

SSE's involvement in the communications markets encompasses a subsidiary that purchases wholesale products such as Openreach's regulated 'wholesale line rental' (WLR) to provide retail phone and broadband services to residential customers and a subsidiary operating in the business connectivity market. Openreach wholesale products are also used by the latter business and so the regulation and governance of Openreach is a matter of interest to SSE.

We welcome Ofcom's consultation on strengthening the independence of Openreach and agree that, overall, Ofcom's proposal for legal separation of Openreach within the BT Group should result in an enhanced level of strategic and operational independence for Openreach compared with the current situation.

We agree with Ofcom's comment (paragraph 1.5) that many CPs rely on access to the Openreach network and thus are affected by its operating, strategic and investment decisions. These same considerations therefore clearly also affect the end consumers purchasing services that depend, at some point in the supply chain, on Openreach assets. Thus the matter of how Openreach serves its non-BT wholesale customers is a significant one for a large part of the communications user base in the UK.

We also agree with Ofcom's analysis that Openreach has not consulted its wholesale customers readily or regularly in the past on planned product developments or sought to establish what sort of product developments its wholesale customers would like to see.

We therefore welcome the emphasis in Ofcom's proposal on effective consultation "with all downstream customers" (paragraph 4.11.5). We have a remaining concern that there should be effective consultation with smaller wholesale customers - for example, the many WLR users such as SSE - rather than just the "major communications providers" mentioned, for instance, at paragraph 4.37. Given that Openreach has a wide range of types of downstream customer, serving a variety of supply chains, we would like to see developed a transparent and inclusive form of governance for Openreach's interaction with its body of customers so that all customers have the chance to put forward views and see how these are accommodated. While large-scale investment plans would naturally form part of the subject matter for consultation, wholesale customer CPs are also interested in more day to day matters such as the charging structures for existing product sets. As Openreach is a dominant provider of access-related services, we believe that a range of commercial matters that affect wholesale customers' ability to develop and innovate in the downstream services they provide should be in-scope for a governed dialogue between Openreach and its customers.

We recognise that the precise form of governance for a legally separate Openreach within the BT Group must balance a range of considerations, as discussed in the consultation. We would advocate careful attention to the following topics in developing the final arrangements:

- The balance and composition of the Openreach Board and its reporting arrangements to the BT Group in support of good corporate governance; for such a technical business, a majority of non-executive directors may not be feasible; it may be helpful for Ofcom to review this further with BT and perhaps to consider specifying a similar concept to "sufficiently independent directors", defined within energy network licences;
- Confidentiality of information within Openreach and a culture of 'business separation' between it and the downstream businesses within the BT Group; this could perhaps be supported by the appointment of an independent Compliance Officer;
- Alignment of incentives on Openreach with those of its wholesale customers in terms of product development and charging structure matters; and

- Transparency of financial, information and staff flows between Openreach and the rest of the BT Group.

On other matters,

- We agree that the BT proposal described in section 7 does not go far enough to alleviate concerns with current situation;
- We agree that mitigations of pension fund costs should be feasible in the context of legal separation; and
- We agree with Ofcom that monitoring of the on-going results of implementing the final proposal will be important. To assist with this, it will be necessary to ensure, in our view, that monitoring information is sufficiently informative to convey a realistic picture of Openreach interaction and support for its wholesale customer base and thus to inform the necessary judgements.