



**12<sup>th</sup> April 2017**

## **CWU and Prospect Response to Ofcom Consultation - Delivering a more independent Openreach**

### **Introduction**

1. This is a joint submission from the Communications Workers Union (CWU) and Prospect. Between the two unions we represent the vast majority of BT employees, including all of the company's Team Members (non-managers) and the company's reward framework workforce. We are the only unions in the UK with formal recognition in BT and the only unions with membership in BT.

### **Background**

2. The CWU and Prospect made a joint submission to Ofcom's consultation on Openreach in September 2016, and we have held a number of meetings with Ofcom on this issue in recent months. In making our representations we have outlined our serious concerns about the problems the separation of Openreach from BT Group could bring for BT employees, especially for those in Openreach.
3. Whilst it is helpful to now have some clarity around this situation after what has been a long period of uncertainty, Ofcom's decision to establish Openreach as a distinct company nevertheless means we are now faced with some real and considerable challenges. These relate in particular to the job security, pensions and terms and conditions of our members, as well as to BT's ability to make adequate investment in the UK's telecoms networks and services.

### **Job security, pensions and terms and conditions of employment in BT**

4. Throughout Ofcom's Digital Communications Review and its more recent focus on BT, the CWU and Prospect made clear our view that the legal separation of Openreach risks a negative impact on resource and labour standards in the business.
5. We argued that the ensuing TUPE transfer risked undermining the terms, conditions and job security of 32,000 Openreach employees. We also expressed our concerns that it would weaken the pension scheme covenant which would result in higher pension deficit repair payments, reducing the amount available for network investment.

6. Following Ofcom's decision on the future of Openreach, we will be doing all we can to protect the interests of our members. There is no doubt that the TUPE transfer of 32,000 workers will be a complex task that carries with it certain risks, especially given its complexity and the time that will need to be invested by the business and the trade unions to get right.
7. We also have to consider that TUPE legislation changes which came into effect in 2006 watered down the protections for workers. We therefore will be seeking a binding agreement with BT to protect its employees' pensions, pay, terms and conditions, as well as all collective agreements and career development opportunities into the future.
8. Although we welcome that Ofcom's final agreement with BT provides some assurances on the future of the BT Pension Scheme, including legislation on the Crown Guarantee, we still await the BT Pension Scheme Trustees' consent to Openreach Ltd becoming a participating employer in the pension scheme.
9. These employment related issues should be important considerations for Ofcom, because there is a connection between labour standards in Openreach and the company's ability to deliver high quality services on behalf of its customers. 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. Unfortunately these matters are almost entirely neglected in Ofcom's normal regulatory decision making process, and we believe this has to change if Ofcom is to ensure the best outcomes for users of communications services.

### **Network investment**

10. The CWU and Prospect have consistently expressed concerns about the impact of the break-up of BT on the company's ability to invest in network infrastructure.
11. Whilst Ofcom's decision to legally separate Openreach from BT Group was in part driven by the theory that it would give Openreach greater freedom to invest in the network, we do not believe Ofcom has ever provided any real evidence that such investment would be forthcoming. The reality is that BT's rivals have not actually been willing to make any solid commitment to invest in an independent Openreach. Furthermore, no fixed network operator other than BT has demonstrated any intention to invest in communications networks in areas of the country where the economic case is weak, or to offer their services for universal coverage of 10Mbit/s by 2020.
12. It is also the case that there are complexities and potential costs involved in becoming a wholly owned subsidiary, which could impact on Openreach Ltd's investment potential in the future.

### **Consultation question: Do you agree with our proposal to release BT from the Undertakings 30 days after receiving notice from BT that the conditions in paragraphs 3(a)-(c) of its March Notification are satisfied?**

13. We remain of the view that BT would be much better equipped to invest in and deliver high quality communications networks and services if it was to remain a unified company with

Openreach as a division within BT Group. BT's scale and structure as a vertically integrated business has allowed it to pursue a long term, high risk investment strategy which is now likely to be under threat.

14. Whilst we agree that BT could and should have invested more in Openreach in recent years, we do not believe that splitting the company up will encourage more private sector funding for network infrastructure. It is more likely to have the opposite effect, particularly for hard to reach areas where the business case is weak, because it will undermine the scale needed to support investment decisions.
15. In light of Ofcom's decision to legally separate Openreach from BT Group however, we believe that satisfying the conditions set out in BT's March Notification is essential before BT is released from the Undertakings and Openreach Ltd is created.
16. Above all, our main interest is that our members' job security and terms and conditions are maintained. This means we will continue to seek absolute assurances from both BT and Ofcom that there will be no effect on our members' terms and conditions as a result of the transfer. If this is not forthcoming, it will undoubtedly create serious problems for industrial relations in the company. This in turn will be detrimental to all stakeholders, including both Openreach's employees and its customers.
17. We believe that the UK's digital infrastructure needs are best served by a regulatory framework that promotes long term investment as a priority, including in harder to serve areas, and recognises the importance of a properly valued workforce in building and maintaining the network to the highest standards.

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