

PIA Implementation Issues

Introduction

1. The PIA remedy is Ofcom's flagship remedy to deliver network level competition and investment in WLA and LLA markets. Ofcom's decision to mandate access to BTOR's infrastructure should enable altnets to deploy their networks quicker and more cheaply across the UK.¹
2. Openreach has both the incentive and the ability to engage in exclusionary conduct in relation to its physical infrastructure. By preventing or delaying access to PIA products Openreach is able to secure a first-mover advantage and migrate customers onto its own fibre network before rival networks are available for wholesale. This is now a race to market.
3. Ofcom has not introduced Equivalence of Inputs ("EOI") for PIA despite acknowledging that EOI is the most effective form of non-discrimination obligations.² This means that Openreach does not consume the PIA product, and therefore it does not have any commercial incentive to deliver PIA efficiently and with acceptable levels of Quality of Service. Further, there is scope for material discrimination in BTOR's favour as between its own self-provision of physical infrastructure and consumption of the PIA product by rival network providers.³ For these reasons, it is very important that the PIA remedy is specified with sufficient clarity to ensure efficient delivery (for example, through ongoing product and process improvements), requires Openreach to deliver the product to a consistent, acceptable Quality of Service level, and that the scope for undue discrimination is properly monitored and, where necessary remedied by Ofcom enforcement activity.

¹ TAR Volume 3, paragraph 5.2.

² TAR Volume 3, paragraphs 4.51 to 4.52 and 4.63.

³ TAR Volume 3, paragraph 4.49.

Effective monitoring and enforcement of the No Undue Discrimination obligation

4. CityFibre has significant concerns about Ofcom's overall monitoring of PIA implementation issues. We are grateful for the leadership in the regular CEO meetings convened by Ofcom which signal the importance that Ofcom attributes to its PIA remedy and the emphasis it places on building trust and effective collaboration between Openreach and its PIA customers. However, our understanding is these meetings are not intended to deal with issues of implementation.
5. The scheme Ofcom has set up for monitoring and enforcing the implementation of PIA is one of voluntary regulation overseen and facilitated by the OTA2, backed up by statutory regulation by Ofcom. CityFibre believes that the OTA2 is doing a good job in resolving day-to-day operational issues of PIA usage. It has brokered agreements on a number of improvements to the product, typically in the form of negotiated amendments to the Reference Offer⁴. This is a valuable role, and PIA users have had some success via this route in obtaining product improvements, albeit more slowly than is desirable. However, the OTA2's role is limited by its lack of statutory powers. Its terms of reference make clear its reliance on cooperation between Openreach and PIA users in order to carry out its facilitation role and its lack of formal enforcement powers.⁵
6. It is therefore important, separately from OTA2 activities, that Ofcom effectively monitors and enforces the remedy. We note that the Government's recently published SSP consultation⁶ specifies that in order for PIA users to have confidence in Ofcom's compliance and enforcement activities, Ofcom "should **closely** and **proactively** monitor Openreach's compliance with the No

⁴ TAR Volume 3, paragraphs 4.78, 4.117.

⁵ OTA2 Scheme Charter, Terms of Reference, Issue v5b, 1 April 2021, paragraph 3.8: "Recommendations made in this role are non-binding on the CPs and Openreach but, by participation, the CPs and Openreach are indicating their willingness to cooperate in facilitation in good faith and their commitment to attempt to resolve issues through facilitation".

⁶ <https://www.gov.uk/government/consultations/proposed-statement-of-strategic-priorities-for-telecommunications-the-management-of-radio-spectrum-and-postal-services/proposed-statement-of-strategic-priorities-for-telecommunications-the-management-of-radio-spectrum-and-postal-services>

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Undue Discrimination principle”, and “Ofcom and the Openreach Monitoring Unit should take reasonable and practical steps to demonstrate transparency in its monitoring and enforcement activities including by publishing regular reports on its work”. We do not believe that this is currently the case.

7. It is not transparent to us that Ofcom is closely and proactively monitoring. We are aware of Ofcom attendance as observers at the industry working group convened by the OTA2, but it is not clear to us what further monitoring takes place in addition to this attendance. There have been only three Openreach Monitoring Reports since the WFTMR statement was published in 2021 (not even annual). The two most recent reports⁷ reference PIA monitoring activity (paragraph 3.24 of the 2023 report and paragraph 3.8 of the 2024 report respectively) only in very high level terms. They provide slightly more detail in instances where the OMU has responded reactively to issues raised. There is little evidence of close and proactive monitoring.
8. The OMU reports also rely on Openreach’s production of an Internal Reference Offer and voluntary KPIs as evidence of compliance with its obligations. However, both of these measures are inadequate to fully assess Openreach’s compliance.
9. In the TAR consultation Ofcom states that the IRO “*provides transparency about the differences between Openreach’s use of physical infrastructure in comparison to third parties’ use via PIA*”⁸. This is not the case. The lack of detail in the IRO is insufficient to allow PIA users to understand the differences between their permitted use and the basis on which Openreach uses its network. Ofcom’s proposal in the TAR to continue *not* to require Openreach to justify these differences compounds the transparency deficiency in the IRO⁹. It is not clear why Openreach should not be required to provide a justification at the outset for the differences between its own use of physical infrastructure and that of third parties via PIA, particularly at this pivotal

⁷ Openreach Monitoring Report, 11 September 2024 and Openreach Monitoring Report, 11 September 2024, 27 June 2023.

⁸ TAR Volume 3, paragraph 5.57

⁹ TAR Volume 3, paragraph 5.57.

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moment when effective network-level competition depends on a robust PIA remedy.

10. In addition, the voluntary KPIs which Openreach produces are not sufficient to allow meaningful comparisons between PIA users' experience and Openreach's self-provision of physical infrastructure to its own business (for which see further below).
11. It appears that Ofcom's current approach relies (at least to a significant extent) on PIA users submitting complaints or disputes to Ofcom. Neither the Internal Reference Offer or the voluntary KPIs give PIA users a sufficient basis to do so.
12. We believe that it is likely that discrimination is occurring because of the significant disparity between the speed of rollout of Openreach compared with altnets. However, we simply do not have enough information to assess this for the reasons explained.

Simple amendment to the definition of PIA Adjustment Services

13. An important aspect of the SMP regulation is the obligation on Openreach to make Network Adjustments. With this obligation in place, the OTA2 has facilitated significant improvements in the ability of altnets to use the product.
14. However missing from the matters covered by the regulation is a requirement to maintain accurate records – the so-called “Missing Inventory” problem, which arises due to significant failings by Openreach in the maintenance of accurate records of its physical infrastructure assets. The result of these failings is that PIA users experience significant delays and significant administrative overhead in trying to resolve these record deficiencies and consequent delays in building their networks. These factors undermine the effectiveness of the remedy and are contrary to the non-discrimination obligation on Openreach.
15. The PIA contract requires that an access seeker raises a Notice of Intention (NOI) to access PIA assets using the Object IDs contained in Openreach's Mapping Tool. On many occasions, CityFibre is unable to raise an NOI due to deficiencies in the Mapping Tool, as duct and pole assets are not accurately

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recorded on Openreach's database: the assets are either misidentified, are in the wrong location, or are entirely missing. This is not a feature solely of historical inaccuracies. CityFibre has encountered examples where new build housing developments are only partially recorded with whole streets being omitted from the Openreach database. This adversely affects PIA users' ability to use PIA at speed. Further, Openreach requires PIA users to remedy these deficiencies at its own expense.

16. The time and cost associated with remedying these deficiencies is significant. In 2024, CityFibre spent [xxx] days of administrative support resolving these Missing Inventory issues. This figure substantially underrepresents the total costs imposed by Openreach's poor record-keeping, as it only covers the time to enter the information into the Openreach system, and takes no account of the time taken to travel to site, take photographs and then transfer photographs to CityFibre's own systems prior to uploading to Openreach. This undermines the effectiveness of the Network Adjustments regime. There is a further discriminatory consequence given that, under the current Reference Offer contract, Openreach can charge PIA users for data errors (via the unauthorised use charges) but faces no reciprocal charges where its inaccurate data imposes costs on PIA users.
17. This is a significant omission from the regulatory obligation as accurate records are a necessary input of the order process mandated by Openreach and the lack thereof create additional time, costs and uncertainty in the provision of PIA to the disadvantage of PIA users. Where Openreach cannot produce the data or records that enable access to its physical infrastructure, but requires access seekers to fix or update its data for it, Openreach should at least cover the costs associated with remedying these deficiencies.
18. There is a simple fix to rectify this omission by including in Condition 12A "adjustments of records" or some such phrase¹⁰. CityFibre also considers that specifying the nature of the network adjustment remedy in this way does not

¹⁰ TAR Volume 7, Condition 12A (PIA Adjustment Services) and section 1 of the Annex to Condition 12A.

carry a risk of regulatory failure since this adjustment reflects a necessary input for accessing the PIA remedy.¹¹

Use of direction making power for PIA QoS

19. CityFibre is concerned that Openreach does not face regulatory obligations to provide PIA to an acceptable standard. Ofcom determined, in the WFTMR, that PIA was an insufficiently mature product on which to impose QoS obligations¹², but clearly this argument no longer holds, given the relative maturity of the product and its large-scale consumption. Ofcom proposes to maintain this position in the TAR primarily on the basis of the existence of the voluntary KPIs (for which see below).
20. CityFibre considers a decision not to impose QoS obligations in the TAR is not reasonable. For other regulated products in the WLA, LLA and IEC markets, Ofcom proposes to maintain directions which set out clear standards related to transparency and publication requirements and the provision of network access to Relevant Ethernet Services, Dark Fibre Access and WLA products.¹³ These standards give greater specificity around the obligations placed on Openreach in those markets. This gives users of these products confidence that Ofcom will be able to effectively monitor and if necessary, take enforcement action should Openreach fail to deliver those products to an acceptable standard. We note that Ofcom took enforcement action (as reported in the OMU's 2023 and 2024 reports) concerning Openreach's quality of service performance in the LLA and WLA markets during 2022/23.¹⁴ The ability of Ofcom to effectively investigate and enforce in this instance relied on its ability to measure Openreach's performance against the targets set out in the directions to SMP Condition 10 of the WFTMR in respect of these products. Ofcom has imposed QoS obligations in these markets *despite the*

¹¹ TAR Volume 7, paragraph 5.31.

¹² WFTMR Volume 5, paragraph 5.3

¹³ TAR Volume 7, Part E.

¹⁴ OMU Report 2023, paragraph 3.15. Confirmation Decision served on BT by the Office of Communications (Ofcom) for contravention of SMP Condition 10.1 (CW/01273/06/23) (15 March 2024).

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products in question being delivered on an Eol basis: that is, even with downstream BT businesses consuming these products and therefore exerting some inter-group pressure for the quality of the products to be kept at acceptable levels. In the case of PIA, delivered on a non-Eol basis, no group-wide incentive to sustain service quality exists – indeed, the opposite incentive may be true.

21. A further concern is the recent announcement made by BT Group in its annual results of substantial headcount reductions in the Openreach business. If there is a general squeeze on operational capacity within Openreach as a result of the implementation of these changes, cuts may be made in operational support for a product that Openreach does not itself consume. Whilst it may be too early to infer a general pattern, CityFibre operational staff report that several key people who work on the pole repair and replacement programme have been moved to other tasks,
22. CityFibre does not believe that the voluntary KPIs produced by Openreach are a sufficient basis against which Ofcom can monitor and enforce the remedy. The KPIs are a set of indices covering only one aspect of PIA operational performance (timely delivery of Network Adjustments) which Openreach publishes alongside internal performance statistics for an entirely different product, Ethernet. The rationale for using Ethernet, rather than Openreach's self-delivery of network adjustment for its full fibre rollout programme is problematic, given that enabling works for Ethernet delivery are likely to involve substantially different engineering considerations to mass market broadband rollout.
23. The KPIs do not cover other critical elements of acceptable PIA delivery, such as time taken to repair physical infrastructure that becomes defective in life, or the accuracy of management information provided to PIA users.¹⁵ Even within the narrow scope that they do cover, there are concerns about how accurate a picture the KPIs show. The KPI on Network Adjustments delivered by the

¹⁵ WFMTR Volume 5, paragraph 5.4 suggests that it was anticipated by Ofcom that the scope would be expanded over time to cover other aspects of PIA delivery. No such expansion has in fact taken place.

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Customer Committed Date is not a true reflection of the actual time taken to deliver NAs, given that Openreach frequently unilaterally changes the CCD, typically citing Matters Beyond Our Reasonable Control (MBORC). Whilst recognising that sometimes there will be genuine MBORC events that require an alteration of the CCD, the current approach significantly distorts the picture as between claimed and actual performance.

24. Even if the voluntary KPIs were more comprehensive and better specified, by their nature they cannot provide the same compliance incentives as SLAs/SLGs coupled with performance targets included in a binding direction of the kind that Ofcom has imposed in relation to other regulated products.
25. An important example of where a QoS direction should go beyond the scope of the voluntary KPIs is the case of pole repairs. A Quality of Service standard should require BTOR to repair or replace a pole that becomes defective in-life within a specified period of time, failing which compensation will be payable to the PIA user and enforcement action can be taken by Ofcom.
26. PIA is now a mature and stable construct, and there is no objective justification for this important remedy not to be underpinned by QoS measures. As explained, the voluntary KPIs are not sufficient. CityFibre considers Ofcom should use direction-making powers to set appropriate Quality of Service and Transparency directions under SMP Condition 10 for the physical infrastructure market.¹⁶

¹⁶ TAR Volume 7, Condition 10 (Quality of Service).