<u>Request for Information on Openreach Equinox Offer- response from Fern Trading Limited 15th July 2021</u>

On July 1, Openreach notified Ofcom of its intention to launch a new national wholesale price discounting offer called Equinox. On July 2, Ofcom issued a Request for Information to stakeholders on whether Equinox raised competition concerns, and was necessary for its FTTP business case, or to increase consumer benefits. This response from Fern Fibre strongly suggests that Equinox does raise significant competition concerns, will have the effect of deterring or undermining alternative network build, and is not essential to Openreach's business case to meet its fibre targets.

In the WFTMR, Ofcom was very clear about the challenges that alternative networks face in becoming established and overcoming the incumbency advantages of Openreach, and the importance of it taking care to support new network build during the early phase of rollout. This discount proposal increases those challenges and, as such, Ofcom should consult on the discount offer accordingly.

In particular, the short-term decrease in both wholesale and retail prices that this could generate needs to be balanced against likely higher prices in the longer term, due to its negative impact upon network competition, and alternative network build. The Government was unequivocal in its Statement of Strategic Priorities that Ofcom should prioritise investment over reduced retail prices in the near term. Ofcom is required to have regard to this in its regulatory decision-making.

This Equinox pricing offer is very low, and pushes Openreach closer to its cost of capital in Area 3. It should be obvious to Ofcom that the offer is primarily aimed at undermining competition, and deterring alternative network build. It will have a materially negative impact on network competitors. Ofcom should analyse the geographic impact of the offer, and the impact of its ten-year duration, and set out its conclusions in a formal consultation, to which competitors can respond.

1. In the WFTMR, Ofcom determined that different competitive conditions exist in Areas 2 and 3, and defined geographic markets accordingly. The Equinox offer gives ISPs wholesale discounts of up to 30%, according to the FTTP:FTTC ratio they can achieve on their Openreach lines at a national level. Ofcom must understand that this offer has a different effect in these two geographic markets. It allows BT to price above cost at a *national* level, because this cost base includes the cheaper-to-build urban Area 2 markets. But when looking purely at more expensive *Area 3 locations*, its prices must be substantially closer to - or below - its build cost.

2. Anyone competing with BT purely in Area 3 (which is where the vast majority of the 1.25m premises funded by Fern Fibre will be located) must beat BT's nationally-driven price. This will massively reduce returns, and, in some locations, is likely to deter build by operators within the Fern Fibre group and negatively impact new market entry. Ofcom should consider this impact on competition carefully before giving its approval to the Equinox offer.

3. It should now be clear that BT did not need the additional £1bn+ delivered through the WFTMR price control in order to build fibre in Area 3. After securing this deal, it announced its intention to build 25m homes by the end of the charge control period, including all of Area 2, and 5m Area 3 premises (i.e. 1.8m more than promised under its Commitment). The fact that these additional premises fall deeper into Area 3, and are therefore more expensive to build, shows that OR would have built them without Ofcom's regulatory gift. BT's position is not surprising; all 3.2m Area 3 Commitment premises - and more - are commercially viable for *two* networks.

4. Nevertheless, Ofcom did not accept this reasoning, and presumably still sticks by its view that material build from providers other than BT remains unlikely in Area 3. But you cannot have this both ways. Either BT needs the additional money raised through the price control in order to build in Area 3, in which case it clearly cannot afford to reduce revenues by deep price discounting, or it doesn't, in which case the only credible reason for the discount is to deter competitors by making it difficult for them to secure wholesale customers and by reducing retail prices.

5. A key question in determining whether the Equinox offer is anti-competitive is whether it is necessary in order to achieve OR's fibre targets and therefore make its investment viable. This is clearly not the case.

    a. Firstly, as set out above, BT said publicly that it would achieve 25m fibre premises, and made this announcement *without the benefit of knowing whether Ofcom would accept its discount offer*. This demonstrates that the offer simply is simply designed to deter competitors; it is not a pre-requisite to meeting its target.

    b. Secondly, the ISPs which currently buy FTTC and ADSL products from BT are likely to continue to do so even without the discount. Even with a regulated One Touch Switching process in place, they face a considerable barrier in moving their customers to another network, including the need for an engineer visit and the installation of new domestic equipment, for what is essentially the same product. Furthermore, ISPs which meet their OF FTTP:FTTC discount ratio are disincentivised from moving their customers to other networks, because doing so automatically lowers this ratio.

6. Why is a *ten-year* discount necessary in order to secure BT's fibre roll-out plans? How can this be viewed as anything other than attempt to put competitors out of business or damage their returns? It's difficult to think of regulatory approval in any sector for an incumbent discount deal lasting such a long time. The ten-year timespan moves the discount offer to the end of the *next* WFTMR charge control, for which Ofcom has not even started to consider the conditions of competition or its appropriate regulatory response. How can Ofcom know now what impact this offer is likely to have on long-term competition? Ofcom needs to analyse the long-term impact of the offer and then consult on it.

7. Furthermore, it is impossible for competitors to assess whether BT's pricing is fair without transparency over where it is building, and therefore what its costs are. Listing near-term likely exchange locations doesn't help with this. BT's standard practice is to build the easy-to-reach towns in Area 3, but then, unlike Fern, leave the surrounding villages unbuilt, while it moves on to more lucrative areas. The economics of connecting these forgotten areas are such that they then become instantly out of reach to competitors. This leaves rural areas stranded for years, and is very much the opposite of the 'outside-in' approach. But unless we know exactly where BT is going, we cannot assess whether its costs are fair (or, for areas where only one network is economically viable, whether we should build first). If Ofcom has evidence that BT's build programme is such that it is not pricing below cost in Area 3, then it should present its case, and allow competitors an opportunity to respond through consultation.

For these reasons, Fern asks Ofcom to conduct a proper analysis of the likely competitive effects of the Equinox offer, and then to consult on its findings.

Yours sincerely

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On behalf of Fern Trading Limited