



**Virgin Media Limited's response to Ofcom's
consultation: "Electronic Communications Code:
Proposed Template Notices resulting from
Product Security and Telecommunications
Infrastructure Act 2022 amendments to the
Code"**

Non-confidential

6th March 2023



Virgin Media Limited welcomes the opportunity to respond to Ofcom's consultation on the proposed template notices, which are required under amendments to the Electronic Communications Code ("the Code") introduced via the Product Security and Telecommunications Infrastructure Act ("PSTI Act").

Firstly, we would like to take the opportunity to once again voice our support for part two of the PSTI Act and the amendments made to extend the rights to upgrade and share infrastructure. We believe this was a necessary change that creates more parity with the rights available to operators for apparatus installed under post-2017 agreements.

Crucially, the change supports operators in deploying network within physical infrastructure operated by entities that hold Significant Market Power ("SMP") based on Ofcom's WFTMR review, namely, Openreach's duct and pole access product, referred to as Physical Infrastructure Access ("PIA"). This is something we championed in our initial engagement on Code reform, and we remain optimistic that the extension of these rights will facilitate faster and smoother network deployment.

However, we do not believe the noticing requirements introduced by the PSTI Act are proportionate or necessary for apparatus installed under land. Nonetheless, we acknowledge that the noticing regime is enshrined in the legislation and Ofcom's focus in this consultation is not about the existence of the noticing requirements, but rather on the notices themselves.

We believe that the proposed noticing regime would be incompatible with the scale use of PIA. When using the rights for sharing infrastructure, the present wording of the notices would require the original operators to be the signatory and thus manage the notification process. In bespoke sharing arrangement made between operators, this approach may be practicable. However, in the context of PIA, we think such an approach would create an unreasonable administrative burden on Openreach (the original operator) and introduce friction into the established PIA processes and systems that industry has worked to refine. In turn, these outcomes may result in the PSTI Act's potential benefits to PIA being unrealised.

We have two suggestions to resolve this matter. Firstly, we believe the optimal outcomes is that CPs using PIA are permitted to issue the notice, as it appears in the consultation document, on behalf of Openreach. We believe that such an agreement can be reached within industry, but that Ofcom should formally recognise it.

However, in absence of such an agreement, we suggest a variant of the notice should be created for PIA use, in which paragraph two could be amended to something akin to the below:

*"We, [insert name of PIA CP], are party to an agreement with Openreach for and on behalf of British Telecommunications plc. that gives effect to the determination and the remedies imposed on BT in accordance with the Physical Infrastructure Market Review (28 June 2019). This agreement gives us access to physical infrastructure of Openreach, which is party to a subsisting agreement with the owner of the Land (the **"Agreement"**) pursuant to which Openreach keeps its electronic communications*



apparatus (as that term is defined in paragraph 5(1) of the Electronic Communications Code contained in Schedule 3A of the Communications Act 2003 as amended by Schedule 1 of the Digital Economy Act 2017 (and as may be further amended modified replaced or re-enacted from time to time)) (the “**Apparatus**”) installed under the land at [*insert address of the land where the Apparatus is installed*] (the “**Land**”).

Following this, paragraph three of the notice could then specify the PIA CP is undertaking the requirement to provide notice that apparatus is being shared, as well as providing the appropriate contact details for Openreach should the relevant landowner wish to contact them.

If neither of these options can be pursued, it will be vital for Ofcom to work with Communications Providers and Openreach to ensure there is an appropriate route forward that does not unduly burden Openreach or cause detriment to CPs ability to utilise PIA.

Lastly, we think it is important that these notices are recognised and understood by public bodies. Given this, we welcome the inclusion of brief explanatory notes, and we would encourage Ofcom in making efforts to reach out to local authorities when issuing the final version of the notices. When complying with other noticing regimes, Virgin Media Limited has experienced criticism from local authorities about littering the public realm. In such circumstances, we have always sought to explain clearly the reason for affixing paper notices, but we believe these types of interactions can be limited through more awareness in the appropriate spaces.