the UK wholesale broadband marketplace, being a long-term deal, spanning five years. Established in September 2018, the offer runs until September 2023 and promotes pricing certainty across a range of FTTC / FTTP speeds, provided specific targets on



volume, bandwidth mix, and forecasting accuracy are achieved. The offer has a significant influence on retail market pricing and thus derives considerable direct consumer benefit. ✂

10. Although this consultation is only directly concerned with the geographic FTTP elements of the offer (which are limited to pre-July 2018 Openreach build, BDUK build and specific non-Openreach FTTP developments), we would consider it would harmful to carve these terms out of the original deal. CPs have invested time and effort into understanding and operating under these discount terms, and the removal of part of them would undermine confidence in the wider deal. Given the allowances made to recognise the volumes of other FTTP builders within the terms of the deal, there is no evidence of any competitive wholesale detriment occurring and the deal should be allowed to run forward unmodified.

FTTP only offer v2

11. This offer is only available across Openreach's Fibre First towns and cities FTTP footprint up to 31 August 2021 (or for an early period, should a CP have selected this option). It is not available for FTTP build that occurred prior to July 2018 or for new sites or BDUK premises.
12. Again, we are not aware of any harm that has resulted from this deal being made available and given its modest impact (due to the limited footprint it catches). We therefore see no value from terminating the deal. We support Ofcom's proposal to let it continue unaltered until the end of its term.

Local Marketing Offer

13. Under this offer, retail broadband providers can select up to four conurbations (subject to a maximum of 500,000 premises in total) within the Openreach Fibre First towns and cities FTTP footprint where they can benefit from discounted prices for FTTP. To qualify, retailers need to meet certain criteria, including undertaking local marketing and achieving minimum average revenue per user. As the local marketing offer provides discounted FTTP rentals in specific towns/cities it would constitute a geographic price variation.
14. ✂. Given the price points on offer and the urban locations available, we are unaware of any harm occurring to either retail competition or in development of the wholesale market, with retailers free to select from a limited number of locations (up to 500,000 premises) from a pre-defined list. The rental discounts are due to end on the 30 September 2022, making any impact from the offer firmly timebound.



15. Participating retailers have investment considerable local effort into engaging with the scheme and it would be particularly disappointing if this effort was to be undermined. We support Ofcom's proposal to leave this offer in situ, allowing it to time out as previously planned.

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