



## **Openreach Proposed FTTP Offer Starting 1 April 2023: Equinox 2**

TalkTalk submission

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**NON-CONFIDENTIAL**

# 1 Summary

- 1.1 This is TalkTalk's response to Ofcom's consultation regarding Openreach's proposed 'Equinox 2' discount offer for its FTTP products scheduled to take effect from 1 April 2023.
- 1.2 We welcome Equinox 2 as a step in the right direction which will significantly benefit consumers. The lower wholesale prices will reduce retail prices, thereby increasing consumer uptake; it will also enhance retail competition. Yet it is not anti-competitive: it does not deter ISPs from using altnets, in part due to the failsafe mechanism; and the discounted Openreach price remains above even the top end cost estimate of an efficient altnet and significantly above the bottom end estimate. In fact, consumers would benefit from further material reductions given Openreach's discounted wholesale prices remain above efficient altnet costs; and the price is about 50% above Openreach's own costs. Ofcom should encourage Openreach to go further in its discounts.
- 1.3 It is also worth recognising that Equinox 2 (and indeed Equinox 1) will indirectly benefit altnets. Equinox 1/2 has and will continue to have the effect of increasing ISPs commitment to and investment in FTTP through, for instance, accelerating product developments that support FTTP (such as VoIP), increasing marketing focus on FTTP, stopping selling of legacy, and same pricing between FTTC and FTTP. These measures will not only apply to and benefit Openreach but it will also benefit altnets since the same approach will apply similarly to altnets.
- 1.4 [X REDACTED X]
- 1.5 The remainder of this submission addresses each of the areas of concern that Ofcom included in its consultation: effect of order mix targets (including failsafe mechanism); forecasting requirement; the discounted price level; and whether there have been frequent and detrimental price amendments.

# 2 Effect of order mix targets

- 2.1 The first question Ofcom addresses is whether the order mix targets (OMTs) act as a barrier to altnet entry and expansion: the OMTs are 80% for rental discounts and 90% for (full) connection discounts. Ofcom address this question by assessing whether the OMTs (in combination with the price discounts) deter ISPs from using altnets: since not putting customers onto an altnet will increase an ISPs FTTP order mix making it more likely that they will reach the target and receive discounts.
- 2.2 [X REDACTED X]
- 2.3 [X REDACTED X]
- 2.4 [X REDACTED X]
- 2.5 TalkTalk's order mix with the FSM in place will be higher that without the FSM. This is because in areas where altnets are present TalkTalk places the majority of FTTP orders onto altnets meeting that the FTTP order mix for Openreach is relatively low (as Ofcom outlined in §3.53). [X REDACTED X]

- 2.6 Overall, we consider the FSM is a good mechanism to avoid the risk that the OMT will have any loyalty inducing effects or deter ISPs from moving customers to altnets.
- 2.7 Regarding the legacy cross-check we recognise that it is addressing a legitimate concern for Openreach (that ISPs use the FSM to allow it to sell high levels of legacy products in overlap areas). However, it is highly unlikely that this will happen and the legacy cross-check will be engaged. The legacy cross-check allows Openreach to trigger a review if the number of legacy orders per premise is more than 50% greater in overlap areas than areas where only Openreach is present. [REDACTED] it is likely that in overlap areas a greater share of orders will be on FTTP (and fewer on legacy). We note that it appears that INCA/Zzoomm have not provided any reason (§3.33d) for their claim that legacy orders per premise will be higher in overlap areas.
- 2.8 We consider that for TalkTalk the FSM will not, if we choose to invoke it, be difficult to operationalise. A range of data will be required from the ISP, Openreach and relevant altnets. We anticipate that the data that needs to be collected from TalkTalk is likely to be available from our existing systems (some minor adaptation may be required). We do not consider it onerous. We are also comfortable that the various provisions regarding confidentiality will protect our interests. We note that some stakeholders have raised an issue about information that may be required from altnets to complete the analysis. If this is required, we note that it is in an altnet's interests to provide this information since it may reduce deterrents to using that altnet.
- 2.9 Lastly, given its novelty, we consider that Ofcom should monitor the operation of the FSM to ensure that it is working as intended.

### 3 Forecasting requirement

- 3.1 The forecasting requirements are, we consider, reasonable. They have been modified (favourably) from Openreach's initial proposals and are now similar to those in Equinox 1.

### 4 Discounted price level

- 4.1 Ofcom has in this consultation decided to additionally assess whether the discounted Openreach FTTP prices are at a level below the efficient entrant cost range. Ofcom states that the average rental figure in 2023/24 (which is redacted) is above the top end of the 2023/24 cost range of £11.10 - £15.93: this implies the average rental is at least £16.
- 4.2 Ofcom has based its estimates of the efficient entrant unit cost (in 2023/24) on the analysis in WFTMR21 (which gave a range of £9.53 - £13.67 in 2020/21 prices). Ofcom has then increased these unit costs by about 16.5% (£11.10 - £15.93) to reflect unit cost increases. Ofcom used CPI inflation to index the unit costs. CPI overestimates the increase in unit costs. For instance, wage rises have been below CPI and Ofcom does not take into account efficiency improvement. We note that Ofcom has not assessed whether CPI is the appropriate inflation measure by which FTTP costs will have increased: it merely states it is "*using our preferred CPI metric*". There is no justification.
- 4.3 We also note that Openreach FTTP prices will remain well above Openreach's own FTTP costs. Frontier Economics carried out analysis for TalkTalk in 2021 which estimated that

Openreach had to charge £9.50 a month indexed at CPI to recover its costs including cost of capital. This implies that it would have to charge around £11 in 2023/24 which is significantly below the £16 that Openreach is charging.

## 5 Frequent price amendments

- 5.1 A number of altnets have raised rather ambiguous concerns about Openreach frequently amending its FTTP prices which Equinox 2 is a part of. We think these concerns are unfounded and unreasonable.
- 5.2 Providers are likely to change their prices (or other terms) in response to changes in costs, demand and competition. This is particularly likely in the early stages of a market developing as all these factors are likely to develop. Thus changes in prices and terms should generally be seen as a sign of a healthy market. Whilst this can create uncertainty and risk (for altnets, for example) it should be considered as an inherent part of a competitive market.
- 5.3 In any case, there has not been that much change in Openreach FTTP prices:
- There have been only four rental price changes since 2012 (on FTTP80/20)
  - Equinox 1 (launched in Oct 2021) was a set of discounts designed at discouraging ISPs from selling legacy products
  - Equinox 2 (launched in April 2023) increased those discounts and creating mechanism to protect altnets (recognising that as overlap increases concerns could increase)
- 5.4 Furthermore, this pricing change is manageable since ISPs and altnets who are affected by these prices are generally well resourced and sophisticated actors.

## 6 2026 Price Increase Option

- 6.1 Equinox 2 suggests an optional rental increase by £1 in 2026. This has been reduced from £1.50 in Equinox 1, and the notice period has also been extended.
- 6.2 While we welcome the reduction of price increase and the extension of notice period, this still represents a risk to customers such as TalkTalk given the size of the customer base that this increase would be applied to. In addition, the next WFTMR period begins in 2026, so we would urge Ofcom to consider the dual effect of increased wholesale prices if the current CPI-linked price rise in WFTMR 21 were carried over to the next period.