making communications work
for everyone

Dame Melanie Dawes
Chief Executive

Julian Knight MP
Member of Parliament for Solihull
House of Commons
London
SW1A 0AA

18 March 2021

Dear Julian,

DCMS Select Committee Report: Broadband and the Road to 5G

Today we have published Ofcom's Wholesale Fixed Telecoms Market Review 2021 – 2026 ('The Review'). This sets out our final decisions on how we will regulate the wholesale telecoms markets used to deliver broadband, mobile, and business connections in the UK, for the next five years and beyond.

Our decisions today are the culmination of several years' work to set a regulatory framework that will promote competition and investment in gigabit-capable networks. Over the past year, the pandemic has underlined even more clearly the importance of fast, reliable broadband connections for people and businesses across the UK. While superfast broadband now reaches 96% of UK households, and has served the country well during lockdown, it clearly doesn't meet our needs in future, as the Government's own ambitions recognise.

The Review marks a significant and sustained change in Ofcom's regulatory approach in a number of respects. This recognises the historic nature of this investment, as the UK finally replaces the copper networks that have been the bedrock of telecoms services for more than a century. Our strategy is based on providing long-term certainty and promoting network competition as the best driver of investment, so that consumers can benefit from a choice of networks that offer fast and reliable broadband and value for money. Over the next ten years we expect to see new providers entering and competing with Openreach and Virgin Media. This will put us on a path to even greater deregulation in the future, allowing competition to replace regulation permanently. Where effective competition emerges, there will be no need for Ofcom to regulate.

The key elements of our approach are as follows.

First, our approach to wholesale price regulation encourages investment. Over the last few years, we have brought down the wholesale price Openreach charges retail providers for its entry-level

Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Switchboard: +44 (0)20 7981 3000
or +44 (0)300 123 3000

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(40Mbit/s) superfast copper broadband service, in line with its falling costs. We are now keeping this price – and the prices of slower copper broadband packages – flat in real terms.

Openreach's fastest fibre services will continue to be free from pricing regulation. Openreach can also charge a small premium for regulated products which are delivered over full fibre instead of copper. This reflects the fact that full fibre is consistently faster, and much more reliable, than copper-based broadband.

This approach improves the investment case for BT and its rivals by providing them with a margin to build the new networks. It also helps make sure people can still access affordable broadband.

As Openreach has committed to build fibre to 3.2m premises in the more rural areas, we have been able to apply the same pricing approach across the whole UK – that is in both Area 2 (where we think there is, or there is likely to be potential for, material and sustainable competition to BT) and in Area 3 (where we think there is not, and there is unlikely to be potential for, material and sustainable competition to BT). This gives consistency of price regulation across the country and supports smaller alternative networks who may want to build commercially in rural areas.

Second, we are promoting competition among network builders. Our approach to pricing supports BT's competitors too. And we have already levelled the playing field by making it significantly cheaper, quicker, and easier for BT's rivals to build their networks, by giving them better access to Openreach's underground pipes and telegraph poles. This can halve the upfront costs of connecting a home. Last year, orders were made to use over 23,000km of duct and over 140,000 poles, up from 2,500km and 12,000 respectively the previous year.

We will also prevent anti-competitive behaviour. We will prevent Openreach from harming competition by reviewing all long-term discount agreements it offers its wholesale customers and restricting them if they could stifle investment by its rivals.

Third, our Review supports the eventual closure of the ageing copper network. When Openreach has rolled out full fibre in a particular area, we will progressively remove regulation on its copper products over a number of years, eventually enabling it to retire the copper network. This will improve the business case for Openreach, by removing the need to maintain two networks, while promoting the take-up of faster fibre services. Customers will be protected during this transition to ensure they can continue to access their services – particularly those in vulnerable circumstances.

Finally, we recognise that full fibre is a long-term investment, taking more than a decade – if not two – to pay back. We have said that we do not expect to intervene and impose cost-based pricing until at least 2031. We have also said that we will be cautious about intervening at that point: if the investment and competition dynamic is still playing out, we would expect to regulate in a way that continued to support this. This gives Openreach, other fibre builders and their investors certainty that there will be a stable pro-investment regulatory regime.

Over the next ten years we expect to see new network providers entering and competing with Openreach and Virgin Media. This will put us on a path to even greater deregulation in the future, allowing competition to replace regulation permanently.

We have already been encouraged by the response to our approach by network providers. Many large fibre builders have now committed to substantive gigabit-capable rollout plans, with Openreach (target: 20m premises by the mid-2020s), Cityfibre (target: up to 8m premises), and Virgin (target: 17m premises) all announcing major new network investments in recent months. Given Virgin Media expects to have upgraded their entire network by the end of the year, we're likely to have around 60% of the UK covered by gigabit-capable networks by the end of 2021.

Overall, we believe the regulatory approach we are publishing today will lead to around 70% of the UK (around 21 million properties) having a choice of networks from competitive commercial roll-out. Openreach has committed to deploy full fibre to a further 3.2 million properties (10%) in more rural areas.

The nature of our strategy means that fibre builders are likely to face competition and overbuild, including from BT. That is the nature of a competitive regime. However, as Openreach has already published details of the geographical areas it expects to cover as part of its 3.2 million commitment in Area 3, we are confident that this can be kept separate from those areas that will be covered by planned publicly-funded schemes. Ofcom's market review team have also been meeting regularly with colleagues at BDUK as they consider what safeguards should be included in public awards to prevent BT overbuilding rivals in subsidised areas, and will continue to do so in future.

In paragraphs 96 – 109 of the its Broadband and the Road to 5G, the House of Commons Select Committee for Digital, Culture, Media, and Sport detailed four specific concerns relating to Ofcom's Review. The Committee asked Ofcom to write to it after publication of our statement to explain how we had accounted for them. We explain our position on each below in the Annex below.

I hope you and the Committee find this information helpful, and I would be delighted to provide any further information which you require. I am very much looking forward to working with you and your colleagues on the Committee as we move towards the exciting goal of making gigabit-capable networks widely available across the UK.

Yours sincerely,

MELANIE DAWES

Cc: DCMS Committee Clerk

Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Switchboard: +44 (0)20 7981 3000
or +44 (0)300 123 3000

www.ofcom.org.uk

Annex - Ofcom response to Committee points in paragraph 96-109 of Broadband and the Road to 5G

1. The functioning of the physical infrastructure remedy (referred to as 'duct and pole access' in the Committee's Report) (paragraphs 98 - 99)

Ofcom response: We consider access to physical infrastructure to be our overarching remedy for the support of network competition in all areas. We have maintained the requirement on Openreach to provide access to its ducts and poles, which we first introduced in 2019. We will continue to closely scrutinise the development of the physical infrastructure product to ensure that Openreach meets its commitments to make the product as accessible and efficient as possible for all operators who want to use it, including through our Openreach Monitoring Unit, which reports annually on the functioning of Openreach's separation from BT. Last year, orders were made to use over 23,000km of duct and over 140,000 poles, up from 2,500km and 12,000 respectively the previous year.

2. The interaction of Ofcom's designation of different areas in the UK for regulatory purposes and the UK Government's subsidy award programme (paragraph 100 - 103) in two areas:

- **the potential for BT to overbuild subsidised competitors where it is unsuccessful in its bid for BDUK contracts (paragraph 101)**

Ofcom response: We recognise that securing taxpayer value is a vital consideration in any public subsidy. Openreach has now published details of the areas it plans to cover in the period up to 2024 which will provide further clarity to BDUK as they develop their procurement strategy. We have taken measures to prevent Openreach from using wholesale pricing structures to deter new network build by alternative network operators, but Ofcom's strategy ultimately means that in much of the UK there will be competing network providers (and therefore some overbuild). However, the BDUK contracts will cover areas where there is unlikely to be a commercial case for operators – including BT – to build without public subsidy.

- **the role for smaller providers in providing competition in Area 3 (paragraph 103)**

Ofcom response: As our price regulation in Areas 2 and 3 is the same, smaller operators will continue to face the same market prices irrespective of how the areas in which they are active are defined by Ofcom. Given the evidence available to us, however, we do not think smaller providers are likely to provide the same competitive constraints on BT as those providers who are building at scale. We address this issue in more detail in our document as part of our discussion of geographic markets for wholesale network services (Volume 2, Section 7).

3. The potential for co-investment, and industry concern that such arrangements might be seen as a breach of competition law (paragraph 104 - 106)

Ofcom response: In December 2020, after the Committee had finished hearing evidence, Parliament passed new legislation[1] which dealt specifically with co-investment in the electronic communications sector, and how Ofcom should consider such proposals in the context of regulating markets. The process set out in legislation requires stakeholders to notify to Ofcom commitments to open up investment in a very high-capacity networks to co-investments. Where such commitments are accepted by Ofcom and become binding, this can lead to deregulation where at least one person has entered into an agreement for co-investment with the person subject to the commitment. To date, no such commitments have been notified by stakeholders to Ofcom.

4. Obligations imposed on BT as a condition of switching off its copper network, and how these would apply in instances where an alternative provider had already provided a fibre service (paragraph 107 - 109)

Ofcom response: As noted above, we have put in place regulation to enable Openreach eventually to switch off the existing copper network area-by-area once its fibre network is built out and other fibre builders will benefit from many of the same incentives as BT – in particular the expectation of a stable regulatory regime until at least 2031 and a margin in pricing structures to incentivise build. We address copper retirement and network competition in detail in our statement in Volume 3, Section 2.

[1] The Electronic Communications and Wireless Telegraphy (Amendment) (European Electronic Communications Code and EU Exit) Regulations 2020

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