

18th January 2019

CWU Response to Ofcom Business Connectivity and Physical Infrastructure Market Reviews

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK. We represent over 60,000 members in the telecommunications industry working in around twenty companies including BT, Openreach, Virgin Media, Sky and TalkTalk. We are the only trade union with formal recognition for non-management grades in BT and Openreach.
2. We welcome the opportunity to respond to Ofcom's Business Connectivity and Physical Infrastructure Market Review consultations. As the two consultations are linked and running in parallel, we are making a single submission in response to both.
3. We agree that more fibre technology is critical to delivering better broadband services, and we believe that high quality broadband should be universally available across the UK. We therefore support Ofcom's objective to enable more fibre investment and to ensure that investment is not limited to meeting demand from one set of customers or another.
4. We also consider that the regulatory framework must strike the right balance between promoting investment and competition, complemented by public interventions where there is no commercial case to build networks. The CWU has consistently expressed our concern that regulation is too focused on encouraging price competition, and that this places a constraint on investment, service quality, jobs and terms and conditions of employment. As we have said in previous submissions, we wish to see a fundamental shift in regulation towards raising minimum quality standards and incentivising investment for the benefit of all stakeholders. This includes workers in the sector and users of communication services with less market power, such as those living in harder to serve areas.

Business Connectivity Market Review

Protecting customers where network competition is unlikely

5. We agree that it would not be desirable for BT to raise prices in harder to reach areas in order to reduce prices in more competitive areas. However, BT can only deliver services

in harder to reach areas if it has the necessary funds to invest. This will depend on a regulatory framework that allows BT to recover its costs and provides sufficient incentives to continue investing in the network.

6. Therefore, whilst safeguarding prices in areas of low competition, Ofcom must also allow BT to compete effectively and earn a fair return on investment including in more competitive areas where there is greater pressure on pricing. If not, the required level of funding will not be forthcoming and there will be no realistic prospect of serving the needs of customers in less competitive areas.
7. The same principle applies to the roll out of universal broadband. The CWU has long called for a broadband universal service obligation, and we welcome Ofcom's recent proposal that BT should be designated as the official broadband Universal Service Provider (USP). However, the funding needed to achieve universal roll out will rely on sufficient investment incentives, cost recovery mechanisms and the ability to cross subsidise from profitable parts of the network to deliver services to harder to reach areas.

Dark fibre for inter-exchange connectivity

8. We are concerned that Ofcom's proposal to require BT to provide dark fibre at cost, combined with unrestricted duct and pole access, will not provide sufficient incentives for BT to commit high risk long term investment in new fibre optic networks. This is especially likely to be the case in harder to serve areas. All the investment risk would be carried by BT as the infrastructure provider with rivals able to pick and choose where and when to operate. This would not appear to fit with Ofcom's objectives of supporting long term fibre investment or providing the opportunity of higher returns on risky investments.

Continuing controls over quality of service

9. We agree that Openreach has improved service quality since regulation was first introduced and that it would not be appropriate to relax or withdraw quality of service regulation. We also believe that performance can and should continue to improve, but this will continue to depend on the ability of Openreach to fund the resources it needs to deliver those improvements.
10. We note that Ofcom has proposed more stringent quality of service standards for Ethernet services in certain areas. For example, the mean time to provide across orders is set to reduce from 40 days to 38 days maximum, whilst the maximum mean period for the iCDD (initial Contractual Delivery Date) will reduce from 55 days to 53 days.
11. As we said in response to the Wholesale Local Access Market Review in 2017, quality of service is important to the CWU and our members. Better quality services leads to increased customer satisfaction and greater customer demand, helping to create direct labour jobs and protect labour standards.

12. CWU members work extremely hard for Openreach and its customers, and they do so in what is often a very challenging and stressful working environment. Placing excessive pressure on the Openreach workforce would be damaging for operational effectiveness and service quality. Therefore, it is important that Openreach has the ability to invest in the resources it needs to deliver service quality improvements. Ofcom must ensure, through appropriate cost and pricing regulation, that Openreach is able to retain and build the workforce it needs with the skills and expertise to deliver the best possible quality of service for customers.

Physical Infrastructure Market Review

Unrestricted access to BT's ducts and poles

13. We recognise that providing unrestricted access to BT's ducts and poles will help to avoid network duplication costs and remove barriers to entry due to the high cost of constructing new infrastructure. However, it must be done in a way that offers continued incentives for long term network investment; allows BT to recover all its costs; and ensures that quality of service and health and safety standards are upheld.

Recovering additional costs and supporting decent labour standards

14. As Ofcom notes, the requirement for unrestricted physical infrastructure access (PIA) could have a material impact on Openreach, both in terms of the resources required to carry out repairs and install additional capacity, and the costs associated with network adjustments. For example, Openreach may need to expand its workforce by hiring more network planners and field engineers.¹ It is important that the regulatory framework allows Openreach to recover these costs in full, and that it enables the business to maintain an engineering workforce that is overwhelmingly directly employed, UK based, well trained, multi-skilled and on upper quartile rates of pay and conditions of work.

15. As we have said in previous submissions, there is a connection between labour standards in Openreach and the company's ability to deliver high quality services. Any weakening of pay, terms and conditions for Openreach employees will inevitably be detrimental for overall staff recruitment, retention, motivation and productivity. If Openreach continues to be a good employer then it will be much better equipped to serve its customers well in the future.

Health and Safety regulation

16. We also believe that with increased access to the Openreach network, Ofcom should ensure that there are strict requirements on health and safety for providers working on the network. We are aware that specified engineering rules and health and safety standards already exist that communications providers must comply with. It is therefore

¹ Physical Infrastructure Market Review, Ofcom, 2nd November 2018, para A9.23, p.164

disappointing, and a serious omission in our view, that this issue is not touched on in Ofcom's Physical Infrastructure consultation.

17. The CWU has consistently argued that transparency of maintenance standards, extending to minimum health and safety standards, should form part of Ofcom's regulation of Openreach and the other companies that use its network. This would help to ensure that the rules and safety standards are as robust as possible for the protection of all of those working on the network. It would also ensure that the network is consistently maintained to a high standard, thereby supporting Openreach and other communications providers in delivering a high quality service to all their customers.