

## Delivering a more independent Openreach

Response to Ofcom consultation on BT's voluntary notification under s.89C Communications Act 2003 and consultation on releasing the BT Undertakings pursuant to section 154 Enterprise Act 2002

**Non - Confidential Version**

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## Foreword

On 17 March 2017, Ofcom published their consultation which explains why they consider BT's voluntary commitments to further reform Openreach sufficiently meets their competition concerns.

This submission is provided by Openreach, a line of business within British Telecommunications plc ("BT"), in response to proposals related to Openreach's business. BT will provide a separate submission in response to proposals related to wider BT matters.

# 1. Introduction

1. Openreach is pleased that Ofcom have accepted the proposals to further enhance the organisational structure of its business as a pragmatic solution to meeting their concerns as set out in Ofcom's initial conclusions published in February 2016. We are fully committed to implementing the requirements of the Commitments and Governance Protocol, which include a focus on compliance, increased transparency and improved customer engagement. We genuinely believe that together, these changes will provide a framework that will drive significant improvements across our industry for the benefit of UK citizens. As customer expectations continue to rise, Openreach is committed to playing its part to work with Communications Providers (CPs) to not only meet, but develop plans to exceed future expectations.
2. We have already started to introduce new governance and measures in advance of the formal introduction of the Notification<sup>1</sup>. This paper provides Openreach's response to the areas identified by Ofcom relating to Monitoring and Measures of Success.
3. Openreach is passionate about engaging with industry to collectively identify new opportunities to bring about fundamental improvements in the products and services we and our customers deliver to UK consumers and businesses. We are keen to ensure that customers have confidence in our processes such that they proactively seek out opportunities to work with us on initiatives, including new business models to grow and develop the market. We are enhancing our existing Statement of Requirements (SOR) process and introducing a new Customer Consultation Process which includes a specific confidential phase during which CPs can raise proposals, including co-investment proposals, with us.
4. We agree that effective controls and reporting are important to demonstrate compliance with the Commitments, in support of the announcement that a positive long-term regulatory settlement has been reached with Ofcom on its Digital Communications Review (DCR). In line with this ambition, we have already put place a number of measures:
  - the appointment and induction of an independent Openreach Chair and Board;
  - the creation and first meeting of the Openreach Board Audit, Risk and Compliance Committee (OBARCC);
  - the establishment of a remuneration committee for Openreach, chaired by an independent non-executive Director;
  - the development of the CP Consultation Process (as discussed in more detail in Section 2 of this response below); and
  - redesign of the Openreach brand to remove the reference to BT Group and the associated logo.
5. We share BT's concern, set out in Section 3 of its response, that there are a number of areas where the Undertakings could potentially inhibit our ability to implement aspects of the Commitments in advance. For example Openreach wants to introduce the redesigned brand as soon as possible, for

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<sup>1</sup> Voluntary agreement to implement the requirements as detailed in response to Ofcom's Digital Communications Review

practical reasons and to give a visible sign of Openreach's commitment to the new regulatory settlement. However, the Undertakings require that the Openreach brand is used in proximity to the words "a BT Group business" and the BT corporate logo. Similarly, the OBARCC is keen to assume responsibility for Undertakings compliance monitoring as part of the move to greater independence for Openreach. However, the Undertakings require that the EAB is responsible for monitoring compliance across the whole of the BT Group. Openreach would like to work with Ofcom, alongside BT, to ensure that such matters do not stand in the way of early implementation.

6. We broadly support the proposed key metrics and methods as part of the governance arrangements which allow increased transparency in the ways in which Openreach operates its business, although we would point out that quality of engagement may be more important than quantity.
7. Openreach is fully committed to meeting and demonstrating compliance with the aim of ensuring that the new model delivers against the broader policy objective of ensuring that Openreach acts and treats customers equally. However, in order to ensure proposed metrics and methods provide the appropriate measures, further work is required. In particular:
  - the metrics need further definition as some are open to interpretation; and
  - some of the proposed metrics are not wholly under Openreach's control: CPs need to play their part in contributing to the measure and its success, and Openreach cannot be held accountable for the action or inaction of others.
8. We would welcome wide discussion with Ofcom, OTA2 and industry to clarify the above and to ensure all parties are aligned.
9. Finally Openreach supports Ofcom's 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.

## 2. Consultation with customers

10. Ofcom put forward three areas where they will draw upon their monitoring work to assess the success of the new Openreach. This section provides our comments on each of these areas, i.e. how successfully Openreach:
- responds promptly and effectively to its customers' needs, for example in developing new wholesale products and services;
  - leads engagement with industry on major, strategic network investment programmes to deliver better services for consumers and businesses; and
  - considers and engages with its customers on new commercial models and relationships to support continued investment and quality, including approaches such as co-investment and risk sharing.
11. The assessment of these areas should be done in line with the improvements already in train which has been discussed and agreed with industry and the OTA2. In this respect the way in which new proposals and SORs are considered is a shared responsibility. Notably we are putting in place<sup>2</sup>:
- new clear industry guidelines on which process Openreach and CPs will use for each type of change they initiate;
  - processes that are clearly defined (based on small, medium and significant changes) and much more transparent to all parties;
  - a new documented process including confidentiality rules and governance to discuss new significant CP ideas, including those incorporating co-investment proposals (see below);
  - that Openreach initiated change including service changes will follow one of the newly defined processes;
  - an improved and clarified process for industry consultation for significant Openreach investments; and
  - new, improved communications starting with an SOR dashboard that can be expanded to cover all consultation processes where appropriate.
12. A key element associated with the above improvements is that there will be a single industry view of SOR progress, reviewed and agreed at monthly industry fora. Industry and the OTA2 will assess and mark the progress of each change initiative flowing through the change processes via the industry fora. The SOR progress will also be reviewed as part of new formal governance structure, including compliance by the OBARCC and review by the Openreach Board.

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<sup>2</sup> In addition, the way in which SoRs are considered will be reviewed in light of the final Wholesale Local Access (WLA) Market Review Statement

13. We welcome active engagement with our CP customers through more structured consultation. We have already stated publically that we want to invest in more 'full fibre' infrastructure where the economic case can be established, and we will be consulting with our CP customers on how best to achieve that aim.

### Introduction of new Customer Consultation Process including Confidential Phase

14. As part of the enhancement in the way that we engage with CPs and, as part of the Commitments, Openreach is putting in place a new customer consultation process including a specific confidential phase. This will be a formal process for consulting with our customers in the early stages of significant investment decisions related to the future development of its network:



15. This new process will be the mechanism by which new large scale and strategic investments are discussed and agreed with our customers.
16. The process includes an explicit confidential phase with stringent information sharing rules and which features:
- a secure mailbox to ensure all confidential information is only accessible by appropriate parties;
  - CP guidelines on the process including Service Level Agreements (SLAs) so that all parties are clear on responsibilities and timescales;
  - an industry agreed request template to document each proposal; and
  - agreed Non-Disclosure Agreements (NDAs) which are in place throughout the Confidential Phase.
17. The confidential phase will commence once the Openreach Confidential Request Form (OCRF) has been completed and submitted by the CP to Openreach. During this phase CPs can discuss investment ideas with Openreach without the considered investments (and any information contained in the Confidential Request Form) being disclosed outside of Openreach except with written consent of the CP proposing the investment.
18. In the event that a CP request for significant investment in Openreach networks and products is followed by a similar request from another CP, the CPs' requests will remain confidential (including from each other).
19. CPs will be informed about the progress and outcome of Openreach's evaluation of their request together with details of Openreach's reasoning. The Customer Consultation Process is monitored and overseen by the OBARCC.

20. The new confidential phase should give customers the confidence to engage in discussions with Openreach around strategic alternative business models. This includes the potential for co-funding initiatives which we are keen to discuss with CPs to provide more opportunities for wider deployment networks and services to consumers in the UK.
21. Downstream divisions of BT Group plc will also use this new process to initiate their proposals for major new investment. The process does not stop Openreach from initiating major network investments or operational changes itself.
22. The Openreach Board will ensure that the Openreach Executive consults with CPs and will consider and address, as appropriate, representations from CPs, Ofcom and other stakeholders. Monitoring and compliance of this process will be carried out by the OBARCC.
23. We are inviting comments on the proposed new process via industry fora, bi-lateral meetings and board to board sessions. We are passionate about engaging with industry to collectively identify new opportunities to bring about fundamental improvements in the products services we and our customers deliver for UK consumers and businesses.



### 3. Monitoring

25. We agree that effective controls and reporting are required to demonstrate compliance with the Commitments and we are committed to building on our track record of compliance with the Undertakings. Demonstrating compliance is key to the success of the Commitments and it is important that Ofcom and our customers have confidence in Openreach governance and compliance processes.
26. This commitment to compliance can be seen in the actions that we have already taken, notably:
  - the appointment and induction of an independent Openreach Chair and Board;
  - the creation and first meeting of the OBARCC; and
  - the development of the CP Consultation Process (as discussed in more detail in Section 2 above).
27. We have proactively implemented the OBARCC, with the inaugural meeting held on 24 March 2017. The OBARCC has been set up as a committee of the Openreach Board with responsibilities which include reviewing Openreach's compliance with the Commitments and the Governance Protocol when they come into force. The OBARCC consists of the three independent non-executive directors and the Openreach Chairman, with guest Openreach Executive members and customers to be invited as and when appropriate. The Terms of Reference of the OBARCC have been agreed by the Openreach Board and we will use the insight and experience of the OBARCC members to help strengthen our compliance approach. Openreach will ensure that the OBARCC will have the resources necessary to undertake its responsibilities under the Commitments and the Governance Protocol.
28. We have a good track record of complying with the Undertakings, and there has been a decline in both the volume and significance of any Undertakings breaches over the years: this demonstrates our commitment to working proactively with the Openreach business to reinforce the importance of equal treatment and a compliance culture in which potential areas of non-compliance are self-reported by the people involved in them.
29. We are incorporating best practice from our current compliance approach. New mandatory training for all Openreach people is being put in place and supplemented with bespoke training for specific teams. Our immediate focus is on culture and the governance changes that support and underpin the Commitments and enhance Openreach's independence. We will be rigorous in our monitoring of compliance and will strengthen our audit and review capability through the OBARCC's exercise of its responsibilities, when the Notification comes into force, to:
  - review the content of the Code of Practice for Openreach Employees;
  - review alleged breaches by Openreach Limited and/or the Openreach Division of the Commitments and the Governance Protocol and determine in each case whether a breach has occurred and whether it is trivial or non-trivial;
  - review complaints relating to the compliance of Openreach Limited and/or the Openreach Division with the Commitments and Governance Protocol including those made by: (i) BT plc or Openreach Employees to BT's confidential helpline and access routes established for general purposes; (ii) Openreach's customers; and/or (iii) Ofcom, and determine in each case whether a

breach has occurred and whether it is trivial or non-trivial; and

- report back to complainants regarding the outcome of their complaints including whether the OBARCC considers that a breach by Openreach Limited and/or the Openreach Division of the Commitments or the Governance Protocol has taken place.
30. In the period before the Notification comes into force, the OBARCC is keen to assume responsibility for monitoring Openreach's compliance with the Undertakings. As part of this transition we envisage moving the members of the Equality of Access Office (EAO) to Openreach to support the OBARCC by the end of June subject to Ofcom's agreement. These changes would be a significant part of the move to greater independence for Openreach and would also help to ensure a smooth transition to the new arrangements when the Notification comes into force. However, the Undertakings could potentially inhibit us from taking these steps since they give responsibility for monitoring compliance across the BT Group including Openreach to the Equality of Access Board (EAB), supported by the EAO. Openreach would like to work with Ofcom, alongside BT, to ensure that this is not the case.
31. In the meantime, the EAB retains all its current responsibilities, but has agreed that it will produce a regular report on Openreach compliance with the Undertakings for the OBARCC. This forms part of an agreement between the OBARCC and EAB on how they will work together.
32. As part of continuous improvement, we welcome the opportunity to review our governance processes and, in particular, incorporate best practice from working with independent members of the Board into the new OBARCC model.
33. In terms of the specific areas of monitoring, the remainder of this section of our response focuses on governance arrangements and independence and equal treatment of Openreach's customers.

### Governance arrangements

34. Whilst noting that the full implementation of all the requirements of the March Notification is dependent on the length of time required to meet the specified pre-conditions Openreach has already gone a long way towards implementing a number of the Commitments. Regarding the specific metrics/methods:

Key metrics/methods	Progress
Interactions between CEOs	In place. Presentation of a report of CEO to CEO interactions is a standing agenda item at Openreach Board meetings.
Duties of the Openreach Board	In place. Terms of Reference have been approved by Board members.
Processes to draft, review and approve annual plans AOP/MTP	In place. Process for developing the AOP/MTP in place. AOP has already been reviewed and commented on by the Openreach Board members, in very tight timescales.
Customer engagement processes	In progress. Processes have been drafted and shared with OTA2 and outlined in draft at industry fora, providing opportunity for CPs to

Key metrics/methods	Progress
	input to finalised processes.
Board appointments	In place. The independent Openreach Board has been established: Mike McTighe as Chairman and three independent non-EXEC Directors – Liz Benison, Sir Brendan Barber and Edward Astle, two Openreach Executives - Clive Selley and Clare Sadlier – plus a BT nominated representative, Simon Lowth.
Openreach financial reporting	In place. Presentation by Openreach CFO (Clare Sadlier) of a report of Openreach financials is a standing agenda item at each Openreach Board meeting.

35. The implementation of these requirements clearly demonstrates Openreach's commitment and willingness to move to an enhanced regime with improved transparency in advance of the formal introduction of the Notification. The areas identified in the 'Progress' column above define how we consider compliance monitoring will take place for these proposals. We are satisfied that this meets Ofcom's requirements and are keen to ensure that this is the case: alternatively we would be happy to discuss the requirements with Ofcom if further clarification is required.

## Independence and equal treatment of Openreach's customer

Key metrics/methods	Progress
Number of consultations with customers and stages reached (confidential, public, committed)	The proposed process, which is subject to CP comment, will have clear monitoring arrangements including tracking the number of CP requests that reach the confidential, public and committed stages. The success of this measure is clearly dependent on the volume and quality of CP requests.
New products and services proposed	In place. In addition to the new consultation process, we monitor SORs that are raised through the existing CP-initiated SoR process. These SORs are managed via the two industry forums (Copper Fibre Products Commercial Group and the Ethernet Commercial Group) where progress is assessed by industry, Openreach and OTA2 in a joint progress score. These activities are currently monitored by the EAB and will also be monitored for compliance purposes by the OBARCC.
New investment ideas and/or commercial models for investment	Openreach is actively encouraging CPs to come forward with new investment ideas (including co-funding) and new business models. The new Customer Consultation Process which includes the specific Confidential Phase is designed to encourage CPs to engage in such discussions with Openreach.
Number of approved and rejected proposals and relative rationale	All requests via the new proposed Customer Consultation Process or via the SOR process are currently monitored by the EAB and will be monitored for compliance purposes by the OBARCC.
Final agreed AOP/MTP and BT and Openreach financial reporting including investment levels, CAPEX and OPEX	In progress, subject to phased approach. The AOP for 2017/18 has been approved by the Openreach Board.
Openreach customers' views	There are multiple ways in which Openreach interacts with its customers, including bi-lateral meetings, communication via dedicated Sales Relationship Managers and service managers and Board to Board sessions. In addition we also have the Industry Fora and facilitated sessions with OTA2.  We are keen to ensure that any metric used as a measure of 'Openreach customers' views' will be reflective of this broad cross section of Openreach engagement based upon qualitative as well as quantitative input. We would welcome collaborative development of such measures in liaison with Ofcom, CPs and the OTA2.

36. The above metrics are aimed at ensuring that the new model delivers against the broader policy objective of ensuring Openreach acts and treats customers equally. Openreach is fully committed to meeting and demonstrating compliance with this objective. However we would like to raise the following observations:

- These metrics may be open to interpretation and therefore **it would be helpful to more clearly define the metric, including what success looks like.** Some of those above may also be overlapping in terms of the process used to monitor compliance. We would welcome wide discussion with Ofcom, OTA2 and industry to ensure all parties are aligned.
- Some of the proposed metrics are **not wholly under Openreach's control, requiring CPs to play their part** in contributing to the measure and its success. For example if a CP puts forward an investment idea and it does not come to fruition, this should not necessarily be seen as a failure by Openreach as the initiative may not have been commercially viable or technically feasible. Similarly the metric for the number of initiatives progressed should be considered in the context of the overall number of viable requests raised by CPs. As such a purely quantitative approach is insufficient. This dependency on other parties needs to be clearly recognised.

## 4. Consultation on releasing the BT Undertakings

**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?**

37. Openreach agrees with this proposal. The Undertakings have worked well for over ten years, and Openreach is well-established as a functionally separate organisation within BT providing access services to a broad range of customers. This has facilitated significant wholesale and retail competition, giving the UK one of the most competitive communications markets globally. However, the industry has changed dramatically over the last decade and now faces different challenges and opportunities. As a result, many of the provisions in the Undertakings are now obsolete or redundant, and no longer serve any purpose. With the DCR agreement between BT and Ofcom, we now have the opportunity to look to the future and focus on the new Commitments, which will serve the industry and customers for at least the next ten years.