



# Vodafone response to Ofcom's Consultation on:

Openreach Proposed FTTP Offer (Equinox) commencing  
1 October 2021

Non-Confidential Version

Confidential

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## Introduction

1. Vodafone welcomes this opportunity to share our perspective on the expected impact of the Openreach Equinox FTTP offer on the wider market. This is the first such notification made by Openreach's since the requirement was introduced in the Wholesale Fixed Telecoms Market Review Statement, compelling them to give 90 days' notice of changes to the charges, terms or conditions on which they provide network access, or any charges for new network access, where the price or other contractual conditions are conditional on the volume and/or range of services purchased.
2. We are firm supporters of the need for 90 days' notice to be provided, believing that it is necessary to ensure the right level of regulatory oversight is maintained. In order to get the maximum benefit from the notice period it is essential that Ofcom understands the views of stakeholders, within the bounds of a formal consultation. This will greatly assist Ofcom in reaching an evidenced based conclusion on the merits or otherwise of approving any notified pricing. This approach should be Ofcom's default position going forward, with the views of stakeholders formally sought and considered within the 90-day period.
3. Discounts and special offers remain an important feature of the wholesale market. They help to promote new services, encourage migration from legacy products and are a key 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.
4. Openreach's ubiquitous access network and its resulting significant market power, coupled with the knowledge that, even within the context of legal separation, Openreach's largest customer remains BT Retail, makes regulatory oversight of discounts a necessary step. There is an ever-present risk BT's retail interests will overshadow those of other providers. Any analysis of future offers must always take this into account, with Ofcom alert to the consequences that would flow from poorly conceived wholesale discounts and the ability of those discounts to undermine competition, either in retail or wholesale markets.
5. Discounts that act as a barrier to buying from another wholesaler can 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 is offered in the retail market. Within our submission to the WFTMR, Vodafone provided a comprehensive annex around possible approaches to these often complex issues.



## Equinox

- 6 Openreach has consulted extensively with their retail broadband customers over the last few months in the period prior to the Equinox terms being notified. From our perspective, we believe this consultation exercise was conducted in good faith, with Openreach genuinely interested in retailer feedback. ✂.
- 7 Solutions aimed at overcoming some of the practical barriers around consuming an ever-higher proportion of FTTP across a rapidly expanding footprint were partially addressed. Reaching the FTTP consumption thresholds and ensuring the expanding FTTP footprint can be served on time (through Cable Link deployment) remain some of the most challenging conditions imposed. This will be a challenge for smaller / newer broadband retailers, who lack the necessary concentration within their existing customer base on a geographic basis to overcome the economic challenges of initial cable link deployment. It is also clear that Openreach have imposed all the risk associated with meeting the qualification thresholds with the retail Communications Provider.

### Consumer Pricing Benefit

- 5 We consider that UK consumers will be the biggest beneficiaries from the offer. ✂. This period of certainty is important, and it should provide a solid platform on which retailers can build long term offers into the consumer market. While we note that the pricing offered remains above the indicated levels shared by Openreach in 2020 (in respect to an FTTP deal that was never concluded), the pricing is considerably better than that available today.
- 6 We would like to see Openreach launch specialised FTTP pricing to support the provision of Social Broadband services across a range of retailers. Openreach has a significant role to play in this area and it is vital that broadband retailers and Openreach work together to serve consumers who face affordability concerns.
- 7 While in theory, signing up to offer is not mandated for broadband retailers, commercial reality necessitates it. That large gap between the headline pricing and the offer pricing means that any retailer who is not a signatory would struggle to maintain any traction in what is a highly competitive retail market.
- 8 The deal has some hard-commercial edges which enact to impose some harsh penalties should qualification targets not be reached. If targets are missed, there are few second chances, and like a high-stake game of snakes and ladders, where the ladders have been removed, retailers missing



target thresholds will slide back to punitively high standard pricing. In such a situation and with access to much higher wholesale pricing, retailers will find it far more challenging to climb back up and restore their previous commercial position. Such an outcome would have a very detrimental outcome on consumers and wider retail competition.

- 9 We are ever mindful that the economics of the deal for BT's retail line of businesses remain considerably different from those of external retailers like ourselves. BT's retail operation will assess the deal from an end to end perspective (as an integrated access and retail network business), with no external cash outflow to BT Group. While legal separation and SMP rules compel Openreach to act on a non-discriminatory basis, the unescapable reality is that the commercial impact on BT Retail is very different. If BT Retail fail to meet their qualifying thresholds and default to headline pricing, any margin hit in their line of business is cancelled out by a corresponding margin gain within Openreach, with BT Group agnostic on which profit centre performs.
- 10 This is of course is an issue that is not confined to this offer but transcends most of the commercial transactions where we buy from Openreach but also compete head to head with BT's retail operations. ✂. Given the length of time this deal would remain in place for, we hope Ofcom will continue to monitor how it functions in the medium term, perhaps making use of the OMU to ensure the deal doesn't result in unintended consequences that damage competition.
- 11 Should it transpire that external retailers are facing a material competitive disadvantage in comparison to BT lines of business, through the operation of this deal, we would expect Ofcom to have some future freedom of action to seek to intervene and remedy this, perhaps through OMU oversight guarding against the practical impact of discrimination.

### **Wholesale Competition**

- 12 As a broadband retailer who is committed to making use of at least ✂ access networks today ✂ and remains open to the possibility of sourcing from other accesses providers in the future (subject to key quality of service and business case objectives being met), we have been especially vigilant in respect of any draft contract terms that may have been sought that would inappropriately discourage alternative network usage. Having considered the Equinox terms closely, we do not consider any of the terms would have such an effect and see no barriers from this contract hinder us in expanding our purchasing from elsewhere in order to support our rapidly growing broadband base. ✂.



## Conclusion

- 13 We are therefore of the view that this proposed offer does not give rise to any significant competition concerns and should be allowed to proceed, subject to meaningful ongoing OMU oversight to guard against the prospect of any anti-competitive outcomes arising. This recognises the significant duration of the offer and the potential for material market changes in that time. In parallel, Openreach should be encouraged to set out plans for a wholesale social FTTP variant (incorporated reduced ongoing rental charges available to eligible consumers) to enable a range of retailers to be able to offer a FTTP social broadband product.

**End**