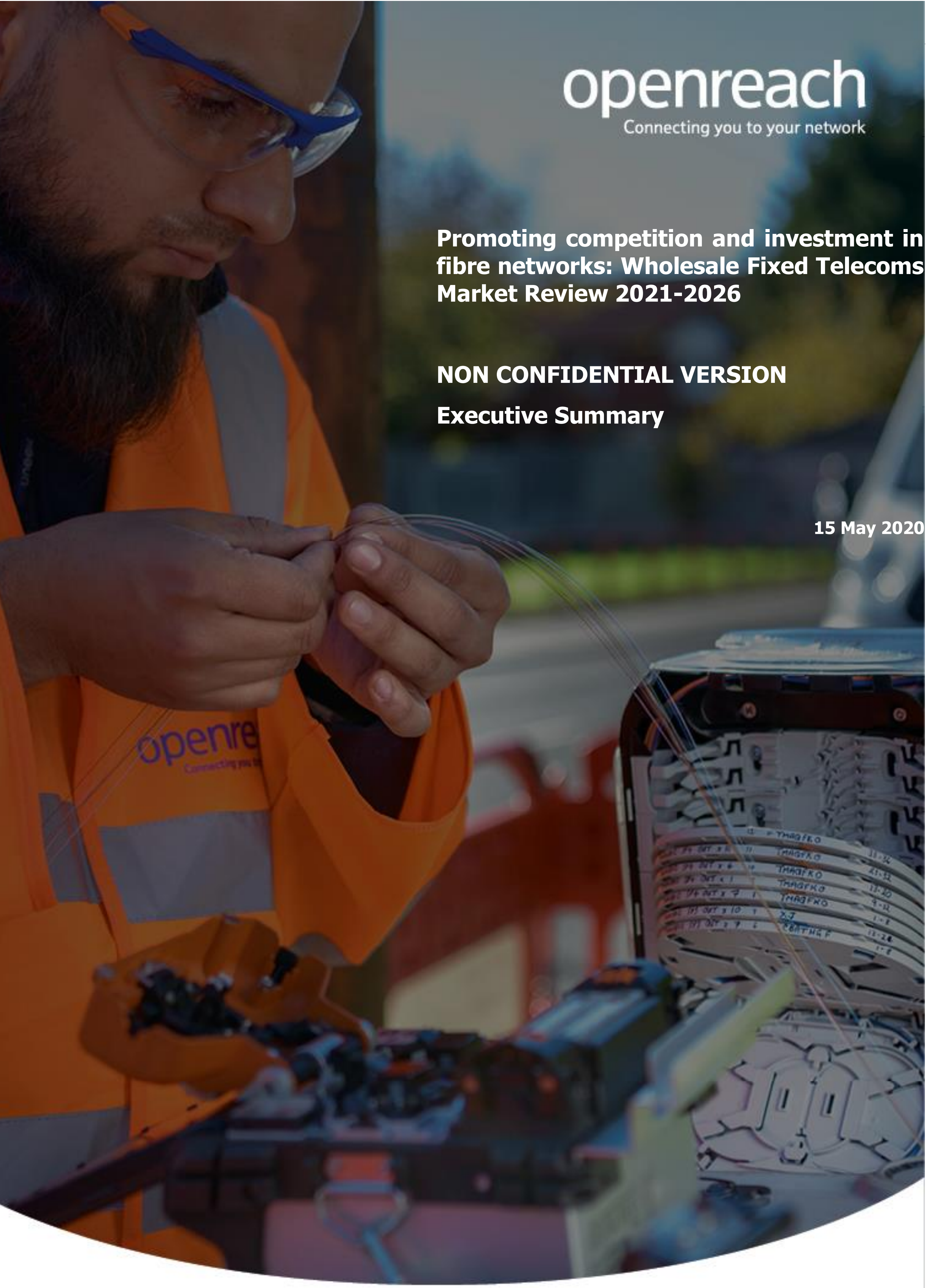

openreach
Connecting you to your network

Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026

NON CONFIDENTIAL VERSION

Executive Summary

15 May 2020

Foreword

This response is provided by Openreach Limited[1]. Openreach is a wholesale network provider. We support more than 600 Communications Providers (CPs) to connect the 30 million UK homes and business to their networks. We sell our products and services to CPs so they can add their own products and provide their customers with bundled landline, mobile, broadband, TV and data services. Our services are available to everybody and our products have the same prices, terms and conditions, no matter who buys them.

[1] Openreach Limited is a wholly owned subsidiary of BT Group Plc.

Executive Summary

Key points

1.1 Openreach is making this response at an unprecedented time as the country focuses on dealing with the challenges posed by COVID-19. Keeping the Nation's communications network going has never been more important and our current focus is on keeping the UK connected and doing the essential work that is required to maintain and enhance our network. We have responded to this consultation as fully as possible given the current circumstances but would note that the full impact of COVID-19 and the time it will take to fully recovery cannot yet be forecast with any certainty.

1.2 Investment in Fibre to the Premises (FTTP) remains at the heart of Openreach's strategy. The current situation has shown the importance of the UK having a fast and reliable broadband network and Openreach shares Ofcom's goal of supporting investment and competition in ultrafast-capable network services. Ofcom's consultation provides much of the clarity and investment certainty needed by infrastructure builders like Openreach and Ofcom's proposals go a long way to providing a regulatory framework that could support investment.

1.3 We have now announced[2] that, on the basis that Ofcom's Wholesale Fixed Telecoms Market Review (WFTMR) proposals are confirmed and we get the required critical enablers, we will increase our FTTP target from 15 million to 20 million premises – almost two thirds of the UK – by the mid- to late-2020s, with a commitment to build significantly in rural locations (i.e. Ofcom's Area 3). We expect to invest around £12 billion to reach our target by the mid- to late-20s, making this the biggest investment in the UK's digital infrastructure for a generation. Once we are through the current COVID-19 crisis we are going to accelerate our build as fast as humanly possible.

1.4 We welcome many of the remedies proposed by Ofcom in areas defined as 'potentially competitive', where the focus is rightly on ensuring any regulatory rules in place are supportive of investment in FTTP networks:

a) We support the proposal to keep the prices of legacy services flat in real terms and to set the price for a new FTTP anchor service at a moderate premium.

b) We welcome Ofcom's support for copper retirement for the Openreach network, endorsing the approach we have consulted on with industry.

c) We welcome Ofcom's endorsement of the 'fair bet' principle.

1.5 Ofcom's proposed regulatory framework is extremely helpful to the investment case for full fibre by us and other providers, but as set out in this response could and should go further. Further, the regulatory enablers proposed by Ofcom are not sufficient in themselves: we also need Government support to remove barriers to investment and cumulo rates and we need commercial agreements with our customers to drive rapid take-up of FTTP.

1.6 We do not believe Ofcom's approach to market definitions and findings of market power reflects current or, as it should, future market dynamics. The finding of Significant Market Power (SMP) across a broadly defined Wholesale Local Access (WLA) market in particular fails to take proper account of the fact that currently Virgin Media has the ability to supply around 15 million UK premises with lines capable of delivering ultrafast access speeds (at 300Mb and above), while Openreach has only just passed 2.5m homes with its ultrafast-capable FTTP network. The

[2] BT's full-year results, 7 May 2020

recently announced merger between Virgin Media and 02 shows the market structure in our sector is subject to change. This merger will result in there being a new stronger competitor to Openreach/BT and Ofcom needs to reflect this (and the potential for further such deals) and the contestability this implies when assessing SMP and considering the need for ex-ante remedies above and beyond competition law. Ofcom should reassess its proposals and finding that Openreach holds SMP in the supply of ultrafast-capable connections.

1.7 We are concerned that Ofcom's proposals on pricing flexibility – in relation to our ability to introduce geographic discounts on access services and/or commercial terms that are conditional on the volume or range of services purchased – would constrain our ability to compete on fair terms in the provision of ultrafast-capable connections and leased lines, even where we are competing against established players – e.g. in supplying ultrafast-capable connections in competition with Virgin Media or in supplying leased line services where contracts are being awarded via competitive tender or 'bid' processes. Notwithstanding our challenge to the broad finding of SMP, Ofcom should impose remedies that take full account of market dynamics in the supply of ultrafast-capable connections and leased lines and, at most (i) limit ex ante restrictions on geographic discounts to Openreach's provision of copper/FTTC access rental services where these are clearly targeted at new entrants and (ii) only consider the merits of any commercial terms conditional on volumes/range of services under the proposed ex ante framework where there is scope for those terms to impact competition from *new* network builders.

1.8 We support Ofcom's proposal to extend indexation to Area 3 if we make a scale commitment to deliver full fibre commercially in Area 3 by the end of 2025/26. BT's May results announcement shows we are keen and ready to step up positively to this challenge. We believe this approach is more appropriate than Ofcom's proposed RAB model, since it provides greater certainty of full fibre coverage in Area 3 and avoids the complexities of correctly calibrating a RAB model – as our concerns over Ofcom's calculation of the 'X' and 'K' factors in our detailed response show. While Ofcom has defined Area 3 as "non-competitive", we believe there will be opportunities for new fibre builders to extend their network into the postcode sectors included by Ofcom in its definition. This creates demand uncertainty making any attempt to establish an effective RAB model even more challenging and further supports applying the same pricing remedies in Area 3 as are proposed in Area 2. By making a commitment to build in the defined Area 3 we are giving assurance to Ofcom that this approach will not risk an imbalance in build over the next 5 years. To underpin a commitment to build in particular parts of the country it is important that the definition of Area 3 by specific postcode sectors is now 'locked down' and not subject to further iterations or shifts in Ofcom's methodology.

1.9 We remain fully committed to delivering a world-class DPA product and understand the importance Ofcom attaches to DPA as a means of encouraging other operators to build competitive fibre networks. We note, however, that DPA is not a silver bullet and building full fibre networks remains risky and has long paybacks. We agree with Ofcom that the DPA specification remains fit-for-purpose and we are continuing to work with our industry customers to enhance the product to reflect their emerging requirements for large scale use. This includes development of new B2B functionality enabling API access to Openreach systems - allowing bulk data download, upload and edit - in addition to the many 'Day 2' product and system developments already delivered in October 2019. We do, however, have some concerns with Ofcom's proposed DPA pricing approach and set out some changes to ensure the full costs of our DPA assets are properly reflected in DPA prices and that costs are more fairly allocated.

1.10 We continue to oppose Ofcom's proposal to impose Dark Fibre in Area 3. This remedy is premature given that there has been insufficient time to assess the take-up of unrestricted DPA, and it will undermine rather than support network build in rural areas allowing, for example, economically inefficient cherry picking. We are further concerned that Ofcom's guidance about the scope of the network access obligation could be interpreted too broadly, requiring us to build new fibre extensions where no existing fibre is available. Given Ofcom's guidance has the potential to be misinterpreted we have proposed a threshold based on economic dig distances using Ofcom's own model, to define the boundary beyond which Openreach would not be required by SMP obligations to build new infrastructure. Moreover, the proposed DFA price is too low and needs to properly reflect actual delivery costs in Area 3. We have supplied Ofcom with information on our Area 3 costs in this regard. This unduly low DFA price will send economically inefficient investment signals and is likely to give rise to accelerated migration from active to DFA services in Area 3 that may undermine our ability to build scale FTTP networks in Area 3 and deliver excellent QoS for leased lines nationally. The proposed one-month implementation timeframe for DFA is not feasible given the systems development and training required to deliver a scalable product plus the need to negotiate terms with industry to avoid unnecessary disputes further down the line.

1.11 We agree with Ofcom's overall approach to QoS with existing Quality Standards kept at 2021 levels and no new targets introduced. This reflects the significant and sustained improvements achieved in Openreach service levels. However, there needs to be sufficient flexibility in the regulatory framework to deal with any exogenous factors or unforeseen material changes that might arise during the review period. We also agree that it would be premature to introduce QoS Standards for FTTP where we are keen to move to agreeing appropriate levels of service with our customers as a replacement for formal regulation; we will be consulting industry on this during 2020.

1.12 We are not currently in a position to determine the full extent of the impact of COVID-19 (including the scope and duration of any impact) on our business and that of our customers and any resulting regulatory implications. It is likely we will need to make further representations on this to Ofcom in the future. It is highly likely that a wide range of QoS performance measures will be affected not only in the period of the outbreak, but for some time afterwards as we recover and return to usual levels in the future. This will impact this year's performance outcomes and the appropriate starting points for the new control period. In addition, there will be technological impacts and subsequent delays relating to release cycles which may not only impact service delivery but our ability to release product developments on schedule. We reserve the right to request regulatory changes that may be required once we have fully assessed the impact of COVID-19 on the business.

Establishing regulation to support fibre investment

1.13 Ofcom's WFTMR consultation's stated goal is to support investment and competition in ultrafast services to as many people and businesses as possible. Openreach shares this goal and is keen that we continue to play our part delivering benefits for our customers and the UK's consumers and businesses.

1.14 Over the last decade, Openreach has invested to drive near-universal availability of superfast broadband services based on VDSL fibre to the cabinet (FTTC) technology. We are now investing to make ultrafast services available: on 7 May 2020, we announced an increased target to pass 20 million premises with FTTP by the mid to late 2020s, up from 15 million, if the conditions are right. We have already reached over 2.6m homes and businesses with full fibre and continue to increase our build run-rate each quarter. Our current run rate stands at 32,000 premises per week. After passing 1.3 million premises in 2019/20, we are aiming at over 2 million in 2020/21, and envisage a build rate of 3 million premises per year thereafter.

1.15 The current COVID-19 situation has shown the importance of the UK having a fast and reliable broadband network and we are keen to get on with the job of building this critical infrastructure. We are continuing with our build plans (the impact of COVID-19 on resource, working practices and efficiency excepted) during 2020/21 to exit the year in a way which would enable a scale build to seamlessly follow on.

1.16 In addition to our commercial investments, coverage in rural areas has improved significantly as a result of the success of our participation in the BDUK and other publicly funded programmes. This has made superfast broadband available to large parts of the country which would otherwise have been considered commercially unviable. Ofcom's Connected Nations report in 2019 found that rural coverage of superfast broadband had reached 79% of premises. But we are keen to help take this further forward and welcome the Government's announcement of £5bn for gigabit capable broadband for the final 20% of the country.

1.17 We are also continuing to build commercially in Ofcom's Area 3. In 2019/20 we passed [✂] homes as we sought to understand better the build economics and challenges in the "better 20% of the final third". In 2020/21 we plan a five-fold increase in this target to 250k homes passed commercially. As set out below, we remain keen to make a commitment to further commercial Area 3 build in return for the extension of indexation across the country.

1.18 Regulation is critical in shaping the conditions for full-fibre investment:

a) We are making **significant upfront investments** to construct an FTTP network that will replace existing copper-based connections to end-customers.

b) The **timeframe for achieving payback on these investments is long and uncertain** and will, among other things, depend on our ability to deploy FTTP at the right build costs at the required pace, migrate customers onto the new platform, retire existing copper-based services and drive incremental revenue from the enhanced capability of the new network.

c) The **success of these investments will be shaped by a number of factors**, including the valuation end-customers actually place on the enhanced capability over time and hence their willingness to pay and the willingness of our CP customers to share in this risk. The result is that our investment comes with material downside risks that it will fail to deliver adequate returns over adequate timeframes for investors. Investors will therefore need to see that we have the opportunity to earn and retain higher returns on the investment, in order to balance the identified risks, rather than see any returns above our cost of capital taken away by regulation – the '**fair bet'.**

d) **Regulation defines the set of access services we must provide to our industry customers, what prices we can set and can place limits on our ability to compete**. The set of regulatory remedies in place at any point in the timeframe of an investment case will play a key role in determining the costs we will incur and the maximum revenues we will be allowed to generate. Uncertainty around the shape of future regulation materially increases the risks and costs of any investment decision.

1.19 A supportive regulatory framework requires, therefore, that:

a) we are able to **minimise our costs** through efficient FTTP build and by driving efficient and timely migration from our existing copper-based services to FTTP-based services;

b) we are **allowed to compete fairly** with other networks and other technologies throughout the period of any investment case; and

c) we have the opportunity to **generate adequate future revenues to fund the investment case**: any price controls that are set over the timeframe of the investment case for access services – which may cover existing copper-based services and future FTTP-services – should provide us with the opportunity to extract the additional value required to justify the investments.

1.20 Ofcom's support for these regulatory fibre enablers is extremely helpful to our investment case and we set out in this response how Ofcom could go further to support its aims of investment and competition in full fibre. Ofcom's actions alone will not be sufficient: we also need Government support to reduce the costs of investment and we need CPs to drive rapid take-up. Hence, our scale FTTP case will remain a risky investment.

Ofcom's proposed regulatory framework

1.21 In this consultation, Ofcom has proposed a number of measures that support investment by us and by others, including those that directly address the key enablers we have identified for our scale FTTP business case.

a) **Indexation.** We support Ofcom's proposal to provide regulatory certainty in Area 2 by applying CPI indexation to the current regulated prices of legacy services (i.e. MPF, 40Mb FTTC and wholesale leased lines). This will be important during a period of transition where costs of supply will be volatile as volumes change, and as we will be looking to move customers to full-fibre services. Ofcom should confirm that indexation will remain in place for the life of the legacy assets.

b) **FTTP anchor premium.** We welcome Ofcom's support for a moderate price premium for the FTTP 40Mb anchor product when it replaces the FTTC **equivalent**. This premium reflects the increased value provided to CPs and their customers and the cost savings to CPs through the increased reliability of the new platform. However, we believe Ofcom's proposed price range of £1.50 to £1.85 is too low and the premium should be at least £2.

c) **Pricing freedom on higher bandwidth FTTP services.** We agree with Ofcom's proposal to only directly constrain our pricing of the 40Mb FTTP **anchor** services, allowing us commercial freedom – subject to 'fair and reasonable' supply obligations – to set the price premium/structure for the supply of higher bandwidth, higher value FTTP services.

d) **Copper retirement.** We welcome Ofcom's support for our approach to copper retirement which we have been consulting on extensively with **industry**. As Ofcom indicates, this is a key enabler for our fibre business case as we want to encourage customers to move off the copper platform to enable us to reduce the time period during which we will have to incur the cost of simultaneously running two networks. We are pleased that Ofcom agrees that 75% is a suitable threshold for commencing switchover by implementing stop-sell and that legacy regulation could be withdrawn after a minimum of two years. We welcome Ofcom's further consultation on this threshold given the practical difficulties of reaching 100% ultrafast coverage. We think Ofcom could go further, for example, to support stop-repair in copper where FTTP is available.

e) **Fair Bet.** Ofcom's clear in-principle support for the Fair Bet on our fibre investments is very helpful, signalling that any future regulation of the pricing of fibre services would allow for the risks faced at the outset of our build programme and would not unduly constrain upside returns once commercial outcomes are known. We would, however, also encourage Ofcom to confirm that its general approach to price regulation of FTTP services – i.e. a 40Mb anchor with freedoms on price setting above the anchor – will endure for at least two market review periods. While Ofcom has done this in a number of presentations, including notably the analysts’ presentation on the day of the publication of its WFTMR Consultation,[3] it would be very helpful if Ofcom could formally state this position in writing. This would provide comfort that we will have an extended initial period with limited regulatory constraint during which we can drive and retain value from the platform.

f) **Balanced build in the Final Third**. We support Ofcom’s preferred option of extending CPI price indexation to legacy services in Area 3 if we make a commitment to build a sufficient level of fibre commercially in the final third during the 5 years of this review period to 2026. This option is preferable to the challenges and complexities of Ofcom’s post-build RAB alternative, particularly as we believe there will be significant scope for commercial build by different suppliers across the postcode sectors defined within Area 3.

(i) We remain committed to a balanced build between urban/suburban UK (Area 2) and rural UK (Area 3). To date, of our 2.6m homes footprint, approximately [✄] % of premises are in Area 3. We remain keen to commit to scale FTTP build in Area 3 and our build plan for this year includes (subject to any COVID-19 impact) deploying FTTP to a further [✄] premises in Area 3 in 2020/21.

(ii) Ofcom should now confirm the definition of Area 3 so we can make a clear commitment to build in this area. It should also be remembered that there is an important role for Government in funding fibre roll-out to the hardest to reach rural areas.

1.22 We are also supportive of Ofcom’s proposals in a number of other areas:

a) **Duct & Pole Access product specification.** We welcome Ofcom’s recognition of the progress we have made in making the DPA product a best-in-class scale product that meets the needs of industry. It is sensible that the formal DPA specification and other regulatory obligations remain unchanged, but we are still continuing to improve the DPA product specification, delivery and performance metrics to meet our customers’ requirements, supported by our systems development roadmap and collaborative engagement with CPs. For example, we are now looking to reflect CPs’ emerging requirements for large-scale use by the development of new B2B functionality enabling API access to Openreach systems to allow bulk data download, upload and edit facilities, in addition to the many ‘Day 2’ product and system developments already delivered in October 2019. We also support Ofcom’s proposal and consultation to simplify lead-ins.

b) **Quality of Service.** Our key points on quality of service are as follows:

(i) We agree with Ofcom’s overall approach to QoS with Quality Standards kept flat at 2021 exit levels. That said, there may be changes during the next review period that could impact our ability to meet the standards, for example, with the issues raised by proactive repair (that is, the recent proactive reporting of faults by some CPs that have not been raised by their end customers) in relation to copper and fibre services. There needs to be sufficient flexibility to address such exogenous factors and it may be appropriate for the regulation to be amended to reflect these changes as and when they occur. In relation to proactive repair specifically, we believe that it is appropriate for Ofcom to take account of this in the construct of the QoS Standards imposed. We support the view that it is premature to impose QoS regulation on FTTP and we plan to consult on this area with our industry customers later this year.

[3] https://www.ofcom.org.uk/__data/assets/pdf_file/0022/189310/access-review-analyst-briefing-transcript.pdf

(ii) Proactive repair was not foreseen by Openreach (or Ofcom) in setting the resource requirements in the WLA for the current set of QoS standards and we have not planned to be able to deal with the additional and volatile volumes that are now being submitted. The introduction of proactive repair has circumvented recognised industry processes that underpin both the SLA/SLG framework and QoS standard levels and creates significant increases in fault volumes that are not forecast and may not actually materialise as faults. Openreach is actively reviewing mitigating actions to address this with the preferred approach being to exclude such faults; we look for Ofcom's support in this. At the very least, Ofcom needs to take account of this in the construct of the QoS Standards imposed.

(iii) On Ethernet, we continue to have concerns with the Upper Percentile QoS Standard as determining the level of a standard is too complex and the measure outcome is too sensitive to external factors. We propose that the measure should be replaced with a remedy that is based on enhanced oversight which we set out in this response.

(iv) During the COVID-19 crisis, Openreach's current service focus is on keeping the UK connected with a set of operational priorities agreed with Ofcom and industry. At this stage, we cannot predict the situation for the remainder of 2020/21 and any possible impact on 2021/22 performance. Ofcom may therefore need to amend its proposals once we are back to a steady state. Our ambition of operating at 2020/21 QoS Standard exit levels remains unchanged, the timing of when we can get there at this point is unknown.

c) **WLR/ISDN deregulation**. We support Ofcom's proposals which reflect the voluntary commitment on WLR and ISDN2/30 we have offered to make covering the period up to national stop-sell and withdrawal in September 2023 and December 2025 respectively. Under this commitment, we would continue to provide new WLR and ISDN2/ISDN30 circuits until September 2023 and to support the existing WLR and ISDN2/30 customer base on a reasonable basis until December 2025.

1.23 However, we do have some significant concerns with some other aspects of Ofcom's proposed approach:

a) **Approach to market definition/SMP.** Our key points on Ofcom's approach to market definition/SMP are as follows:

(i) We do not believe Ofcom's approach to market definitions and findings of market power reflects current or, as it should, future market dynamics. The finding of SMP across a broad WLA market in particular fails to take proper account of the fact that, at this moment, Virgin Media has the ability to supply around 15 million UK premises with lines capable of delivering ultrafast access speeds (at 300Mb and above), while Openreach has only relatively recently passed 2 million premises with its ultrafast network. Recent news of the proposed merger between Virgin Media and O2 further illustrates this point and will herald a new, stronger competitor across fixed and mobile telecoms markets. The provision of access services will be transformed over this market review period with Virgin Media expanding the geographic reach of its network and a number of ambitious, well-financed entrants deploying ultrafast-capable networks. With this outlook, retail CPs are actively considering their options for how their network access requirements can be met in a way that ensures they are able to extract higher value from their customers and meet demand for ultrafast speed connectivity services from their customers as it emerges – demand at the wholesale level for ultrafast-capable connections is running ahead of demand from end-customers for connections sold at ultrafast speeds.

A finding in this review that Openreach has market power in relation to the provision of ultrafast-capable connections – i.e. that we could act independently of other players in the supply of such lines – is clearly inconsistent with this emerging outlook.

(ii) As we have noted, we welcome Ofcom's proposals not to impose direct controls on the price levels at which we supply access services above the existing 40Mb anchor service over ultrafast-capable lines. However, the broad finding of SMP across all our access services imposes additional burdens and restrictions on our terms of supply compared to other providers of ultrafast-capable connections and there is a material risk of distorting competition over the market review period. We would, therefore, ask Ofcom to reassess forward-looking conditions for the supply and demand of ultrafast-capable access lines and conclude that Openreach does not hold market power at this time. Similarly, while we welcome the fact that Ofcom has shown some recognition of differing levels of competition in the business connectivity market with the Central London Area fully deregulated and lighter-touch remedies in the HNR areas, we believe Ofcom's analysis still understates the existence of competition in these areas and beyond.

(iii) Ofcom's approach to defining a market for 'telecoms physical infrastructure' based solely on Openreach physical assets is also unsatisfactory, leading to the unsurprising finding of SMP for Openreach on a national basis. In our view, the finding does not place enough weight on the differences in competitive conditions prevailing in different geographic areas, new sites, or with respect to overhead/underground infrastructure - and does not fully reflect the broader options available to access seekers (particularly mobile operators) using alternative deployment methods and alternative telco/non-telco infrastructure. Outside of the SMP framework, Ofcom also could and should have focused more attention on opening up such options for the industry by reviewing and setting expectations for the ATI regulations (for example, in relation to levels of charges and other T&Cs, and response deadlines) to ensure they are fit for purpose. Our experience to date of trying to gain access to passive networks using the ATI regulations shows them to be inadequate. Reform and clearer guidance on their application would help Openreach (and other network providers) in scenarios where we have no pre-existing physical infrastructure and hence no market power, such as in new build sites and multi-dwelling units (MDUs) - including where we are 'locked out' of a site at the build stage by an exclusivity agreement between the serving CP and developer.

b) **Restrictions on our commercial flexibility to supply access services.** Our key points on our commercial flexibility to supply access services are as follows:

(i) We oppose Ofcom's proposals to use ex ante remedies to restrict our ability to introduce geographic discounting of prices across our access services and/or commercial terms that are conditional on the volume or range of services purchased. Ofcom is proposing that we follow new operational processes – i.e. we will need to seek consent before introducing geographic discounts on most of our rental services supplied into the proposed SMP markets, including FTTP services and leased lines services; and we will need to give 90, rather than 28, days' notice of any volume-conditional terms during which time Ofcom will consider whether to require that such terms are removed or adjusted. Ofcom's commentary and guidance in this consultation then raises concerns that it would set a high evidential barrier to allowing geographic discounting and not blocking the introduction of volume-conditional terms. We believe this approach is not justified and could result in a distortion of competition, particularly where we are competing against established network players – e.g. Virgin Media in the supply of ultrafast-capable access lines or leased line providers, especially where we are responding to invitations to tender / bid processes.

(ii) We recognise Ofcom's policy objective of promoting competition in the supply of multi-service, ultrafast-capable networks, but we expect this competition to result in increased levels of geographic pricing and in network suppliers and wholesale customers looking to establish long-term supply arrangements where pricing certainty is offered in exchange for volume commitments and some degree of 'risk-sharing'. Openreach's case to invest in ultrafast-capable network will be undermined if we are restricted in our ability to respond fairly to these competitive dynamics.

(iii) Given our position that Openreach cannot have SMP in relation to the supply of ultrafast-capable connections, there is no case for any ex ante restrictions on our commercial activity for these services. However, we propose that, at a minimum, Ofcom amends its proposals to (i) limit the proposed ex ante restrictions on geographic discounts to Openreach's provision of FTTC access rental services only; and (ii) only use the proposed ex ante framework to assess the effects of any proposed volume-conditional commercial terms where these could have some effect on *new* network suppliers and use competition law to assess any such terms that would only have an impact on established network suppliers such as Virgin Media as part of a full evidence-led, effects-based assessment.

c) **Dark Fibre remedy.** Our key points on the Dark Fibre remedy are as follows:

(i) We oppose Ofcom's proposal to impose Dark Fibre in Area 3. This remedy is premature given there has been insufficient time to assess the take-up of unrestricted DPA, and it will undermine rather than support network build in rural areas. If DFA is mandated in Area 3, changes are needed in respect of the remedy; otherwise, the risks this could create to our Area 3 volumes will need to be reflected in our business case to build.

(ii) We are concerned that Ofcom's current guidance on when dark fibre requests would be required to be met by Openreach could be misinterpreted to go beyond what Openreach is legally required to do under the Network Access obligations. Ofcom's current guidance correctly restricts the scope of the dark fibre obligations on Openreach to the making of network adjustments that are (i) necessary; (ii) feasible; and (iii) to improve efficiency[4]. However, it provides no guidance to assist CPs and Openreach in distinguishing requests for network 'adjustments' of that kind (which would fall within the scope of the proposed regulatory Network Access obligation) from requests for network *extensions* (which would not). Openreach sets out a proposed definition to assist the market in clearly understanding which requests are subject to regulatory obligation from those that are not. To note, although Ofcom's guidance on this topic is provided solely in relation to the dark fibre remedies, Openreach's comments and proposals apply more widely, and the definitions Openreach proposes will apply equally to all leased lines services.

(iii) The proposed DFA price is significantly below costs and needs to be increased to properly reflect actual delivery costs in Area 3. We have supplied Ofcom with information on our Area 3 costs and are happy to work with them to ensure these are understood and properly reflected. The proposed DFA implementation timescales (1 month after the final statement) are not realistic given the systems

[4] Ofcom Consultation Volume 3, Paragraph 6.98

development and training required. Openreach sets out that June 2022 is sensible the date for full product launch. The unduly low price proposed for DFA in Area 3 will also drive rapid migration from active services to DFA. This migration will then impact Openreach's ability to meet QoS standards for leased lines nationally by creating significant additional work that will need to be undertaken by the operational teams.

d) **Duct & Pole Access pricing structure**. Our key points on Duct and Pole Access pricing structure are as follows:

(i) We support Ofcom's principle that DPA pricing should ensure cost recovery and a level playing field but are concerned that its current proposals will not achieve this in application. Ofcom is proposing to broadly maintain the existing price structures for DPA services which reflect current utilisation of the infrastructure assets in supporting our copper/VDSL based network. Ofcom then proposes to reduce prices for pole access based on a reduced valuation of the pole assets. Openreach is concerned that Ofcom has not yet properly taken into account the forward-looking costs of investing in DPA assets and that its approach to cost recovery does not reflect the changing way in which DPA assets will be utilised in the future by competing fibre-based suppliers.

(ii) To address this issue, it is therefore important that DPA prices properly reflect current and forecast DPA costs, based on current build scenarios. The additional DPA costs relating to the FTTP scale case will also need to be included. Finally, the methodologies for pricing multi-bore duct and manholes need to be changed to reflect a fairer allocation of costs between Openreach and other network builders. Openreach believes multi-bore duct and manhole prices do need to increase in this review period to ensure we have a glide to a sustainable medium/long term pricing structure.

1.24 Finally, there are a number of areas where Openreach has concerns about, or do not fully understand, Ofcom's modelling, or where further work is required. These include:

a) Ofcom has used nationally averaged costs to propose its DFA prices and those include volumes and costs in CLA, a geographic market where BT is assessed by Ofcom not to have SMP. Openreach considers there is no justification for including CLA volumes and costs in its estimate. Further, Openreach's geographically-disaggregated costs supplied to Ofcom prior to this consultation show that the DFA costs of supply in Area 3 are significantly higher than in the rest of the UK.

b) In calculating DFA prices, Ofcom uses the same efficiency assumptions they made in the 2018 BCMR consultation. We continue to believe that the underlying evidence (recent historic unit cost analysis and management plans) does not support these very high efficiency levels.

c) Openreach estimates, at the DFA price points proposed by Ofcom, that the rate of local access fibre provision activity in Area 3 will more than double over the charge control period. Ofcom makes no allowance for these migration costs in its assessment of DFA costs.

d) Ofcom uses undiscounted FTTC prices to estimate the x for the Area 3 RAB model. We consider that discounted FTTC prices are the appropriate start charges for modelling purposes.

e) In its 'k factor' model, Ofcom makes no allowance for legacy volume loss to FTTP as we build out FTTP. More generally, Ofcom's cost modelling will need to be updated to reflect the impact of our scale FTTP commitment.

1.25 We flag these and other similar modelling issues in this response but will need to continue to work with Ofcom to understand and align data and assumptions.