



Copper retirement and the Telecoms Access Review

nexfibre submission
Non-confidential

Copper retirement is a critical moment of change in the market and must be regulated appropriately for the benefit of competition and consumers

1. Introduction

Copper switch off represents a major change in the overall connectivity sector. nexfibre supports the evolution of connectivity in the United Kingdom; as a full fibre operator, we understand first-hand the benefits that high speed connectivity brings to consumers, businesses and communities. We recognise that the process for BT to switch off its copper network is complex with a variety of considerations at each stage. However, it is vital that the full impact of this switch off is properly considered by Ofcom, not only the effect it will have on BT but also on competition in the sector more broadly. There is a risk that BT's dominant share of copper connectivity can be leveraged into fibre, to exclude competitors and retain dominant position. The 2026-2031 period of this Telecoms Access Review will be critical for determining the path of copper switch off. Regulation must be proportionate, appropriate and neutral to best protect the interests of consumers.

With this in mind, we are asking Ofcom to consider the following issues in the Telecoms Access Review:

- **Current regulation is over-focused on BT investment incentives**
- **Market dynamics during the switch off process**
- **Exclusionary behaviour and pricing schemes**
- **Exchange closure**
- **Timeline transparency**

2. Current regulation is over-focused on BT investment incentives

The current regulation of copper switch off has been primarily focused on the impact of copper switch off on BT's investment incentives. In the WFTMR, Ofcom stated:

While by definition copper retirement is focused on Openreach's investment incentives, we also consider that our policy – as part of the wider package of remedies – promotes investment by other operators in Area 2 by focussing Openreach's incentives on its ability to migrate customers rather than on reducing prices¹

In light of the current stage of migration and switch off, this does not adequately consider the impact that copper switch off will have on the market as a whole. The price differential between copper and fibre access will have a profound impact on investment incentives, market dynamics and most importantly consumer expectation. This must be considered in its entirety.

¹ *Wholesale Fixed Telecoms Market Review 2021-26 Volume 3: Non-Pricing Remedies para. 2.66*

Solely viewing copper switch off as a BT issue will result in inadequate regulation, risking long-term harm to consumers. During the Telecoms Access Review process, we ask that Ofcom consider the impact of copper to fibre migration on the entire market. As outlined below, the impact of switch off should particularly be considered in light of the incentives that BT has to engage in exclusionary behaviours and pricing. Examination of the impact on the entire market is necessary to ensure that Ofcom is upholding its duties to further the interests of consumers and promoting competition.

3. Market dynamics during the switch off process

The migration from copper to fibre is a profound shift in the connectivity sector in the UK. After decades of limited copper connectivity, consumers will be able to access high speed, reliable fibre connections. While sustainable competition to BT is still nascent (as we have explored in our other submissions to Ofcom), end-users have more options when choosing connectivity products. As high speed connectivity becomes the norm across the UK, consumers are switching providers in greater numbers to benefit from fibre connectivity.

End-user switching and demand for high quality connectivity is incentivising ISPs to migrate from copper to fibre networks to ensure they meet growing consumer demand. For operators of alternative networks, this represents a key opportunity to attract ISP customers.

ISP switching to a new network supplier comes with cost and administrative burden. It involves IT investment, management processes and operational resources. During the copper migration period, ISPs will already be prepared to bear this cost and operational burden. As a result, this is a period where switching between competitor network providers is more likely to occur and create the opportunity to establish a truly competitive fibre market. The increased investment in fibre networks in the UK in the last number of years is partially a result of investor expectations of increased ISP switching.

Conversely, at the point where an ISP has committed to a particular fibre network in a specific area, it is less likely to switch to a competitor network in the near future. The sunk cost of recent migration would make it more difficult to justify the cost and complexity of switching so soon after the original migration. In order to incentivize switching in the period immediately after migration, competitor networks would have to offer significant discounts overcome this and to attract ISP customers.

Therefore, all operators have an incentive to attract ISP customers to their networks during the copper migration period. Due to its position of significant market power, BT is in a unique position to retain ISP customers. It holds long-standing relationships with most ISPs, enjoys significant scale and market share and has been able to engage in pricing and other behaviours which negatively impact

other competitors, as outlined in our previous submission “UK Fibre: A Fork in the Road”². BT has both the incentive and ability to engage in specific behaviours during the copper switch off process to shore up its market share and continue to enjoy a position of dominance on the WLA market. By ensuring migration from its copper network to fibre network, it can entrench this position in the long-term with well-known negative effects on consumers and competition.

4. Exclusionary pricing schemes and behaviours

The process of copper to fibre migration provides a strong incentive for Openreach to set wholesale prices and put in place incentive schemes which encourage ISP customers to migrate their customers to Openreach’s network at the expense of alternative fibre networks.

This includes Openreach setting prices that at a level that competitors will struggle to compete with. In addition, Openreach can put in place migration incentives which have an exclusionary effect, such as the migration installation charge discount versus standard install charge in Area 2 that was introduced in Equinox 2.

As it stands, as the SMP provider in the market, Openreach’s pricing affects the pricing of the entire market. If Openreach reduces its pricing on fibre, as it did under the Equinox 2 pricing scheme, the rest of the market needs to reduce pricing to remain competitive. BT enjoys economies of scale unavailable to competitors, which allows it to price at a lower level sustainably. Its scale and incumbency also results in a lower cost of capital than many competitors.

The combination of the entrenched relationship between Openreach and ISPs, the switching costs associated with a move to an alternative wholesale provider, and lowered prices and/or other migration incentives mean that wholesale competitors to Openreach need to price at a discount to Openreach pricing in order to attract customers.

If these price reductions cannot be offset by cost reductions, revenue and return on investment for competitors is decreased, reducing the incentive to invest. Investors are less likely to make capital available to competitors for further rollout or expansion, which in turn reduces competition to BT. This is consistent with deep pocket theory of predation.

As we have outlined in our paper “UK Fibre: A Fork in the Road”³ there is evidence of pricing behaviour with an exclusionary effect at present in the market. There is a

² UK Fibre: A Fork in the Road Telecoms Access Review Confidential pre-consultation submission, submitted on 14 June 2024, Section 4

³ *ibid*

risk that copper switch off provides an incentive and a cover for further exclusionary pricing.

Justification for exclusionary pricing

In addition to creating an incentive for BT engage in further exclusionary pricing behaviour, migration from copper to fibre also creates a public-facing justification for BT to claim when explaining these behaviours. BT is able to claim that these pricing schemes are necessary to encourage migration and justify their investment in fibre upgrade. There is, rightly, a strong push by policymakers to rollout and upgrade networks to fibre. However, this rollout is not dependent on allowing the incumbent operator to engage in pricing or other behaviours which excludes other operators. Copper switch off should not be used as a justification for softer regulation which damages competition in the long-term. On the contrary, to protect rollout and competition in fibre, it is critical that regulation of Openreach is robust.

Exclusion risk

In the WFMTMR decision, Ofcom stated that the broader set of regulatory controls it had put in place were sufficient to address the risks that arose due to the impact of copper switch off.⁴ Though not sufficiently substantiated, this may have been true when switch off was at an earlier stage. However, as switch off accelerates, the impact on market dynamics increases and the potential for exclusionary effects becomes greater. This must be properly assessed and addressed.

Risk at each threshold

The WFTMR establishes a staged approach to copper switch off, with criteria to meet at each stage.

First threshold

At the first threshold, Openreach may stop selling new copper services in an exchange area. Instead, customers seeking to switch providers, upgrade or move will have to purchase services over an Openreach fibre connection or from an alternative operator.

The first threshold requires the following:

- Openreach has published a notice at least 12 months in advance of the date when it expects 75% of premises in an exchange area to be covered by ultrafast (the first threshold)
- Openreach makes ultrafast services available at 75% of premises in the exchange area

As outlined above, Openreach has a strong incentive and ability to encourage migration to its network. It is particularly important that during this period that

⁴ *Wholesale Fixed Telecoms Market Review 2021-26 Volume 3: Non-Pricing Remedies para. 2.2*

Openreach is subject to effective regulation to prevent exclusionary pricing. The use of volume discounts and other commercial incentives to encourage migration to its fibre network must be properly assessed to protect competition and prevent long-term harm to consumers.

Second threshold

At the second threshold, the charge control on copper services may be withdrawn. The second threshold requires the following:

- Openreach has published a notice at least 12 months in advance of the date when it expects the exchange to be completed
- Openreach makes ultrafast services available at all premises in the exchange area other than those excluded (a 'completed exchange')
- At least two years has passed since the stop sell has come into effect

It is likely that following the removal of the charge control that BT will increase pricing on copper. This would further incentivize migration from copper to fibre. It is important that the interaction between increased copper pricing and the charge control on fibre pricing is carefully assessed. In particular, fibre pricing should not be allowed to reduce further, as BT will be in a position to recoup more of this reduction against the increased pricing on copper. This would make it even more difficult for competitor networks to offer lower prices and would increase the exclusionary effect.

Third threshold

Although the third threshold was not formally adopted in the WFTMR, a proposed third threshold was outlined in the consultation. At this third threshold, all regulation of copper services may be withdrawn. The proposed third threshold requires the following:

- The criteria for the second threshold have been met
- Take-up of Openreach copper-based services is no more than 10% of relevant premises within the exchange area and there are reasonable measures in place to support vulnerable consumers
- Openreach has published a notice to confirm that the preceding criteria have been met
- Two years have passed since Openreach published that notice

Regardless of the specific criteria which may be adopted in TAR, at the point of withdrawal of regulation, significant migration to fibre networks will have already taken place. The removal of regulation in its entirety on copper would allow BT to engage in other behaviour which could squeeze competitors. The timelines should be carefully considered. It is critical that an appropriate threshold is adopted to

ensure that the removal of regulation does not have a negative impact on competition in the market more broadly.

5. Exchange closure

Closure of exchanges is a key part of the copper retirement strategy. BT enjoys complete discretion as to which exchanges to close, within the limits set out in the WFTMR decision, and the timing of these closures. This gives BT considerable strategic advantage over the market as a whole.

There is an incentive for BT to leverage exchange closure to its advantage, by strategically targeting the timing of exchange closure to areas where competing networks are built or planned relative to areas without competing networks. In particular, Openreach may benefit by targeting exchange areas where competitor networks have not yet gained ISP customers. By targeting these exchange areas, Openreach can create an incentive for migration to its fibre network in those areas rather than competitors. As outlined above, migration by an ISP from copper to fibre network in a particular area is a key moment where switching between competitor network operators is more likely to occur. By capturing significant ISP demand at this stage, Openreach reduces the ability of competitors to compete in the short and medium term.

In the WFTMR decision, Ofcom recognised the risk that Openreach would strategically target exchange areas. However, there was limited engagement with this risk or its impact, as it was stated that *“this risk is likely to be low given Openreach’s commercial incentives are likely to include wider considerations.”*⁵ However, there are significant potential benefits to Openreach from retaining its SMP position. While there may be multiple factors involved in the decision to close an exchange, these potential benefits should not be underestimated. The risk of Openreach targeting exchanges with a view to protecting its SMP position is greater at this stage, as exchange closure accelerates.

Therefore, as switch off progresses, it is vital that Ofcom engages with this risk in greater granularity. Openreach continues to enjoy significant market power, and it should not be able to use migration from copper to entrench this position on fibre.

6. Timelines and transparency

The process for copper switch off outlined in the WFTMR decision includes timelines intended to give greater clarity to the market as to how copper switch off

⁵ *Wholesale Fixed Telecoms Market Review 2021-26 Volume 3: Non-Pricing Remedies* para. 2.69

progresses. However, BT retains ultimate discretion as to where and when it will switch off copper. This puts other market operators at a disadvantage.

The timelines at each threshold should be made clearer. There is still significant ability to deviate from the indicated timelines during each stage. For example, under the first threshold, after Openreach publishes a notice to indicate that they expect to reach 75% coverage of an area within 12 months, there is no obligation to actually reach that coverage within the 12 month period. If the coverage level is not reached, there is no obligation to communicate that publicly. While we understand the need for some flexibility, as changes can occur during build which are not foreseen, it is important that this flexibility does not lead to a lack of transparency.

7. Conclusion

nexfibre supports the migration from copper to fibre networks, as the next stage in the development of connectivity in the UK. This is a once-in-a-generation shift in UK connectivity, offering a unique opportunity for greater switching between network providers. This would boost competition in the market, producing better outcomes for consumers into the future.

However, this opportunity is not guaranteed. The migration process must be carefully managed, in a proportionate and neutral fashion, to protect nascent competition and consumers. BT has both the incentive and ability to set prices and engage in behaviours that exclude rivals from the market, bolstering their SMP position and reducing competition. BT should not be able to use copper switch off to replicate the market dynamics of the past. Instead, Ofcom must ensure that the impact of copper switch off on the entire market, and not just BT investment incentives, is fully assessed and ensure that appropriate regulation is put in place to safeguard competition, investment and consumers in the long term.

About nexfibre

nexfibre is a joint venture between InfraVia Capital Partners, Liberty Global and Telefónica and is financed with £4.5 billion of equity and debt investment.

nexfibre's investment will provide a major boost to the UK's digital economy and make a significant contribution to the Government's gigabit broadband ambitions.

Virgin Media O2 is nexfibre's anchor wholesale tenant. nexfibre intends to make its network available to other internet service providers. Additionally, nexfibre and Virgin Media O2 together intend to wholesale their networks to other internet service providers creating a national-scale operator, boosting choice and competition in the market.

nexfibre.co.uk