



Promoting competition and investment in fibre networks - approach to remedies

Annexes to BT's response to Ofcom's consultation published on 29 March 2019

14 June 2019

Comments should be addressed to:
BT Group Regulatory Affairs, BT Centre, London EC1A 7AJ
Regulatory.affairs@bt.com

Table of contents

A1	Examples of increasing competitive pressure in business markets	3
A2	Generic ‘market shares’ analysis is unlikely to be reflective of competitive constraints on a forward looking basis	4
A3	Responses to Ofcom’s consultation questions	6

A1 Examples of increasing competitive pressure in business markets

- 1.1 As discussed in Section 2, we believe competition in business markets is already effective in the HNR metro areas and likely to become effective more widely in the timeframe of the market review period from 2021-2026. The Figure below provides a win/loss analysis of competitor winning bids undertaken by BT Enterprise to understand the reason why a particular major corporate or public sector tender was lost.
- 1.2 It shows that BT lost these tenders because it was either uncompetitive on price and/or it was unable to offer a suitable solution for the customer as a result of competitors using non-Openreach networks (or components). This appears to suggest that, using Openreach inputs, BT Enterprise was not able to compete effectively on price and offer a high-quality solution, particularly in urban suburban areas.
- 1.3 The success of these competitors is not restricted by their maturity or scale, as even new entrants like Cityfibre have won contracts by deploying dark fibre networks in urban areas at low cost.
- 1.4 This illustrates the competitive nature of business markets. In order to avoid imposing disproportionate remedies restricting Openreach ability to compete fairly (and by consequence negatively impacting BT's downstream business units' competitiveness – as set out in section 4 above), Ofcom must conduct a forward looking analysis of competition in markets downstream of DPA, and which takes into account the likely impact of DPA on business markets in the timeframe of the 2021-2026 market review.

Figure A1: Examples of contracts BT Enterprise has lost to competitors using alternative network infrastructure

[]

A2 Generic ‘market shares’ analysis is unlikely to be reflective of competitive constraints on a forward looking basis

- 2.1 In conducting its SMP assessment at the next review, Ofcom is likely to use market shares as one measure to inform its assessment of market power. Notwithstanding the limitations of market shares in tendering markets, it is important that – should Ofcom continue to use them – that it carefully considers which market shares to use depending on the question that needs answering. Over time copper based technologies become obsolete. As a result, the legacy network’s pricing power on a forward looking basis cannot be measured correctly by combining legacy and ultrafast connections in a single market share measure.
- 2.2 Ofcom defines ultrafast as speeds above 300Mb/s. Broadband that makes use of copper networks (including variants such as FTTC and G.Fast) is unlikely to deliver speeds materially in excess of 300Mb/s for the mass market¹ (because of the limitations on speeds caused by the distance between the cabinet and the premise). Openreach therefore needs to build FTTP to compete in ultrafast speeds (contrary to Virgin Media which already has a large ultrafast footprint).
- 2.3 It is therefore not appropriate to measure Openreach’s market power – vis-à-vis competitors who do have such networks - by reference to market shares that combine Openreach share of connections of copper and FTTC on the one hand, with its share of connections of ultrafast speeds on the other. This is relatively intuitive when considered in a context where:
 - Previous waves of innovation illustrate that to compete in the long-run investment in new technology is indispensable;
 - Ofcom has levelled the playing field between Openreach and altnets by introducing access to physical infrastructure; and
 - FTTP relies on entirely new investment by Openreach (rather than existing assets).
- 2.4 This means it is not clear which ultrafast builder will ultimately be able to enter and/or sustain themselves in any given area (and some areas as Ofcom also point out will only see two or fewer ultrafast networks emerge as viable). This also explains the current intensity of competition for the market to invest in FTTP; and which we describe in Section 2 of our main response.
- 2.5 In terms of the constraints successive technological innovations place on one another (as illustrated in Figure A4 using the examples of ADSL, FTTC and 4G) previous waves of innovation suggest that:²
 - At the outset prices between the new and the old technology may loosely constrain each other (but not be in the same economic market),
 - Over time this gives way to an accelerated trend in migration up the speed tiers – when substitution could be faster (in particular if there is strong competitive

¹ Source: <https://www.giga.net.uk/news-gfast/>

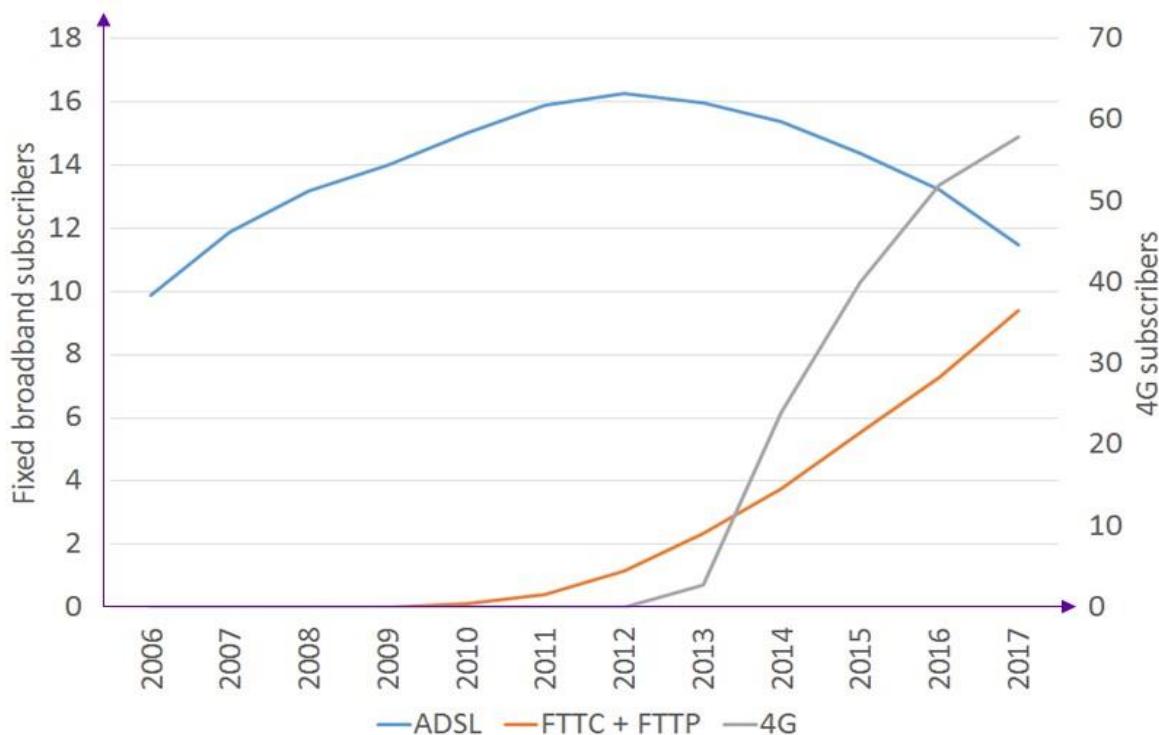
² Rogers, E (1962): “Diffusion of Innovations”, p11.

pressure from altnets or if legacy prices are set so as to encourage it).

- This asymmetric substitution will finally slow down as only a “laggards” are left on the old technology (which then begins to decline). The figure below illustrates this for ADSL and FTTC.

- 2.6 This means that in the current regulatory and market environment (i) Openreach needs to invest to maintain its competitiveness; (ii) while it may be that as and when the new fibre technology becomes the new mass market product the provider or providers in any given area may be found to have SMP (depending on how many networks may ultimately remain viable), ultimately this may or may not be Openreach and Ofcom must not assume the contrary from the outset and propose regulation relying on that assumption.

Figure A2: S-curve of Technology adoption – previous waves of innovation



Source: Ofcom Communication Market Reports 2007-18

A3 Responses to Ofcom's consultation questions

The following provides cross-references to the relevant parts of the main document in the BT Group response to Ofcom's consultation: promoting competition and investment in fibre networks- approach to remedies, which answer Ofcom's questions.

Question 2.1: Do you agree with our overall approach to regulation in potentially competitive areas?

See sections 2, 3, 4 and 6 of our main response

Question 2.2: What is your view of our access and charge control proposals for wholesale local access services in potentially competitive areas?

See sections 3 and 4 of our main response

Question 2.3: What is your view of our access and charge control proposals for leased line services in potentially competitive areas?

See sections 2, 3 and 4 of our main response

Question 3.1: Do you agree with our overall proposed approach to regulation in non-competitive areas?

See sections 5 and 6 of our main response

Question 3.2: Do you agree that a RAB charge control framework is appropriate for non-competitive areas?

If not, please explain why you think an alternative is more appropriate.

See section 5 of our main response

Question 3.3: Do you have any comments on the design of a RAB charge control for non-competitive areas?

See section 5 of our main response

Question 3.4: Do you agree with our proposal to introduce dark fibre in non-competitive areas?

See section 6 of our main response

Question 4.1: Do you agree with our proposed overall approach to QoS?

See Openreach response

Question 5.1: Do you agree with our overall approach to transitioning regulation as BT deploys its new fibre network?

See section 3 of our main response and the response by Openreach

Question 5.2: Do you agree our proposal not to require BT to offer new forms of wholesale access to its copper network?

Yes - see our response to section 3