
Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets

Physical Infrastructure Market Review (PIMR), Business
Connectivity Market Review (BCMR), and Leased Lines
Charge Control (LLCC)

NOTIFICATION TO THE EUROPEAN COMMISSION

Draft Statement

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1. Introduction

We want to enable widespread, full-fibre network competition

- 1.1 To meet growing demand for digital services and connections, investment is needed now and over the next few years to upgrade the UK's broadband infrastructure. Whether to support fibre-to-the-home broadband, connections to 5G mobile stations, or improved business connectivity, more fibre networks will be needed to support the next generation of services in the UK.
- 1.2 We want to secure investment in fibre networks by BT and other companies by promoting network-based competition. We want to encourage BT's competitors to build their own networks, rather than relying on access to the Openreach network. Competition is the best way to achieve investment in new high quality, future-proofed networks.
- 1.3 We share Government's ambition to secure further investment to deliver fibre and 5G to everyone.¹ Government also set out its support for network competition as the best way to secure long-term investment across the majority of the UK, while acknowledging the need for alternative action in other areas.
- 1.4 Taking a narrow view of markets or timeframes will not further the interest of consumers. Our goal is to encourage the availability and use of high-speed data transfer services throughout the UK through competition. This is why we have a long-term strategy, and why the decisions set out here have been taken in this context.

We want to encourage competition and investment through revised regulation

- 1.5 To date, our approach to regulation has considered residential ('local access') and business ('leased lines') markets separately. We have required BT, through Openreach, to provide wholesale products that are unique to each of these markets. This reflected our expectation that BT would continue to face limited competition in both residential and business markets where it had significant market power (SMP). Based on this, we focused on access-based competition; intervening in wholesale products to promote competition in retail markets.
- 1.6 This model has been very successful, allowing for reduced regulation in a range of retail telecoms markets as competition has been established. Consumers have benefitted from better value for money, with the standard broadband and land-line bundle prices falling by 18% between 2015 and 2018.² However, while a strategy focussed on network access has been shown to drive shorter term consumer benefits through retail competition, it can

¹ Department for Digital, Culture, Media & Sport, July 2018. [Forging a full fibre broadband and 5G future for all](#) [Accessed 23 May 2019]

² Ofcom, 2018. [Pricing trends for communications services in the UK](#). Average dual-play standard broadband bundle prices including promotional discounts between Q4 2015 and Q1 2018. [Accessed 16 May 2019]

only go so far. Many of the benefits of this approach have now been realised, with underlying market power remaining with the incumbent in local access and leased lines markets, and ongoing regulation necessary to ensure ongoing competition at the retail level.

- 1.7 In recognition of this and the significant investment needed for the UK's communications sector to meet the needs of people and businesses, in 2016, we undertook our first strategic assessment of the telecommunications sector in ten years.³ We decided to move away from access-based regulation, instead moving to an approach that promotes competition and investment through network competition. Network competition will both drive investment and, it is hoped, lead to further deregulation not possible under an access-based regulatory model.
- 1.8 We believe there is significant scope for investment in fibre networks for up to 70% of the UK, from a range of providers. There is commercial appetite to invest in these networks across the UK, and internationally.
- 1.9 Given our strategy to encourage investment by promoting network competition, we do not want to set the wrong incentives by making access to BT's existing network a more attractive commercial proposition than building new networks where this is feasible. We want to give telecoms providers a stronger incentive to switch from the monopoly network to an alternative supplier, enter partnerships with those suppliers, or deploy their own network connections. In the long term, where there is scope for competitive entry this will deliver better outcomes for consumers than ongoing regulation of a monopoly provider, including stronger competition at the retail level.
- 1.10 This investment requires regulatory support. We provided further details on the steps to implementing our strategy in July 2018⁴. Crucial to this strategy are changes in three broad areas: how we structure regulatory interventions; where and how we intervene to promote competition and investment; and how we provide further certainty and longer-term predictability for network investors and market participants.
- 1.11 Refocusing regulation to promote network competition requires action in a number of reviews and decisions:
- Securing unconstrained duct and pole access. We are today publishing our decisions on unrestricted access to Openreach's duct and poles. This is necessary to address BT's market power in telecoms physical infrastructure, will reduce the up-front cost of building networks, and recognises that network investors will use new networks to deliver a range of different services to different end users.
 - Aligning the next business market review decisions with this strategy. Today we have published our decisions on how we will regulate leased-line services. Given that we intend to review business markets as part of our overarching review of telecoms access markets, this regulation will be in place until April 2021.

³ Ofcom, 2016, [Strategic Review of Digital Communications](#) [accessed 22 May 2019]

⁴ Ofcom, 2018, [Regulatory certainty to support investment in full fibre broadband](#) [accessed 20 May 2019]

- Consulting on new regulation including how we should define geographic areas as either competitive, potentially competitive or non-competitive. We are also consulting on a new approach to regulating wholesale access to networks, by geographic area, which will replace Ofcom's Business Connectivity Market Review and our Wholesale Local Access Review. A key element of this new approach is stability and predictability. These are key for investors considering investments in networks with a long life and long payback periods. For example, this approach will be in place for at least five years, but will look to signal longer term predictability beyond that.

Implementing our new strategy

- 1.12 The changes needed to fully implement our strategy and realise network competition and investment need to be introduced in a consistent way. While desirable, it is not possible to introduce these changes in one go without holding up the potential for competitive network investment.
- 1.13 Where possible, we will implement parts of the strategy as early as we can. Today we are introducing unrestricted duct and pole access, through the physical infrastructure market review. This remedies Openreach's continuing market power in physical infrastructure, enabling lower up-front costs for fibre investment.
- 1.14 The move towards geographic markets is complex and will take time to develop. We have recently consulted on how geographic markets could work, and we are currently consulting on the remedies that could apply in different circumstances and for wholesale local access and business connectivity services. It will take time to design a regime to underpin long term investment. We will introduce the new regime in 2021.
- 1.15 Today, we are required to review markets on a fixed period: the temporary conditions put in place following the appeal of the 2016 BCMR expired on 31 March 2019, with Openreach committing to current pricing and access arrangements at least until 30 June 2019.⁵ Recognising that further detailed work on geographic markets and remedies is in progress, we must however set out how the business connectivity market will be regulated now, in a way that addresses BT's market power over the next two years, and reflects the wider strategy of securing network investment by promoting competition to deliver long-term consumer benefits.
- 1.16 The alternative approach, considering the business connectivity markets in isolation from our broader strategy, would make competitive network investment less likely and be negative for consumers in the longer term. For example, product and pricing decisions taken here that were inconsistent with our aims of certainty, stability and predictability would undermine the potential for long-term investment decisions. Short-term incentives to invest could be reduced by decisions that favoured an access regime over one which supports competitive network investment, and investors would face significant uncertainty on pricing levels and market context if regulated prices were volatile in the short term. This

⁵ Openreach, 2019. [Industry update: Openreach voluntary commitments in respect of the BCMR lacuna period](#) [Accessed 16 May 2019]

risks undermining network competition emerging at exactly the time when telecoms providers are looking to invest in new fibre networks.

- 1.17 The reviews we are concluding today are set out in the following volumes. In volume 1, the Passive Infrastructure Market Review shifts the focus of our regulation to the infrastructure elements that are at the heart of BT's market power. In volume 2, the Business Connectivity Market Review assesses the market for high speed services for the next two years, to address our competition concerns arising from BT and KCom's market power. In volume 3 the Leased Lines Charge Control sets out the details of pricing regulation resulting from the BCMR.