

22<sup>nd</sup> May 2020

## **CWU Response to Ofcom on Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026**

### **Introduction**

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK. We represent over 60,000 members in the telecommunications industry working in around twenty companies including BT, Openreach, Virgin Media, Sky and TalkTalk. We are the only trade union with formal recognition for non-management grades in BT and Openreach.
2. The CWU welcomes the opportunity to respond to Ofcom's consultation on promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 (WFTMR). The CWU is a strong advocate for long term investment in telecoms network infrastructure to improve the quality and availability of services and to support jobs and economic activity.
3. We believe that some of Ofcom's decisions in relation to the WFTMR will need to be put on hold until it is clearer how the coronavirus crisis will unfold and what the Government's exit strategy will be. This applies particularly to decisions regarding operational targets for Openreach, given the suspension of business as usual. Ofcom must not set impossible tasks for Openreach when it is focused on keeping the nation connected during this crisis. However, we also call on Ofcom to push swiftly ahead with introducing the regulatory enablers for investment decisions under the WFTMR, in order to avoid any delay in securing the long term risk investment that is central to delivering a full fibre network across the UK.
4. The coronavirus pandemic has highlighted the importance of universal high speed digital connectivity as part of the UK's critical infrastructure. Openreach has been working tirelessly to maintain the national telecoms network and to ensure everyone has unlimited broadband during this difficult time.<sup>1</sup> It has also been installing fibre communications at new hospitals around the country, including the new Nightingale hospital in East London, and it has been helping food wholesalers and retailers on the logistics of delivering essential supplies.<sup>2</sup>

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<sup>1</sup> <https://www.bt.com/coronavirus>

<sup>2</sup> Keeping the nation connected is vital, so stop abusing my staff, says Openreach boss, Thisismoney, 8 April 2020, accessed at: <https://www.thisismoney.co.uk/money/markets/article-8201331/Keeping-nation-connected-vital-stop-abusing-staff-says-Openreach-boss.html>

5. We welcome the steps Ofcom has taken to assist Openreach in protecting its workforce and customers, including by supporting the decision not to carry out new service provisions at this time. We call on Ofcom to continue to take a flexible approach to regulation during this crisis which prioritises the health and safety of workers and customers. Ofcom must also continue to act swiftly and decisively to stamp out the dangerous conspiracy theory linking 5G networks and coronavirus that has led to the abuse of telecoms engineers, putting their safety at risk and threatening the integrity of the network.

### **The need for fibre broadband**

6. Fibre technology is critical to delivering better broadband services, and we believe that high quality broadband should be universally available across the UK. We therefore support Ofcom's objective to enable more fibre investment. This must ensure that investment meets the needs of all citizens and consumers, and that it does not prioritise one set of customers to the detriment or exclusion of another.
7. It is clear that the rollout of full fibre across the UK offers enormous social and economic benefits, including reduced carbon emissions, higher productivity and more job creation. A recent report for Openreach found that offering full fibre nationwide could allow 400,000 more people to work from home, helping them to avoid the commute and allowing greater choice about where they live. It could also boost UK productivity by £59bn based on deployment by 2025, and could help to bring half a million people back into the workforce by 2038.<sup>3</sup>
8. It is encouraging that full fibre coverage is increasing at its fastest ever rate and that it has grown from 3% to nearly 14% in three years.<sup>4</sup> However, there is still much more to do if the UK is to keep pace with our international competitors. South Korea and Japan have 99% full fibre coverage, whilst the UK ranked 25<sup>th</sup> out of the EU 28 for FTTP coverage in mid 2018 on just 4%, a long way behind countries like Spain on 77% and Portugal on 70%.<sup>5</sup> Also of concern is that most of the UK's 3.0 million full-fibre connections are in urban areas, with harder to reach areas being left behind.<sup>6</sup>

### **The need for regulation to support job creation and decent labour standards**

9. The Government's pledge to deliver gigabit-capable broadband nationwide by 2025 is hugely ambitious and there are some considerable challenges to address if this is to be achieved. One of the most important of these is ensuring the labour force is in place

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<sup>3</sup> Full fibre broadband: A platform for growth, A Cebr report for Openreach, October 2019, available at: <https://www.openreach.com/full-fibre-impact>

<sup>4</sup> Promoting competition and investment in fibre networks: WFTMR 2021-26, Ofcom, 8<sup>th</sup> January 2020 and UK superfast and fibre coverage, thinkbroadband, accessed on 19<sup>th</sup> May 2020 at: <https://labs.thinkbroadband.com/local/uk>

<sup>5</sup> Full-fibre broadband in the UK, House of Commons Library Briefing Paper, 10<sup>th</sup> January 2020, Number CBP 8392

<sup>6</sup> Connected Nations 2019 – 3 million UK premises can get full fibre, ISP Review, 20<sup>th</sup> December 2019, accessed at: <https://www.ispreview.co.uk/index.php/2019/12/connected-nations-2019-3-million-uk-premises-can-get-full-fibre.html>

with the right skills and training. Industry has said that to extend full-fibre to all 32 million homes by 2025, the workforce would have to be drastically increased. Openreach has said it would have to hire another 30,000 field engineers on top of the 5,000 already laying fibre to 20,000 premises a week in order to stick to the accelerated timeline.<sup>7</sup>

10. As a starting point, it is encouraging that Openreach has announced its intention to accelerate its fibre to the premises (FTTP) build to 4.5 million UK homes and businesses by March 2021, and will support the investment to reach 20 million premises by the mid-to late-2020s if the right government support and investment conditions are in place.<sup>8</sup> Openreach has recruited and trained 3,000 field engineers during 2019 to help deliver its fibre network ambitions.<sup>9</sup>
11. It is crucial that the additional resources needed for this work are fully reflected in Ofcom's charge control modelling. This must include the costs of secure jobs, decent labour standards and proper training, all of which are fundamental to delivering high quality services. Any weakening of pay and conditions for employees will inevitably be detrimental to recruitment, retention, productivity and service quality.

#### **Different approaches to regulating Openreach's residential broadband products in different parts of the UK**

12. The CWU is especially concerned about the prevalence of cherry picking competition amongst alternative fibre network operators. This leads to network duplication costs and overbuild in some areas, whilst other less commercially viable parts of the UK are left behind. It also creates price competition which undermines the economics of universal service provision and threatens a race to the bottom on employment standards and quality of service standards.
13. When applying a different approach to regulation in competitive areas compared with non-competitive areas., Ofcom needs to be careful to strike the right balance so that Openreach's revenues and market share can maximise the cross subsidisation of rollout from high value areas to more remote parts of the country.
14. Pricing regulation and charge controls must enable Openreach to recover its costs and incentivise continued long term investment, including in harder to reach areas. Ofcom must also allow Openreach to compete effectively and earn a fair return on investment including in more competitive areas where there is greater pressure on pricing. If not,

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<sup>7</sup> Telco lobby tells BoJo to show his commitment to fibre goals, telecoms.com, 5<sup>th</sup> August 2019, accessed at: <https://telecoms.com/498880/telco-lobby-tells-bojo-to-show-his-commitment-to-fibre-goals/> and UK ready for UK PM Johnson's fiber broadband challenge, Reuters, 2<sup>nd</sup> August 2019, accessed at: <https://uk.reuters.com/article/us-bt-results/bt-ready-for-uk-pm-johnsons-fiber-broadband-challenge-idUKKCN1USOMN>

<sup>8</sup> Openreach add 227 rural UK areas to FTTP broadband rollout update, ISP Review, 26<sup>th</sup> January 2020, accessed at: <https://www.ispreview.co.uk/index.php/2020/01/openreach-add-227-rural-uk-areas-to-ftp-broadband-rollout.html>; and BT financial results for the full year to 31 March 2020

<sup>9</sup> Openreach to hire 3,000 new engineers to boost full-fibre broadband rollout, City AM, 28<sup>th</sup> January 2019, accessed at: <https://www.cityam.com/openreach-hire-3000-new-engineers-boost-full-fibre/>

the required level of funding will not be forthcoming and there will be no realistic prospect of serving the needs of customers in less competitive areas.

15. The CWU has consistently called on Ofcom to strike the right balance between promoting investment and competition, complemented by public interventions where necessary. We have long argued that regulation is too focused on encouraging price competition, and that this has led to the rise of low cost cherry picking by alternative fibre network operators seeking profit maximisation over service quality and employment standards. This weakens the potential for economies of scale and cross subsidisation by Openreach - the only ubiquitous network operator in the UK - to the detriment of citizens and consumers in difficult to serve areas.
16. We wish to see a fundamental shift in regulation towards raising minimum quality standards and incentivising investment for the benefit of all stakeholders. This includes workers in the sector and users of communication services with less market power, such as those living in less commercially viable areas.
17. We support Ofcom's proposal to **index wholesale charge controls** at the rate of inflation instead of reducing these over time. This will help to incentivise long term network investment from Openreach. We also welcome the proposal for a light touch approach to regulation for full fibre, allowing for a premium of between £1.50 and £1.85 per line per month. We agree with Ofcom that this is necessary to support investment in fibre networks and to maintain the relative profitability of building a network in comparison to buying from Openreach. We recognise that prices for consumers are likely to increase slightly, but this reflects the added value of the service.<sup>10</sup>
18. In order to achieve 100% coverage of FTTP services, there needs to be changes to **wayleaves** due to the difficulties of gaining permission to run cables through private land. Challenges faced by operators in rolling out their networks include landlords who object to the work being carried out or those who demand costly payments, often leading to a protracted legal process. We call on Ofcom to work with the Government to tackle the problems associated with wayleaves as a matter of urgency, with the aim of formulating new legislation that addresses these barriers to universal fibre coverage.
19. We support the **fair bet principle** which ensures that Openreach has an incentive to make risky investments in network infrastructure, and consumers have the benefit of that investment. The area of the UK classed as Area 3 by Ofcom, where there is unlikely to be material commercial deployment by rival 'multi-service networks' (MSNs)<sup>11</sup> to Openreach, covers 9.2 million premises.<sup>12</sup> This means that approximately one third of all UK premises are reliant on Openreach's network for accessing a fibre broadband

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<sup>10</sup> Promoting competition and investment in fixed networks: wholesale fixed telecoms market review, 2021-2026, Volume 4: Pricing remedies, Ofcom, 8<sup>th</sup> January 2020, para 1.84, p.18 accessed at:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/188814/wftmr-volume-4-pricing-remedies.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/188814/wftmr-volume-4-pricing-remedies.pdf)

<sup>11</sup> Ofcom defines MSNs as networks that cover both business and residential customers. They tend to have a larger geographic availability and provide a wider range of services.

<sup>12</sup> Promoting competition and investment in fixed networks: wholesale fixed telecoms market review, 2021-2026, Volume 2: Market Assessment, Ofcom, 8<sup>th</sup> January 2020, para 8.33, p.110 accessed at:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/188822/wftmr-volume-2-market-assessment.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/188822/wftmr-volume-2-market-assessment.pdf)

connection. This is a considerable proportion of customers, and it is essential that Ofcom ensures that the regulatory framework enables the delivery of fibre networks to premises in these postcodes.

20. We believe that the proposed **regulatory asset base (RAB)** is a good conceptual model for cost recovery, which could allow Openreach to recover fibre investment costs across a range of services beyond fibre, including for example copper services. We agree with Ofcom that a RAB approach could help secure investment in cases where it might not otherwise occur by providing Openreach with more certainty of cost recovery. However, calibrating the RAB model is difficult due to significant uncertainties such as costs of deployment in different areas, rates of take-up and average revenue. As Ofcom notes, Openreach has called for the same price caps in non-competitive areas as in potentially competitive areas, with flat prices indexed linked to CPI and a premium on the new FTTP anchor, and has indicated that it would consider making roll-out commitments in Area 3 under these pricing arrangements.<sup>13</sup> We believe Ofcom must introduce an indexation model along these lines in order to maximise the potential of investment by Openreach for the benefit of all those in harder to reach areas. Ofcom's model should also encourage Openreach to channel investment back in to fund further fibre build if the level of take-up makes this possible.
21. If Ofcom fails to maximise the potential for private sector investment in this way, there is every chance the Government's £5bn commitment for fibre build in hard to reach areas will fall short of what is needed. Previous estimates already suggest that it may not be enough. A report for Government in 2018 estimated that it would cost around £7.6bn in public funding to cover the 25% of premises not served by 2033 due to hold up issues or being commercially unviable.<sup>14</sup>

### **Support for Openreach in retiring its copper network**

22. The CWU represents over 30,000 members working in Openreach, the majority of whom currently work on the copper network to a greater or lesser extent. The CWU agrees that Openreach should not have to incur unnecessary costs in running two parallel networks as it lays new fibre to replace copper lines. This would damage Openreach's competitiveness and could limit fibre rollout and future job security. However, at the present time copper makes up most of the fixed network, and generates the majority of the revenue that will fund fibre broadband. In addition, Openreach will not be able to shut down the copper network until it has taken fibre to all premises, which could take until at least 2030 or beyond.
23. We believe that the best way to preserve jobs in Openreach over the long term is to move to a full fibre network, but in the medium term it must be recognised that

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<sup>13</sup> Promoting competition and investment in fixed networks: wholesale fixed telecoms market review, 2021-2026, Volume 4: Pricing remedies, Ofcom, 8<sup>th</sup> January 2020, para 2.24, p.37

<sup>14</sup> Future Telecoms Infrastructure Review: Annex A, A report for DCMS, Frontier Economics, 13<sup>th</sup> July 2018, accessed at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727890/FTIR\\_Annex\\_A\\_-\\_FE\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727890/FTIR_Annex_A_-_FE_Report.pdf)

thousands of jobs will still be required to operate the copper network. As this gradual transition takes place over the next decade or so, the CWU will be working with Openreach to ensure that existing jobs are maintained and engineers receive the training they need to work on the fibre network. In the interests of ensuring the successful roll out of fibre networks across the UK, it is important that Ofcom sets cost and pricing regulations at the right level to support this process.

### **Addressing cherry picking competition**

24. We call on Ofcom to address the problem of cherry picking by alternative network operators which has led to network duplication and overbuild in profitable areas whilst other areas are left behind. Cherry picking undermines the investment case for Openreach – which is currently the only operator with the scale and capability to deliver fibre networks across the whole of the UK – to roll out networks in rural and remote areas. This is because it reduces revenue potential in more profitable areas and with it the scope for cross-subsidies.
25. We are aware that the issue of cherry picking was raised with Ofcom in an open letter last year when politicians from 20 Northern towns and cities highlighted the lack of coordination in deploying FTTP networks which is acting against the interests of customers. They wrote *“We are seeing the needless duplication of full-fibre networks, whilst short distances away other Northern towns and cities with no planned investment risk being left behind.”*<sup>15</sup>
26. CityFibre is concentrating on 37 UK towns and cities, whilst Hyperoptic is rolling out its network in 39 UK towns and cities. It comes as no surprise that they are building their networks in many of the same places, such as Manchester, Bristol, Coventry and Cambridge. At the same time, these operators have no plans for full-fibre networks in smaller towns and less affluent areas.

### **Unrestricted access to BT’s ducts and poles**

27. We recognise that providing access to BT’s ducts and poles helps to avoid network duplication costs and remove barriers to entry due to the high cost of constructing new infrastructure. This must continue to be done in a way that maintains a level playing field so that no operator is unfairly disadvantaged. Pricing regulation for physical infrastructure access must enable Openreach to recover all of its costs and to invest sufficiently to maintain the network to a high standard. This includes ensuring that quality of service and health and safety standards are upheld.
28. As we said in response to Ofcom’s Physical Infrastructure Market Review in 2018, the requirement for unrestricted physical infrastructure access (PIA) could have a material impact on Openreach, both in terms of the resources required to carry out repairs and install additional capacity, and the costs associated with network adjustments. For

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<sup>15</sup> City leaders warn UK full fibre rollout is uncoordinated and inefficient, ISP Review UK, 25<sup>th</sup> March 2019, accessed at: <https://www.ispreview.co.uk/index.php/2019/03/city-leaders-warn-uk-full-fibre-rollout-is-uncoordinated-and-inefficient.html>

example, Openreach may need to expand its workforce by hiring more network planners and field engineers. It is important that the regulatory framework allows Openreach to recover these costs in full, and that it enables the business to maintain an engineering workforce that is overwhelmingly directly employed, UK based, well trained, multi-skilled and on upper quartile rates of pay and conditions of work.

29. As we have also said in previous submissions, there is a connection between labour standards in Openreach and the company's ability to deliver high quality services. Any weakening of pay, terms and conditions for Openreach employees will inevitably be detrimental for overall staff recruitment, retention, motivation and productivity. If Openreach continues to be a good employer then it will be much better equipped to serve its customers well in the future.

### **Health and Safety regulation**

30. We believe that with increased access to the Openreach network, Ofcom should make clear to all providers working on the network that health and safety is a top priority. We are aware that specified engineering rules and health and safety standards already exist that communications providers must comply with. However, it is evident that many providers are ignoring these requirements, with poor standards of maintenance by other CPs working on the Openreach network a real problem that is putting safety and lives at risk. Ofcom has not touched on these health and safety rules in its consultation. As we have consistently said in relation to previous consultations, this is disappointing and a serious omission in our view. We call on Ofcom to remind all operators of their responsibilities in this regard.
31. The CWU has long argued that transparency of maintenance standards, extending to minimum health and safety standards, should form part of Ofcom's regulation of Openreach and the other companies that use its network. This would help to ensure that the rules and safety standards are as robust as possible for the protection of all of those working on the network. It would also ensure that the network is consistently maintained to a high standard, thereby supporting Openreach and other communications providers in delivering a high quality service to all their customers.

### **Maintaining quality of service safeguards**

32. We support the proposal to maintain the existing rules for how quickly Openreach must carry out repairs and installations and keep targets at 2020/21 exit levels. There has been a transformation in quality of service since regulation was first introduced and this is testament to the hard work and commitment of Openreach employees. It also reflects the investment that has been made by Openreach in jobs, skills and training. Openreach's capacity to maintain and improve service standards will continue to depend on a regulatory framework that supports the funding of the resources it needs to deliver those improvements.
33. CWU members work extremely hard for Openreach and its customers, and they do so in what is often a very challenging and stressful working environment. Placing excessive

pressure on the Openreach workforce would be damaging for operational effectiveness and quality of service. Therefore, it is important that Openreach has the ability to invest in the resources it needs to deliver quality of service improvements. Ofcom must ensure, through appropriate cost and pricing regulation, that Openreach is able to retain and build the workforce it needs with the skills and expertise to deliver the best possible quality of service for customers.

34. It would not be appropriate to relax or withdraw quality of service regulation. At the same time however, Ofcom must be careful to ensure that quality of service targets are achievable and not set impossible tasks. Openreach tends to have its best service performance during the first half of the year when weather conditions are more favourable. It is important that Ofcom sets future expectations based on Openreach's quality of service record over the year as a whole, rather than the first half alone. It will also be important that Ofcom takes the impact of the coronavirus into account when considering service level targets.
35. We welcome the flexible approach Ofcom has taken to date in response to the coronavirus crisis by supporting Openreach's decision not to do new provisions at this stage to help stop the spread of the disease. Unfortunately, not all network operators have been putting safety considerations before their own commercial interests in this way. The health and safety of workers and customers must be the top priority that comes before any service provision requirement. At the same time, we must recognise and pay tribute to the commitment of Openreach employees in very difficult circumstances, and the efforts they are making to maintain our critical communications infrastructure and keep the nation connected during this crisis.
36. It is shocking that Openreach engineers have been verbally abused by members of the public as a result of an absurd conspiracy theory linking 5G networks with the spread of the coronavirus. At the time of writing, the CWU has received reports of over 120 cases of abuse of our members in the course of their work, including threats of extreme violence. We welcome Ofcom's efforts so far to put pressure on social media companies to act by limiting the spread of Covid-19 fake news, and to prioritise investigations into media commentators who have perpetuated these dangerous false narratives. In the interests of the safety of CWU members and the security of the UK's communications network, Ofcom must continue to act swiftly and decisively on this issue.

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