

## Notice of release of undertakings given by British Telecommunications plc pursuant to section 154 of the Enterprise Act 2002

1. In 2004/05, Ofcom conducted a Strategic Review of Telecommunications, finding that there were reasonable grounds to suspect that competition was being restricted in the markets for the supply of wholesale access and backhaul network services in the telecommunications sector in the UK and in the directly related downstream retail markets. British Telecommunications plc (“BT”) offered certain undertakings to Ofcom under section 154 of the Enterprise Act 2002 (the “Undertakings”) and Ofcom accepted those Undertakings in lieu of making a reference to the Competition Commission. The Undertakings took effect on 22 September 2005. Pursuant to the Undertakings, BT established Openreach as a functionally separate line of business within BT.
2. In February 2016, Ofcom published its initial conclusions from its 2016 Strategic Review of Digital Communications, in which it identified a competition concern that the model of functional separation established under the Undertakings failed sufficiently to remove BT’s ability to discriminate against its competitors that rely on its network.<sup>1</sup>
3. On 18 July 2016, BT made a notification to Ofcom pursuant to section 89C of the Communications Act 2003 of its intention to implement changes to the governance structure of Openreach. On 26 July 2016, Ofcom set out its view that the July 2016 Notification did not fully address its competition concerns.<sup>2</sup> On 29 November 2016, Ofcom announced that it was proceeding with a formal notification to require the legal separation of Openreach from BT.
4. On 10 March 2017, BT notified Ofcom of voluntary commitments under section 89C of the Communications Act 2003 to further reform Openreach (the “March 2017 Notification”).<sup>3</sup> The March 2017 Notification provided that a number of pre-conditions had to be satisfied before the arrangements were implemented, including the release of BT from the Undertakings. BT also requested that Ofcom release it from the Undertakings pursuant to section 154(6)(c) of the Enterprise Act 2002.
5. On 17 March 2017, Ofcom confirmed that it considered that the arrangements set out in the March 2017 Notification would provide an effective and long-term solution to address its competition concerns identified in the Strategic Review and the concerns it originally identified in 2004/5 as part of its Strategic Review of Telecommunications to the extent they remained.<sup>4</sup> In light of BT’s March 2017 Notification, and in accordance with its duties under section 154(7) and 162 of the Enterprise Act 2002, Ofcom published notice of its proposal to release BT from the Undertakings.
6. On 13 July 2017, having considered all representations made to it on its proposal to release BT from the Undertakings, Ofcom published its decision to release BT from the Undertakings

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/50416/dcr-statement.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/50416/dcr-statement.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0022/76243/strengthening-openreachs-strategic-and-operational-independence.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0022/76243/strengthening-openreachs-strategic-and-operational-independence.pdf)

<sup>3</sup> <https://www.btplc.com/UKDigitalFuture/Agreed/index.htm>

<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0035/98855/Openreach-consultation-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0035/98855/Openreach-consultation-2017.pdf)

30 days after BT had notified Ofcom that the conditions set out at paragraph 3(a)-(c) of its March 2017 Notification had been satisfied.<sup>5</sup>

7. On 1 October 2018, BT notified Ofcom that: (i) it has waived the conditions set out at paragraph 3(a)-(b) of the March 2017 Notification in light of the arrangements relating to the closure of the of the BT Pension Scheme; and (ii) the condition set out at paragraph 3(c) of the March 2017 Notification, regarding the completion of the consultation with relevant employees and representatives ahead of a TUPE transfer, has been fulfilled. On 1 October 2018, the TUPE transfer of relevant employees and representatives from BT to Openreach Limited took place and BT entered into an Agency Services Agreement with Openreach Limited, in accordance with which Openreach Limited will manage and operate the Openreach line of business on behalf of BT. BT has therefore now taken the steps to fully implement the arrangements set out in the March 2017 Notification.
8. Therefore, as set out in Ofcom's decision of 13 July 2017, and pursuant to paragraph 8 of Schedule 10 to the Enterprise Act 2002, Ofcom now gives notice of the release of BT from the Undertakings.

**31 October 2018**

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<sup>5</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/104474/delivering-independent-openreach.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/104474/delivering-independent-openreach.pdf)