

# Ofcom Wholesale Fixed Telecoms Market Review 2021-26

## Response by Fern Trading Limited

This response to Ofcom's consultation on its Wholesale Fixed Telecoms Market Review comes from Fern Trading Limited ('Fern'). Fern owns both Jurassic Fibre Limited ('Jurassic') and Swish Fibre Limited ('Swish'), who will be providing their own separate responses.

### Summary

1. The current UK telecoms regulatory regime has been successful in encouraging large infrastructure funds and investors, including Fern, to invest in the altnet sector and build full-fibre networks in places where BT has failed to do so.
2. We encourage Ofcom to reflect on what has caused the recent increase in UK full-fibre network build rates by all operators, including BT. It is not down to the altruism of BT, but, rather, BT's competitive response to accelerated altnet commercial build programmes.
3. Reducing this competition in over a third of UK postcodes will ultimately push back the date at which full fibre connectivity will be available to all residents in the UK as funding currently committed or planned into fibre operators other than BT will likely be curtailed materially, and cash-strapped BT will not step into the breach if altnets don't invest.
4. Ofcom's strategy and market definitions need to align much more closely with that of BDUK. Only with alignment of regulatory frameworks and Government financial incentives, will everyone's ambitions of a fully-fibred UK by 2025 become a reality.

### Introduction

5. Fern is a large trading group, of over £2 billion in size, and is advised by Octopus Investments Limited. It is active in the Healthcare and Property sectors, and has been at the forefront of funding and developing the Renewables sector in the UK over the last ten years. It is now keen to play a key part in the much-needed rapid growth of the Fibre Broadband sector in the UK.
6. Fern has acquired and is now backing Swish and Jurassic, whose business plans focus on commercial fibre network deployment in the UK.
7. Swish and Jurassic are both "Multi-Service Networks", whose networks serve both business and residential customers, provide a wide range of services including both leased lines and broadband, and expect to cover approximately 2.5 premises each in the period up to 2026, plus a further approximately 2.5 properties each in expansion plans that are under consideration in economically viable areas.
8. In the last 18 months alone, we have committed to fund at least £500m of capital into Jurassic and Swish over the next five years to help them meet their objectives.
9. In the period between now and 2026, Fern is expecting to fund the two companies with even more equity capital if their construction programmes grow in size as further additional economically viable locations are identified, and indeed could look to fund further companies in the sector if the regulatory framework continues to encourage investment into an area of UK infrastructure that is in need of large amounts of capital.

10. We believe that a large number of such locations are currently wrongly classified as “Area 3” by Ofcom, and therefore there is a material risk that these locations will not benefit from one operator, let alone two or more operators, building an FTTP network in the next five years if they remain incorrectly classified despite being economically viable for Swish, Jurassic or any other operator to build there.

#### **Commercial Plans and Area 2 definitions**

11. The business plans of Jurassic and Swish do not include a requirement for public intervention or funding. These plans have been carefully reviewed by us, our advisers Octopus Investments Limited, and various sector experts, and assessed as commercially viable.
12. By definition, therefore, all locations where Jurassic and Swish plan to build in the period up to 2026, should be classified as Area 2, as these plans are credible, well-funded, and underway.
13. A full list of all postcodes in which Jurassic and Swish are building is provided confidentially in their respective responses, for inclusion in your Area 2.

#### **Enhancing competition, choice and connectivity for end customers in the UK in Area 2 locations**

14. In the long-term, we do not expect Jurassic or Swish to be the sole provider of connectivity to end customers in their geographies.
15. Both businesses are targeting build where connectivity is currently poor and no ultrafast product is available to end customers. They are not intending to overbuild existing operators, but instead are focusing on underserved communities who only have copper or FTTC today.
16. We believe commercial companies like Jurassic and Swish should be encouraged to not overbuild each other whilst large portions of the UK continue to suffer from poor connectivity, following years of underinvestment by BT.
17. We believe this will help achieve the Government’s objectives of providing full fibre broadband to every home in the UK by 2025.
18. Once this milestone is reached, the business plans we have backed envisage BT or another fibre operator overbuilding Jurassic and Swish networks, as there is likely to be commercial logic for this once BT’s copper network is switched off.
19. We therefore expect that end customers covered by Jurassic and Swish networks will always have a choice of ISP and a choice of infrastructure provider.

#### **Transparency of BT**

20. Fern has been disappointed by what appears to be a lack of transparency in BT Openreach’s fibre build programme.
21. As noted above, in order to provide ultrafast connectivity and choice to end customers as soon as possible across all of the UK, operators should be encouraged to not overbuild each other. In addition, BT should be entirely transparent about its own full-fibre build plans, so that altnets deploy in locations where BT is not planning to overbuild them.
22. We have become aware of a “Retro NewSites Programme” which allows BT to build in various locations in the UK outside of its Fibre First announced plans. At best, this risks unnecessary overbuild whilst vast swathes of the UK remain without fibre. At worst, when combined with information available to BT through its PIA ordering portal, it allows BT to misuse confidential data specifically to target areas for FTTP upgrade which other operators are building in. This

reduces the commercial attractiveness of those areas to altnets. It will lead to less funding being invested into the fibre sector by commercially-minded investors.

23. In line with its own Commitments Code of Practice, BT must not use confidential information acquired in one part of its organisation for the commercial benefit of another part. Ofcom should rigorously enforce this requirement. Otherwise, with investment curtailed, it could take longer to cover the whole of the UK with fibre.

#### **Future plans**

24. The network build plans of Swish, Jurassic, and indeed all companies active in the sector, can expand and accelerate, as opportunities arise to provide connectivity to more of the UK. We appreciate that it is difficult to forecast where commercial providers are likely to deploy if Ofcom doesn't have access to firm details of funded plans.
25. To address this, Ofcom should conduct a modelling exercise to assess which postcodes in the UK are potentially economically viable for an operator to build in, and hence should be classified as Area 2. Relying on today's build plans alone from existing operators whilst vast swathes of the UK remain without ultrafast connectivity, risks misclassification of a large number of premises in the UK.
26. At the very least, Ofcom should include provisions in their rulings to allow dynamic conversion of any postcode that it has initially classified as being in Area 3, to Area 2 if an operator other than BT has built a network there.
27. Failure to do this would result in BT being able to offer geographic price discounting in those areas, with the aim of deterring competition from altnets from areas that they consider to be commercially viable, but Ofcom doesn't. This will lead to loss of choice for end customers.

#### **Impact of classifying locations erroneously as Area 3**

28. We believe that classifying a location as Area 3 effectively provides a monopoly to BT in that location, and reduces the likelihood that a third party would build there.
29. Fern has backed business plans in Jurassic and Swish which do not expect BT to be handed a regulated monopoly position in geographies covered by their network builds. The locations are by definition economically viable for a fibre operator to build there, without requiring additional incentives from Ofcom to BT.
30. If Ofcom does classify locations within the Jurassic and Swish build plan footprint as Area 3, despite the fact that they can clearly support competition, there is a material risk that Fern would divert funding for Jurassic and Swish into other sectors and not build at all.
31. This would leave those locations in Area 3 without an FTTP proposition for a considerable period of time.
32. To re-iterate the point above, we have committed up to £500m of capital to highly credible and experienced companies that are building fibre broadband networks in the UK that will cover over a million premises, even though the majority of these locations are currently classified as Area 3. This commitment has been made in the current regulatory environment, which promotes open competition, and seeks to prevent anti-competitive behaviour from BT.
33. We would reconsider making such investments in the sector if favours are granted to BT at the expense of commercial operators, and would expect other funders and investors to do likewise.

34. This would have leave hundreds of thousands of customers in Area 3 without the connectivity they need until BT firstly raise the capital required to build a fibre network and then secondly decide to prioritise such areas ahead of more urban areas – both of which tasks have proved beyond them for the last twenty years.