
Openreach monitoring report

Ensuring an independent Openreach committed to fair competition

[Welsh version available](#)

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1. Overview

- 1.1 We want people across the UK to have access to reliable, resilient and high-quality internet connections that support the way we live, work, shop and use public services. The actions, conduct and decisions of Openreach play a crucial role in achieving that outcome due to its powerful position as a supplier of network infrastructure.
- 1.2 Through the work of the Openreach Monitoring Unit (OMU), we ensure that Openreach meets our expectations for how it deals with both its customers and its competitors. The OMU monitors that Openreach continues to operate with greater strategic independence from BT Group, as required by the Commitments,¹ so that it can and does act in the interests of all its customers and does not, for example, preference BT Group brands. The OMU also makes sure that Openreach meets the regulatory requirements and expectations we imposed upon it in the [Wholesale Fixed Telecoms Market Review \(WFTMR\)](#) to support competition and investment in gigabit-capable networks.
- 1.3 In our [last report](#) in late 2021, we announced our intention to extend the remit of the OMU to include the outcomes of the WFTMR. We are in a key period for fibre investment, with alternative networks (altnets) and Openreach investing significantly on the basis of the rules we put in place in the WFTMR. It remains more important than ever to ensure that the OMU scrutinises these matters to ensure that Openreach is meeting both the letter and the spirit of its obligations.
- 1.4 Our experience to date is that the Commitments have generally proved to be successful, and we continue to see evidence that they are well-established and well-embedded across BT and Openreach. Both organisations have structures to support the Commitments that we see functioning well, and processes in place which help to support compliance and address the relatively rare instances of non-compliance.
- 1.5 Where breaches have been identified through our monitoring work, or have been brought to our attention, we have worked closely with BT and Openreach as well as the relevant stakeholders on these matters to hold BT and Openreach to account. These breaches have all been relatively minor in nature and are occurring at a rate typical of recent years (less than 10 per annum).
- 1.6 While the evidence we have seen suggests BT and Openreach are firmly committed to ongoing delivery of the Commitments, the challenge facing both parties is to ensure that the Commitments remain operationally, culturally and sustainably embedded within both organisations six years after their introduction. There have been examples where changes in staff and the introduction of new systems have led to occasional breaches, and while

¹ In 2017 BT gave Ofcom voluntary Commitments to address Ofcom's competition concerns at the time. See the latest version: [Commitments of BT Plc and Openreach Limited to Ofcom – Issue 5](#) – of 28 May 2021.

these were swiftly and appropriately addressed, it is important that BT and Openreach take all necessary steps to ensure complacency does not set in.

- 1.7 The success of the Commitments to date has been at least in part a result of the decisions and choices of key BT and Openreach leaders. Where there is change at these senior positions, we expect BT and Openreach to ensure successors build on the progress that has been made.
- 1.8 So far, we have seen the written Commitments strengthened by the positive spirit in which they have been followed. BT's wider competition-related obligations and commitments – extending to issues arising out of the WFTMR – are also dependent on this spirit, and on compliant behaviour being driven by example from the very top. The comments of BT's Chief Executive, Philip Jansen, in February of this year – including being reported as saying Openreach's fibre push will 'end in tears' for rivals – caused Ofcom and industry significant concern, as set out in [Ofcom's response to Mr Jansen](#). We would be extremely concerned to see similar comments in future and will be keeping this under close review.
- 1.9 Over the last 18 months the OMU's major focus has been on considering whether any actions or decisions by Openreach risked distorting competition and harming the market. In addition to our own-initiative monitoring, we have also considered a range of concerns raised by industry, sometimes expressed as formal complaints. We provide more details of these issues and our work in response in this report.
- 1.10 While we have not found sufficient evidence to open any investigations so far in relation to these complaints, we will continue to take these concerns extremely seriously and we will not hesitate to prioritise enforcement action as necessary. To ensure these various regulatory arrangements continue to function effectively, we will be strengthening the OMU's operation over the coming months so that it remains an objective, vigilant and transparent safeguard.

2. BT, Openreach and the Commitments

- 2.1 In 2016, we identified concerns that the vertically integrated structure of Openreach within the BT Group left BT with an ability to discriminate against competitors.² Openreach's integration within BT Group meant that new, strategic investment decisions were taken at a group level, and without consultation by Openreach with its downstream customers. This created a risk that decisions could favour the interests of BT's retail divisions over those of competing providers.
- 2.2 Without intervention, we considered that this competition concern could undermine the incentive for companies to invest, and ultimately could influence the price, quality and availability of services received by people and businesses. To resolve this, we determined that Openreach needed to have more independence in making strategic and operational decisions, taking equal account of all its customers' interests. Today, the evolving telecoms market and the challenging macroeconomic environment make it more important than ever that Openreach is able to operate independently to meet the needs of its customers.
- 2.3 In March 2017, BT gave voluntary [Commitments](#) to reform Openreach. Openreach became a distinct company, Openreach Limited, with its own independent board of directors, staff, management and strategy, and a duty to serve its customers equally.
- 2.4 In light of this, we set up the OMU to monitor and report on the implementation of and compliance with the Commitments. In particular, the OMU seeks to ensure Openreach treats all of its customers equally on a day-to-day basis, that there is transactional equivalence, and that in its medium- and long-term strategic decisions it operates with sufficient independence of BT, acting in the interests of all its customers.
- 2.5 Our experience to date is that the Commitments have generally proved to be successful, and we continue to see evidence that the Commitments are well-established and well-embedded across BT and Openreach. Both organisations have structures and processes in place which help to support compliance and address instances of non-compliance. Where breaches have been identified through our monitoring work, or have been brought to our attention, we have worked closely with BT and Openreach as well as the relevant stakeholders on these matters and held BT and Openreach to account. We provide examples of these instances within this report.

The role of the OMU

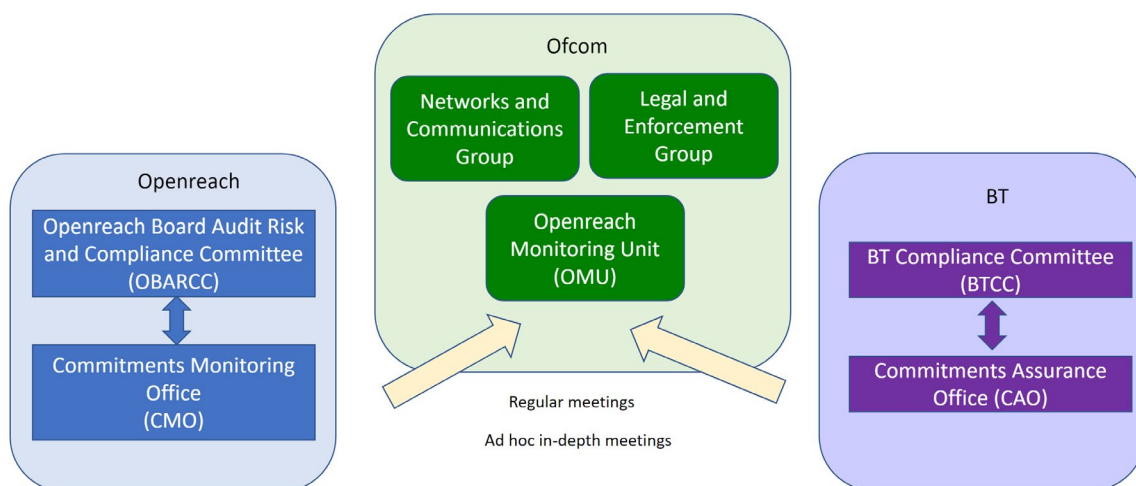
- 2.6 Due to the nature of supervision and regulatory compliance work, the OMU is primarily based within Ofcom's enforcement team (part of Ofcom's Legal and Enforcement Group).

² Ofcom, [Making communications work for everyone: Initial conclusions from the Strategic Review of Digital Communications](#), 25 February 2016.

This also enables seamless escalation to more formal enforcement engagement should that be necessary. Notwithstanding this arrangement, overall policy responsibility for the OMU's work remains with our Network and Communications Group alongside our other regulatory functions in the fixed telecoms sector.

- 2.7 Since the implementation of the Commitments, the OMU has worked closely with BT and Openreach to monitor that the Commitments are working as intended to deliver these outcomes.
- 2.8 BT and Openreach each have Board committees that are responsible for monitoring compliance with the Commitments, and in-house teams that support the committees to achieve this. This arrangement is set out in Figure 1 below.

Figure 1: Commitments compliance bodies



- 2.9 The OMU meets regularly and separately with the Openreach Commitments Monitoring Office (CMO) and the Commitments Assurance Office (CAO) within BT, in line with the [Memorandum of Understanding between BT and Ofcom](#). These meetings typically include:
- briefing from the CMO and CAO on any potential breaches identified and the actions taken to address these;
 - a forward look at relevant agenda items being presented to the Openreach Board Audit, Risk and Compliance Committee (OBARCC) and the BT Compliance Committee (BTCC), and a report on the outcome of these meetings;
 - updates on any ongoing deep dives into compliance; and
 - an overview from the OMU on any Commitments relevant issues that have come to Ofcom's attention, for example through policy work or complaints from other communications providers (CPs).

- 2.10 Additional meetings to go into greater detail on particular issues are arranged as required. For example, in this reporting period we have had further meetings on the issue of CCTV pricing (see paragraph 2.26 below). Issues raised by other CPs or identified through policy work by Ofcom may be discussed at either our regular or more in-depth meetings.
- 2.11 The OMU periodically attends OBARCC and BTCC, and Commitments issues also form an important part of regular senior level discussions between Ofcom and BT and Openreach, as well as with other key stakeholders. Ofcom issues formal information requests where we feel that assessing a particular issue requires more evidence, and we escalate issues to our more formal enforcement procedures where necessary.

Commitments issues since our last report

- 2.12 In what follows below, we group the Commitments issues discussed since our last report into four themes:
- a) Governance: how internal governance processes are managed and evidenced.
 - b) Functional separation: controlling information within appropriate channels and boundaries.
 - c) Financial controls: balancing the need for strategic independence against fiduciary oversight.
 - d) Proactive compliance activities.

Governance

- 2.13 Maintaining separate and independent governance processes for Openreach, while enabling sufficient oversight for BT Group as the parent company, is crucial for the Commitments to achieve the desired outcomes. Both BT and Openreach recognise this and have taken actions to continually monitor and improve their Commitments-related governance processes.
- 2.14 For example, over the past reporting period BT has carried out an internal review of [Guidance Note 7 \(GN7\)](#), which relates to the commercial processes for pricing, products and projects. GN7 sets out five tests for determining when Openreach should involve BT as parent in its strategic decisions. These tests cover when a decision is:
- a) outside Openreach's remit;
 - b) sufficiently material in its own right;
 - c) a major diversion from the approved Openreach plan;
 - d) strategically significant; and
 - e) a driver of financial, reputational, legal or regulatory risk.

- 2.15 As GN7 was applied in practice, it became clear that there were a number of cases where the decision whether or not to involve BT had not been clear cut. The review identified areas in which the interpretation of the five tests could be made clearer, for example relating to the correct counterfactual to use for the assessment. BT made a presentation to the OMU setting out its analysis and findings.
- 2.16 As a result of this review, BT updated its internal Explanatory Note, which was shared with the OMU in draft form for comment. BT and Openreach processes were updated to better enable senior internal challenge to decisions, and to create better targeted governance processes for BT strategic projects that are delivered by Openreach. Each of these actions has contributed to clearer and more robust processes for determining when decisions should be escalated to BT Group as the parent company.
- 2.17 This new process has been applied in the governance of Openreach's [exchange exit programme](#), and has in our view worked well.

Functional separation

- 2.18 BT interacts with Openreach in three different guises:
- a) As a customer: BT buys services from Openreach in the same way that other CPs do. This is fully at arm's length and information exchanges are required to be limited to a normal supplier/customer exchange.
 - b) As a supplier: BT provides Openreach with corporate services such as payroll, billing and HR services. This requires closer working and greater information flows compared to where BT is acting as Openreach's customer.
 - c) As a parent company: BT must obtain appropriate information from Openreach in order to fulfil its legal and fiduciary obligations, as well as to allow it to set strategic direction at a group level.
- 2.19 It is vital that functional separation is properly managed, so that BT's consumer facing units do not benefit from information not available to rival CPs, and so that BT does not have an undue influence on Openreach's greater strategic and operational independence. This depends upon both technological and behavioural controls, and is an area where minor breaches sometimes occur.
- 2.20 In the past reporting period, minor breaches have been reported relating to shared corporate systems including email, post centres, and SAP financial reporting software. Each has been quickly identified and remedied, by changing software to provide separate instances and providing updated training for employees. Our assessment is that none of these incidents involved an intent to breach the Commitments nor were any CPs advantaged or disadvantaged, and in addition our view is that each was thoroughly and robustly investigated by the BT and Openreach compliance functions.
- 2.21 One major breach has been notified, relating to the sharing of a paper that contained information confidential to Openreach with senior members of BT Enterprise. This was

investigated by the CAO, which found no evidence that any action was taken by downstream customer facing units to benefit from the information in the paper. We are satisfied with the remedial actions taken and are pleased at how seriously the CAO took this issue. And consistent with our ongoing discussions with BT about avoiding complacency and mitigating the risks of new staff members, we welcome the Commitments refresher training for the new BT Business CEO that was deployed as result of the breach.

Financial controls

- 2.22 As the parent company, BT Group plc sets the overall strategy for both Openreach and BT units. This has the potential to raise concerns if financial incentives and objectives are set inappropriately, for example to either give BT an unfair competitive advantage, or unduly restrain Openreach's strategic independence. We are satisfied that BT and Openreach have robust processes in place governing how the financial strategy is decided for Openreach, as set out in Guidance Notes 3 and 4, and the CAO and CMO scrutinise evidence that these processes are being complied with.
- 2.23 Financial issues are discussed at the regular meetings the OMU holds with the CAO and CMO. For example, during the past reporting period, BT Group made changes to how BT and Openreach staff bonuses were calculated in relation to overall group level performance. These proposed changes were assessed by both in-house compliance teams, and discussed with the OMU, before being implemented.
- 2.24 Openreach must deliver its strategy within the financial envelope set by BT Group, and in particular must agree with BT Group the amount of expenditure to be invested in strategic programmes such as full fibre rollout. In a challenging economic environment, this requires balancing the objectives of the different companies in its group. The OMU and in-house compliance teams have discussed the processes for agreeing capital expenditure budgets, and how tensions are escalated and resolved. The OMU is content, and continues to actively monitor, that this process is working as intended and Openreach's greater strategic independence is being maintained.

Proactive compliance activities

- 2.25 Both the CMO and CAO regularly undertake 'deep dives' into particular aspects of compliance with the Commitments, on which they report to the OMU. Most recently, these have included reviews of:
- a) Legacy products. Openreach identified that a number of CCTV products were being supplied on a non-Equivalence of Input ('EoI') basis, with orders being placed incorrectly through an old sales channel. Following an investigation, and after discussion with BT and the OMU, Openreach identified an EoI equivalent product that would be supplied for all new sales. It also altered the pricing of the legacy product for the existing customer base, to make it more cost reflective.

- b) **Contracts.** Following on from the review of billing in the previous reporting period, Openreach carried out a review of the compliance of its contracts with billing obligations. This highlighted issues surrounding Cablelink and Optical Service Level Guarantees, and resulted in improved processes and rebates paid to affected CPs.
 - c) **Project SeeSaw.** This reviewed the balance between independence and parent group oversight across all of Openreach's functions, including interviews with key personnel to explore the culture and atmosphere surrounding Commitments compliance. We were satisfied with the rigour with which this review was conducted, which did not identify any significant concerns. However, several interviewees emphasised the importance of individuals and relationship management in ensuring compliance, as the level of friction in processes can vary significantly when personnel change. This underlines the importance of ongoing Commitments training for both new employees and those moving posts internally.
- 2.26 The recent [BTCC annual review](#) reflects this proactive approach to compliance, developing a watch list to track issues and focusing on areas that could have the greatest impact on the governance framework or [Digital Communications Review \(DCR\)](#) outcomes.

3. The Wholesale Fixed Telecoms Market Review

- 3.1 Ofcom is committed to creating conditions for networks to invest in the rollout of full-fibre broadband nationwide – bringing faster, better broadband to people across the UK. An important part of our strategy is to support and promote fair competition, and we set out to achieve this through the WFTMR which was published in March 2021. This put in place new rules around the regulation of the fixed telecoms markets that underpin broadband, mobile and business connections, for the period April 2021 to March 2026.
- 3.2 We recognise the significant role Openreach plays in these markets, and its behaviour is key in ensuring that competition operates fairly for all network builders accessing its infrastructure. For this reason, in our last annual monitoring report we announced that going forward, the scope of the OMU’s work includes issues relating to the broader outcomes of the WFTMR. This means monitoring Openreach’s activities in relation to investment, consumer outcomes and competition.
- 3.3 An important aspect of Openreach’s greater strategic independence is that it has the incentives and ability to make decisions for the benefit of all of its customers, especially in relation to long term investment decisions.
- 3.4 In addition to its strategic independence, we are also, as described above, focused on ensuring Openreach treats all customers equally including providing the same level of service. It is essential that these service levels are high to ensure consumers have a reliable and predictable service. Accordingly, we continue to closely monitor Openreach’s quality of service (‘QoS’).
- 3.5 Openreach has an important role to play in ensuring that competition operates fairly. As well as pursuing its own fibre build programmes, we continue to expect Openreach to work constructively with customers to build commercial relationships and trust, in order to best create conditions to enable industry to make progress in the roll out of full-fibre. Part of our work involves engaging with Openreach and its customers to understand their relationships better.
- 3.6 Openreach’s market position means that it has the potential to impact network competition more broadly. Over the last 18 months, in addition to our own-initiative monitoring of Openreach’s activities, we have also considered a range of concerns from industry, in particular competing network providers. We take these issues extremely seriously and have looked into the potential concerns in depth. While we have not found sufficient evidence to open any investigations so far in relation to these complaints, we will continue to proactively and closely scrutinise Openreach’s activities.

Consumer outcomes

Availability of fibre broadband

- 3.7 In light of its duties, Ofcom seeks to further the interests of citizens and consumers. The strategy set out in the WFTMR aims to promote competition and investment in gigabit-capable networks – bringing faster, better broadband to people across the UK. As industry works to build fibre to the premise (FTTP) networks and migrate consumers onto these networks, we expect industry to keep in mind the need to secure positive outcomes for consumers.
- 3.8 The availability of full-fibre broadband has increased significantly from our last report to 14.2 million homes (48%) now able to access full fibre services as of January 2023.³ This is a significant increase since the last monitoring report when the figure was reported as 24% as of May 2021. Since January the UK has reached the milestone that half of all homes have access to full-fibre services.
- 3.9 Openreach has continued to invest in its FTTP network, reaching 10.3 million premises in March 2023⁴ alongside ongoing investment by altnets in their FTTP networks which now reach over 8 million premises.⁵ Both of these developments have resulted in achieving the milestone of full-fibre coverage to more than half of all homes in the UK. More premises now have a choice of provider of gigabit capable networks, and as of September 2022, 2.1 million residential premises had a choice of two or more full fibre networks.⁶ The altnets' substantial contribution to that achievement further emphasises how important it is that Openreach lives up to the spirit of the rules set out in the WFTMR to ensure competition can operate fairly.

Quality of Service

Regulated Quality of Service standards

- 3.10 We consider that the best means through which to deliver quality of service ('QoS') is through network competition, and that competing full-fibre networks will deliver vastly improved services in terms of speed and reliability. However, we recognised in the WFTMR that while network competition should protect consumers in the long term, it will take time for this competition to become established; also for some areas of the UK, there is unlikely to be potential for material and sustainable competition. We have therefore

³ Ofcom, [Connected Nations update: Spring 2023](#), 19 May 2023.

⁴ BT Group, [Quarterly results: Q4 2022/23](#).

⁵ INCA, [Annual Altnet report reveals vital role of competition to UK digital transformation](#), 17 May 2023.

⁶ Ofcom, [Connected Nations 2022: UK report](#), 15 December 2022.

imposed QoS standards on Openreach to ensure it provides an appropriate level of service to its customers.

- 3.11 Failing to meet these standards could subject Openreach to significant sanction. With that in mind the QoS standards we set are intended to be a lower bound, and met under all but very exceptional circumstances, rather than a target for Openreach to only just achieve.
- 3.12 In setting these standards we were also conscious that they describe only a subset of the parameters that are important to competition and consumer outcomes. In light of this, we expect Openreach's behaviours and approach to QoS to take a broader perspective and consider what is important to competition and consumer outcomes, rather than just the narrow set of regulated standards.
- 3.13 Since our last report in December 2021, Openreach's performance has improved against the measures we use to set regulated standards. This is to be expected following the unprecedented challenges faced due to the pandemic through 2020/21. Since this time, we have received results for two financial years – 2021/22 and 2022/23. In the year 2021/22 Openreach met all of its QoS standards.
- 3.14 The standards we set for 2022/23 (and subsequent years of the market review) are higher than for 2021/22. Openreach have recently informed us that for the financial year 2022/23 it did not achieve two of the 30 QoS standards for voice and broadband services, and also missed one of its five Ethernet QoS standards.
- 3.15 As a result of this underperformance, Ofcom has [opened an investigation](#) into this matter. More information is available on our website, and we will publish updates on the investigation in due course. The OMU will also continue to monitor Openreach's performance over the coming year.

FTTP Quality of Service

- 3.16 We did not impose QoS standards on FTTP services in the WFTMR. We considered that rollout and demand were at too early a stage for it to be proportionate for us to define and impose meaningful standards. However, Openreach is required to provide us with certain QoS key performance indicators ('KPIs') in relation to FTTP which we consider as part of our wider QoS monitoring. Under the WFTMR we also have direction making powers to impose new, or change existing, QoS standards as appropriate.
- 3.17 In 2022/23 we identified a significant deterioration of performance in FTTP QoS, in particular in relation to connections. Several stakeholders also raised with us their serious concerns about Openreach's performance, at a time when industry was focussing on building customer confidence in FTTP and migrating customers to FTTP.
- 3.18 While we have not imposed QoS standards in this area, Openreach is subject to commercially agreed Service Level Guarantees ('SLGs') and is required to pay compensation when these are not met. Stakeholders also raised concerns about Openreach's application of the 'matters beyond our reasonable control' ('MBORC')

concept – through which it identifies matters beyond its reasonable control which had an impact on its ability to deliver services on time. The concerns are that overuse of MBORC could have the effect of unduly reducing SLGs and thereby removing the incentive effect SLGs are intended to have on Openreach’s behaviour.

- 3.19 As part of our wider QoS monitoring we asked Openreach to provide us with further KPIs on FTTP, a recovery plan, and ongoing reporting against this recovery plan. Openreach’s FTTP QoS performance has now started to recover. The significant deterioration in performance coincided with industrial action, and what appeared to be a diversion of resources towards achieving regulated QoS standards.
- 3.20 Although achieving the regulated standards is important, as we set out above those standards are intended to be a lower bound. Openreach’s decisions on the level of and resilience of resourcing and the deployment of those resources have a significant bearing on QoS outcomes. In making such decisions, we expect Openreach to consider in broad terms what is important to consumers and competition. The QoS that Openreach delivers in the absence of QoS standards will be an important part of any assessment we make of QoS regulation in the next market review.

Competition

- 3.21 A major focus of the OMU is considering whether any actions or decisions by Openreach risk distorting competition or harming the market. In this section we set out some concerns we have discovered and that stakeholders have raised in relation to several key areas of interest for them.
- 3.22 We are mindful of our important role in maintaining careful scrutiny of the market, including in relation to any anti-competitive conduct that falls within the scope of the Competition Act 1998, and will continue to closely monitor any developments.

Access to Openreach’s physical infrastructure

- 3.23 A key remedy in the WFTMR is access to Openreach’s ducts and poles, also known as physical infrastructure access (‘PIA’). By enabling alternative network operators to use Openreach’s ducts and poles they can deploy their own fibre networks, in competition with Openreach, faster and at a lower cost.
- 3.24 To ensure that PIA works effectively for alternative network operators we placed a number of requirements on Openreach in the WFTMR. We also established an industry working group under the Office of the Telecommunications Adjudicator, which we closely monitor. In addition, we host a CEO level meeting, exclusively on PIA issues, every six months.

Sharing of information

- 3.25 As established in the WFTMR, Openreach is required to adhere to a number of conditions by virtue of having been found to have significant market power in certain markets. One of

those regulatory conditions requires Openreach to provide CPs with access to an electronic database of up-to-date information (as far as reasonably practicable) held by Openreach in relation to its physical infrastructure for the purpose of PIA CPs planning the deployment of an electronic communications network.

- 3.26 During the course of Ofcom's monitoring of Openreach's activities, we identified that certain Openreach survey activities appeared to generate information about its physical infrastructure, which was not being shared with PIA CPs. We engaged extensively with Openreach to understand the nature and the role of the surveys, and the data collated. We formed the view that some of it was information about physical infrastructure that should be made available to PIA CPs to plan their networks (in accordance with the relevant regulatory obligations) and asked Openreach to remedy this concern.
- 3.27 Following this engagement, Openreach developed a process to assess the data it holds in relation to its physical infrastructure to identify disclosable information for PIA communication customers and put in place arrangements to ensure that this information is made available. If Openreach's survey activities generate new physical infrastructure information, it will update the data it shares accordingly.

Competing fibre networks

Concerns about anti-competitive 'overbuild'

- 3.28 Concerns have been raised by stakeholders around instances where Openreach builds its network in the same place as its competitors. This is sometimes referred to as 'overbuild'.
- 3.29 The strategy we implemented in the WFTMR intends to promote investment and competition. We want this to result in more network-based competition, which includes competitive overbuild in many parts of the UK. However, we did acknowledge the risk of Openreach strategically targeting areas where competing networks have built or plan to build to prevent network competitors' rollout in wider areas.
- 3.30 We also included rules on the availability thresholds that should apply in an exchange area before Openreach could implement copper stop-sell. This was consistent with Openreach's plans to deploy fibre to the large majority of premises in each area. These rules were, in part, intended to provide an incentive to Openreach to complete rollout in an area rather than spread resources more thinly across many areas in a way that could deter competitor investment. However, the effect of Openreach's commercial pricing arrangements and the larger CPs' response to those has been equivalent to a copper stop-sell, thus reducing this incentive effect.
- 3.31 Ofcom recognises that many altnets have an objective to be the first fibre network to deploy in a certain area, so as to hold first mover advantage. However, Openreach's [announced plans](#) to deploy its fibre network to 25 million premises (approximately 80% of all UK premises) by the end of 2026 means that it is likely Openreach will, at some point

over the next few years, deploy fibre in many of the areas where altnets have built, or are planning to build, their networks.

- 3.32 Furthermore, Openreach's commitment, made at the time when its plan was to deploy to 20 million premises across the UK, to deploy fibre to 3.2 million premises in Area 3 represents a significant proportion of what are likely to be the most commercially attractive parts of Area 3. BT's subsequent announcement that it had increased its plan to reach 25 million premises is likely to include a significant increase to the planned deployment in Area 3.
- 3.33 It is also important to note that Area 3 was defined as areas in which neither CityFibre nor Virgin Media planned to deploy fibre to the majority of premises. We recognised that there may be build by other competitors in Area 3, but we expected the competitive impact of these smaller expansions will be substantially less. Some parts of Area 3 do support commercial altnet deployment and may be able to support more than one network. It follows, therefore, that overbuild by Openreach in Area 3 is not necessarily anti-competitive.
- 3.34 In response to a number of specific concerns about alleged anti-competitive overbuild, we carried out an in-depth assessment to determine if there was any evidence to justify an investigation. We gathered detailed explanations for each of the specific overlaps, including the commercial model submitted to Openreach's investment board and contemporaneous documents around those decisions. We have found no evidence to suggest Openreach has rolled out its fibre network to target or harm competitors, or that these build decisions were not commercially rational. We continue to closely engage with Openreach around changes to its business plan, and it understands we expect it to justify any major build plan changes which result in new overbuild.
- 3.35 In addition, we collect information on future deployment plans from a large number of network providers.⁷ As part of this, we have access to the full confidential detail of Openreach's roll out plans. We will be able to identify situations where Openreach has adjusted its build plans, to engage with Openreach to understand the factors behind any such changes and to consider the extent to which these factors are consistent with Openreach's general approach to build selection or are otherwise commercially rationale.
- 3.36 Ofcom will continue to be vigilant and monitor Openreach's build plans enabling us to swiftly respond to any signs of anti-competitive behaviour.

Transparency of Openreach's FTTP build plan

- 3.37 Industry stakeholders told us that they had concerns with the way Openreach communicates its FTTP build plan (which it chooses to publish following an agreement with

⁷ We [publish this data](#) regularly in an anonymised and aggregate format.

Government). Specifically, that Openreach's approach failed to provide certainty by failing to set out whether Openreach intends to build to all, or only part, of a given exchange and by setting out unclear or overly long build windows.

- 3.38 Ofcom engaged with Openreach to understand its plan to improve the way it published information on its build plans. As a result of these discussions Openreach changed its publication at the end of 2022 to increase clarity and remove ambiguities. We consider the improved format of the information has addressed those concerns.

Allegations that Openreach had gathered sensitive competitor information

- 3.39 During the course of this monitoring period, we received concerns from a stakeholder that Openreach may have been gathering confidential information about its altnet competitors from shared ISP customers. Although there was no evidence to substantiate this concern, we took the matter seriously, engaged at length with Openreach and sought assurance that such information was not being shared. We gathered from Openreach all documents associated with its engagement with ISPs and which referred to altnets. There was no evidence in this material of commercial information being shared.

Openreach's exchange closure programme

- 3.40 In setting out its long-term plans and with the evolution of Openreach's products towards Single Order GEA ('SoGEA') and FTTP, Openreach has set the conditions that will determine how CPs that use Openreach's network will configure their own networks, and the services they will use in each exchange, over the coming years. In some cases this may mean CPs no longer need a presence in many of the exchanges sooner rather than later, and a general reduction in demand for products in those exchanges.
- 3.41 Consequently, Openreach has set out a broad plan to close around 100 exchanges by 2030 and around a further 4,500 exchanges in the 2030s, leaving around 1,000 exchanges in use. Openreach has announced they will be launching a consultation with industry on the approach to products, processes and pricing in the 100 exchanges it plans to close by 2030. We expect Openreach to carefully consider all responses and take account of any concerns raised.
- 3.42 Although the focus of Openreach's consultation is on the 100 exchanges that it plans to close by 2030, we expect Openreach to also consider whether its products, processes and prices are fit for purpose for CPs' network reconfigurations across the broader estate of exchanges in the coming years. More broadly Openreach should consider the needs of its customers who are also network competitors.
- 3.43 In the first instance, we expect the Office of the Telecommunications Adjudicator to play an important role in facilitating industry agreement on the implementation of any new products and processes needed to support exchange closure programme. We will continue to monitor developments in the market, including proposals for exchange closures. We will consider relevant developments when working towards the next market review.

Openreach's FTTP offers (Equinox 1 and Equinox 2)

- 3.44 In the WFTMR, we set out a framework to promote investment and competition in gigabit-capable networks. In doing so we recognised the risk that Openreach could set commercial terms that undermine new network build.
- 3.45 To address this concern, we required Openreach to notify commercial terms where the price or other contractual conditions are conditional on the volume and/or range of services purchased. This notification process allows industry and us to scrutinise the terms before they are introduced, and where necessary allow us to intervene to prevent such terms being introduced.
- 3.46 Shortly before our last report, we confirmed that we would not be taking any action to prevent Openreach's Equinox 1 Offer from being introduced.⁸ Ofcom's decision was challenged by CityFibre and upheld on appeal by the [Competition Appeal Tribunal](#) in July 2022. Since the judgment, we have maintained careful scrutiny of the market.
- 3.47 In December 2022 Openreach notified a new pricing offer for its full-fibre service (Equinox 2) which is a supplemental agreement to the Equinox 1 Offer. Having carefully assessed the range of evidence available to us – including extensive responses to our consultation – we recently decided not to prevent the new terms from being introduced.⁹
- 3.48 We also considered the level of prices under the Equinox 2 Offer, as well as stakeholders' concerns about Openreach's practice of discussing and developing discounts with ISPs. Having gathered information from stakeholders and assessed the evidence, we did not have prima facie concerns that would lead us to investigate either issue in further detail at this time.

CityFibre Competition Act 1998 complaint about Openreach

- 3.49 CityFibre [made a complaint](#) regarding alleged breaches of the Competition Act 1998 by Openreach as a result of approach to pricing for FTTP, including the Equinox 1 and 2 offers.
- 3.50 Having carefully considered the complaint, Ofcom decided not to open an investigation on administrative priority grounds. While the complaint alleged conduct that could have had an impact on a market which was strategically significant to Ofcom, there was significant overlap between the issues raised by CityFibre in the Complaint and those that were considered and assessed in the Equinox 2 process.
- 3.51 In the round, we decided the potential benefits of conducting an investigation were not justified given the likely resources required to complete an investigation which would re-examine generally the same issues considered by the Equinox 2 process.

⁸ Ofcom, [Statement: Openreach proposed FTTP offer starting 1 October 2021](#), 30 September 2021.

⁹ Ofcom, [Statement: Openreach proposed FTTP offer starting 1 April 2023 \(Equinox 2\)](#), 30 September 2021.

Wider considerations

- 3.52 As set out in the overview, the Commitments do not completely remove the risk of BT's behaviour having the effect of reducing competition. Therefore, focus should be on compliance with the spirit and objectives behind the Commitments and the WFTMR, not only with the letter of the text, and compliant behaviour should be driven by example from the very top.
- 3.53 The comments made by Philip Jansen in an interview with the Financial Times in February 2023 caused significant concern for industry and for Ofcom. It raised questions about whether the Commitments alone are sufficient to prevent BT from exerting its dominance.
- 3.54 We have also had concerns raised by stakeholders that the behaviour by BT of not passing on Openreach price increases in BT's pricing of some leased line services in downstream markets could result in BT gaining market share, and in doing so reduce the prospects for network competition by reducing the size of the downstream market that is contestable by altnets. Whilst BT is free to compete on the merits in downstream markets, given BT's dominant position in relevant markets and strong position in downstream markets, we would be concerned if the effect of BT's downstream behaviours were to result in the reduction of competition between networks.
- 3.55 Subject to the requirements and restrictions set out in the WFTMR Statement, Openreach is allowed to compete with altnets. Ofcom is mindful that the cumulative effect of BT and Openreach behaviours could increase the risk for altnets in the market. However, there is a difference between promoting competition and supporting individual competitors. We are mindful of this as we exercise our functions.

4. Looking ahead

- 4.1 As we enter year seven of the Commitments, the OMU's role is more important than ever. The OMU remains particularly vigilant that compliance with the rules of the WFTMR and the Commitments is not only embedded in the actions but also in the behaviour of all involved, something which is key to avoid the risk of complacency.
- 4.2 The OMU will continue to hold Openreach to account in ensuring it continues to operate with greater strategic independence from BT Group, and respects fair competition. We will continue to monitor and report on the Commitments and any issues arising out of the market review framework moving forward. We recognise that we are in a key period for fibre investment and the vigilance of the OMU is especially important to industry stakeholders.
- 4.3 We encourage stakeholders to bring issues to us where they are concerned. Over the next monitoring period, we intend to scale up our engagement and strengthen our dialogue with third party stakeholders to ensure we can proactively address issues or concerns about compliance or anti-competitive behaviour in real time. It is important the OMU's operation remains an objective, vigilant and transparent safeguard.
- 4.4 As we have made clear throughout this report, where we have concerns, or where issues are brought to our attention by stakeholders, we will intervene and not hesitate in holding BT and Openreach to account when necessary.