



Legal separation of Openreach

TalkTalk response to Mar 2017 statement and consultation

April 2017

NON-CONFIDENTIAL VERSION

1 Summary

- 1.1 This document is TalkTalk's response to a series of documents published by Ofcom and BT in March and April regarding the separation of Openreach¹.
- 1.2 An Openreach that treats all customers equally and behaves independently of BT is critical to the investment, competition and quality that UK consumers and businesses need. However, the current Openreach model has not delivered real independence not only because the required level of independence was weak but also because it relied on behavioural regulation that BT gamed.
- 1.3 Structural separation remains the only way to guarantee Openreach independence and unlock the full benefits for consumers. Anything short of structural separation leaves unchanged BT's incentive to use Openreach to distort and weaken competition and necessarily relies on behavioural regulation which is inherently ineffective.
- 1.4 Whilst strong legal separation has the potential to deliver some additional independence versus the current approach, the particular arrangements that Ofcom has accepted from BT leaves many significant loopholes that BT will be able to exploit to interfere in Openreach to deny it the strategic and operational independence that Ofcom has stated is necessary.
- 1.5 Ofcom has indicated that it expects BT to abide by the 'spirit' of the arrangements to allow Openreach to "*serve all of its customers equally*" and "*have the greatest degree of independence from BT Group possible*" and expects the Openreach Board to vigorously defend Openreach's independence.
- 1.6 However, we are very sceptical that BT will in practice allow Openreach genuine independence. Recent experience reinforces our scepticism that BT don't want or intend Openreach to operate genuinely independently. For instance: only a few months ago BT were trumpeting the "*importance of integrated and coordinated decision-making*" and that Openreach Directors "*should to act in the best interests of BT plc and its shareholders*"; BT have just placed two BT Group secondees in key senior Openreach roles²; and the Openreach Board has been conspicuously silent since the commitment were published.
- 1.7 BT has offered no explanation of its *volte face* and its change in stance seems more driven by expediency than a genuine wish to see Openreach act independently. Genuine change looks unlikely.
- 1.8 If Ofcom decides to accept BT's Commitments then there are a number of critical elements that must be put in place to give the new arrangements the best chance of

¹ Documents were: Ofcom press release of 10 March; BT's Commitment and Governance Protocol published around 13 March; Ofcom's document including statement of 17 March regarding why it accepted BT's Commitments and a consultation on releasing BT from its existing Undertakings; and, BT's Agency and Services Agreement published around 4 April

² Mark Shurmer to head regulation and Richard Allwood to head strategy

success and also make sure that if the new model is failing to deliver genuine independence that this can be quickly detected and an alternative model pursued. The key elements of the suggested approach are explained below.

1.9 First, Ofcom must clearly articulate the desired outcomes and ‘what good looks like’ both in terms of Openreach decision-making but also how Ofcom expects an independent Openreach to behave across all aspects of its operation. For example, ‘good’ could, or should, be:

- BT Group does not interfere in Openreach decision-making (except where such influence is absolutely necessary to meet fiduciary or legal obligations). So for instance, BT would not block Openreach decisions that are detrimental to BT
- BT allows Openreach Board non-executive directors to be appointed by the Openreach Board
- Openreach does not rely on any BT Group services except where absolutely necessary
- Openreach operates its own recruitment and HR policies that include treating staff moves from (or to) BT Group as it would moves from/to other companies (e.g. gardening leave imposed, no ‘secondments’)

1.10 This clarity of purpose is critical since in a number of places BT’s Commitments contradict Ofcom’s stated objectives³ and without clarity BT and other stakeholders won’t know what is expected. Further, without this clarity of objectives it will be impossible to monitor whether the new arrangements are proving successful.

1.11 Second, Ofcom must proactively monitor Openreach’s ‘compliance’ with these expected behaviours and whether they are delivering the desired step change in investment and quality. Monitoring is going to require significant resource and tenacity. We think Ofcom’s proposed compliance approach is missing several key areas, such as: whether BT is interfering in Openreach’s decision-making; whether Openreach continues to rely on BT Group services; whether Openreach has developed its own HR approach; and, whether the new model is delivering the outcomes that consumers need such as increased investment (including co-investment), competition and quality.

1.12 Third, Ofcom must clearly lay out what happens if the new model is not delivering. The prospect of success is hampered by its reliance on behavioural regulation (which BT can game) and an absence of traditional ‘enforcement’ powers such as fines. Therefore it is critical that Ofcom creates a sanction. In this case the only meaningful sanction is another review that is likely to lead to structural separation. Therefore,

³ For example: Ofcom says that “*Openreach serve all of its customers equally*” yet the Commitments expressly permit unequal treatment – e.g. “*The obligation to treat all customers equally shall not require BT to make investments in respect of the Openreach Division to the detriment of BT as a whole, having taken into account any positive returns or other benefits of investments in the Openreach Division*” (BTC §5.5). With regard to HR Ofcom says that Openreach will “*develop its own distinct organisational culture*” yet Openreach is required to follow BT Group HR policies (BTGP §C1.3d)

Ofcom must be clear that in the case of failure Ofcom will swiftly commence a further review which would only consider structural separation (rather than dabbling with alternative forms of legal separation). And, in any case, there should be a review in 3 years. It is also important that Ofcom makes clear that it does not consider that it is necessary for it to have hard evidence of a ‘smoking gun’ of discrimination in order to proceed to impose structural separation.

1.13 Fourth, Ofcom must ensure that SMP regulation to address investment, competition and quality problems remains in place (such as setting VULA prices at cost, improving PIA and imposing minimum quality standards). For instance the prospect of co-investment as a result of these new arrangements should not weaken the need for strong price regulation of VULA. In any case, it would be wrong to assume that this model will work.

1.14 Lastly, Ofcom’s process in coming to its decision has been deficient. Ofcom’s July 2016 document tabled a proposal for what an acceptable form of separation would be. Ofcom has now accepted a quite different model⁴ and without proper consultation or any meaningful explanation of its reasoning – for instance: explaining what alternatives it assessed and why it rejected them; why it compromised; and the evidence it relied on. Ofcom must recognise that its approach has been inconsistent with Ofcom’s standard practice and regulatory principle to act transparently⁵ (particularly for such an important decision as this). Ofcom can partly remedy this paucity of transparency by including the missing information in its upcoming statement in relation to releasing BT from its undertakings and monitoring approach.

1.15 Our submission is laid out as follows:

- Section 2 explains the areas where we think Ofcom should lay out its expectations about how an independent Openreach should operate and behave
- Section 3 describes how we think this should be monitored and how Ofcom should respond in the case that it is not working
- Section 4 provides our comments on Ofcom’s ‘consultation’ process to date and the consultation regarding releasing BT from its existing Undertakings

⁴ It would be reasonable for Ofcom to reconsult given the substantial differences

⁵ From Ofcom’s website: *Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.*

2 Clear objectives for how Openreach should behave

- 2.1 It is important that stakeholders (including BT, Openreach and Openreach's major customers) are clear about what Ofcom's objectives are for how the Openreach should behave and what outcomes it is looking to achieve. In other words, Ofcom needs to be clear about 'what good looks like'. Without this clarity it will be impossible to monitor whether the new model is being successful or not.
- 2.2 In this section we explain why there is lack of clarity and outline several areas where we think Ofcom should clearly articulate how it expects Openreach should operate and behave.

2.1 Ambiguity in objectives

- 2.3 Ofcom claims that the new arrangements mean that Openreach will act independently . For example from Ofcom's press release of 10 March:

The new Openreach will have the greatest degree of independence from BT Group possible without incurring the delays and disruption – to industry, consumers and investment plans – associated with structural separation or the sell-off of Openreach to new shareholders

The new Openreach will be built to serve all its customers equally, working truly independently and taking investment decisions on behalf of the whole industry – not just BT

The new Openreach will directly employ all its 32,000 staff, who will be transferred across from BT. This will allow Openreach to develop its own distinct organisational culture

- 2.4 However, the actual Commitments⁶ are inconsistent with the objective that Openreach is independent. For instance:

- The Commitments allow frequent and pervasive influence on / interference in Openreach's investment decisions through⁷:
 - Openreach must 'take on board' any views of the BTG CEO/CFO in developing its AOP/MTP (BTGP §B2.2c)
 - Review and approval of detailed AOP/MTP by BTG CEO, CFO and Board
 - Dotted line reporting Openreach CEO to BTG CEO
 - BT able to block Openreach investments that are detrimental to BT (BTC §5.5)
 - Openreach able to make negative NPV investment decisions that benefit other parts of BT⁸

⁶ We use the term Commitments to include BT's Commitments ("BTC"), Governance Protocol ("BTGP") and Agency and Services Agreement ("BTASA")

⁷ it appears that though all CPs are to be treated equally, some are more equal than others

- Need for BTG CEO approval if Openreach just £1 outside AOP/budget (BTGP §B3.6(b))
 - Openreach is able to use BT Group and its employees to provide core and strategic services such as product and system development – thus in effect Openreach won't employ all of its staff (contrary to Ofcom's claim)
 - Staff can be seconded between Openreach and BT Group (and visa-versa) with no regular protections such as gardening leave
 - Openreach's independence is further hindered since it will not own its assets and it only acts as a agent of BT – in other words it won't be a real company
- 2.5 Given these contradictions, it is important that Ofcom clarifies its expectations on how Openreach should operate.
- 2.6 It is important to recognise that genuine independence (and treating customers equally) will not be delivered merely by having a separate Board with a remit to act independently – independence also requires that the whole organisation and its processes 'live and breathe' the ethos.
- 2.7 Below we discuss several particular areas where we think Ofcom should clarify its expectations of how the new arrangements will work and 'what good looks like'.

2.2 What is acceptable interference?

- 2.8 Given the ambiguity highlighted above it is important that Ofcom explains what is acceptable interference by BT in Openreach's decision-making. For instance:
- What would be legitimate reasons for Openreach to favour BT? For example:
 - In what cases would it be legitimate for BT to block Openreach investments that are detrimental to BT (pursuant to BTC §5.5)? And what would not be legitimate?
 - In what cases would it be legitimate for Openreach to make a negative NPV investment for the benefit of BT Consumer (pursuant to BTGP §A2.11)?
 - Would Ofcom expect Openreach to be required to seek BTG CEO approval for a £1 negative variance from budget (as required by BTGP §B3.6(b))
 - What influence does Ofcom consider would be inappropriate for the BTG CEO to exert via the 'dotted line' reporting with the Openreach CEO?

⁸ BTGP §A2.11 allows the Openreach Board to request additional capital "for the purposes of a specific investment that would benefit the customers of the Openreach Division, even where such an investment opportunity would otherwise be Net Present Value (NPV) negative for the Openreach Division". There is no reason for Openreach to do this for a non-BT customer. Thus this clause seems intended to allow Openreach to make negative NPV investment for the benefit of BT divisions such as BT Consumer

- What type of investments that are within budget (but outside of AOP) would Openreach need to seek the approval of the BTG Board for?

2.9 We accept that Ofcom cannot be absolutely definitive about whether every particular type of behaviour is legitimate or not. However, Ofcom must have some idea today of what it considers to be legitimate – it must explain this. It is neither acceptable nor good practice to be silent or ambiguous today.

2.10 We are also concerned about the suggestion that the BT Group Operating Committee ('BTOC') might discuss matters pertaining to Openreach (and the Openreach CEO may attend) (BTGP §B5.5). There should not be any reason for Openreach issues to be discussed at the BTOC since the BTOC has no remit to consider Openreach issues. If matters pertaining to Openreach issues are discussed at the BTOC and/or the Openreach CEO attends the BTOC then Ofcom must be informed.

2.3 Use of BT Group services

2.11 For Openreach to be genuinely independent and treat customers equally Openreach should not rely on BT Group services. Or, if it does, it should be to the minimum degree necessary.

2.12 We are concerned that the Commitments permit extensive use of BT Group services. The restrictions on BT Group staff accessing certain Openreach information or influencing Openreach policy (see BTC §10.1) will limit the use of certain BT Group services. However, this might still allow BT Group to provide Openreach services such as product/systems development (via TSO), R&D, regulation, public policy – involvement by BT Group staff in these activities would compromise Openreach's strategic and operational independence.

2.13 If Openreach is to be genuinely independent of BT it should only use BT Group services in exceptional circumstances when necessary for compelling and legitimate reasons to allow BT to meet its fiduciary duties. Ofcom should make clear its view on when it is acceptable for Openreach to use BT Group services.

2.14 In addition we think that:

- Ofcom should make clear that BT staff should not influence Openreach's decisions on product features, systems decisions, technology choices and supplier choices. Accordingly, the Commercial Policy definition should include these aspects – the current definition is unclear "*Commercial Policy means policies and plans in relation to SMP Products and which relate to ... product development*".
- Ofcom must be notified by Openreach where it uses any BT Group services with a clear justification of the reason why. Ofcom should publish a list of the activities where Openreach relies on BT Group services

- There should be no coordination of external communications by Openreach and BT Group – for instance, submissions to Ofcom. Coordinating responses with one customer (BT) is inconsistent with independence and treating all customers equally

2.15 We also note that the restrictions on BT Group staff accessing certain Openreach information or influencing Openreach policy only relate to Openreach products where BT have SMP⁹. Ofcom should explain why this exception is appropriate since it will compromise Openreach’s independence. If this exception is used, it should be monitored to ensure that it is not used to undermine Openreach’s independence.

2.16 It is unclear why there is a general provision to allow up to 250 BT employees to work for Openreach and visa-versa (BTC §7.5). If this is required in the case of, for example, *force majeure* incidents then these restrictions should clearly prescribed.

2.4 Openreach recruitment and HR policy

2.17 Whether Openreach behaves independently will depend to a large degree on its staff and how they are recruited, managed and incentivised. We agree with Ofcom that it is important that Openreach can “*develop its own distinct organisational culture*”. However, we are concerned that the Commitments contradict this approach in places. For example

- Openreach is required to follow BT Group HR policies (BTGP §C1.3d, BTASA §3.1d, BTASA §14.2)
- BT have just placed two BT Group secondees in key senior Openreach roles¹⁰

2.18 [REDACTED]. There is no reason or benefit (except for BT) for Openreach to take secondees from BT Group.

⁹ see Commitments: Annex A Definitions and Interpretation

¹⁰ Mark Shurmer to head regulation and Richard Allwood to head strategy

- 2.19 Ofcom should make clear that it expects an independent Openreach to develop its own recruitment policy and that moves of staff to or from BT Group will be treated just as moves from an external company. This would mean:
- Openreach jobs are not advertised within, or by, BT (and visa-versa). If BT employees are interested in Openreach jobs they should apply for them in the same way as non-BT employees
 - BT employees and non-BT employees are treated equally in the shortlisting and selection of candidates
 - If a BT employee accepts a job within Openreach then appropriate gardening leave should apply
 - If a BT employee accepts a job within Openreach then there should be no ability to move back to BT (i.e. no 'secondments').
 - If existing Openreach employees have the ability to move back to BT then this option should be removed (or the employee offered the ability to move back to BT immediately).
- 2.20 Having a different approach to recruitment to/from one customer (BT) would be inconsistent with independence and treating all customers equally.
- 2.21 Another HR aspect that we consider is inconsistent with Openreach behaving independently is that Openreach staff can continue to receive BT benefits such as free BT Broadband services (BTC §8.2). This is incompatible with Openreach being independent and developing its own distinct culture. The benefits of Openreach staff must not reflect that it is a subsidiary of BT.
- 2.22 Also, it is not clear whether Openreach employee remuneration can be denominated in BT shares or whether Openreach employees can own material number of BT shares. Both of these practices would be counter to Openreach's independence. This should be clarified.

2.5 Restrictions on Openreach information

- 2.23 For Openreach to operate independently of BT and for all its customers to be treated equally requires that (a) BT does not have access to Openreach confidential information (beyond the minimum that is required for BT to meet its fiduciary duties) and (b) disclosure is restricted to a 'need to know' basis.
- 2.24 However, the Commitments allow for a large amount of information to be passed to the BT Group Board and BT Group CEO/CFO and also onto staff in BT Group. For instance:
- The BT Group CEO and CFO are able to see the full draft AOP/MTP which appears to include very detailed information¹¹

¹¹ BTGP §B2.2a implies that the draft AOP/MTP will include detailed financial, commercial, strategic, operational and technical information

- The BT Group Board, CEO and CFO see the summary draft AOP/MTP, revisions of the draft AOP/MTP and final AOP/MTP
- There seems to be very weak restrictions on onward sharing of information provided to BT CEO, CFO and Board to other BT staff – any onward sharing appears to be allowed to which it is “*extent necessary and appropriate*” which is vague and undefined (see BTGP §A6.1c)¹²
- In addition there is monthly reporting of Openreach performance to unspecified BT Group staff

2.25 This degree of information sharing does not seem necessary, is incompatible with Openreach acting independently and will allow BT’s downstream divisions privileged knowledge.

2.26 Allowed information sharing needs to be much more closely prescribed.

2.6 Governance that is consistent with genuine independence

2.27 We consider that there are a number of aspects of governance in the Commitments that will compromise Openreach’s independence and that these can and should be addressed. For instance:

- The Commitments permit BT to appoint Openreach NEDs (though BT may delegate this to Openreach) (BTGP §A3.4). Allowing BT to appoint Openreach NEDs will compromise Openreach’s independence. Therefore, Ofcom should make clear that it would expect BT to delegate these appointment powers to the Openreach Board (with veto rights for BT if necessary)
- It is unclear how the BT Nominee on the Openreach Board will reconcile their duties to BT Group (as a BT Group Board Director) and their duties to Openreach (as an Openreach Director) (BTC §3.11) since it is possible that the two will conflict. In the case of such a conflict of interest how will this be handled ?
- It is unclear how shared assets (e.g. core duct used by Openreach and BT) will be governed – for instance in terms of investment and operating decisions and cost attribution. This should be clearly articulated
- It is unclear why BTG CEO/CFO need any advance notice that Openreach is considering a new major investment (BTC §11.5). The BTG CEO, CFO and Board will anyway get to approve these if they are ultimately proposed by Openreach. If advance notice is provided it should be notified to the OBARCC and reasoning provided
- It is unclear what delegated authority the Openreach Board will have to authorise capital and operating expenditure (within the AOP). It is referred to in BTGP §B3.4 but the amount(s) are not specified. Obviously for Openreach to

¹² BTASA §17.2b permits BT to disclose Openreach information to third parties

have meaningful independence it should have a meaningful level of delegated authority

2.7 Other areas

2.28 Below we comment on a number of other aspects of the Commitments.

- It is not clear what form of system separation will be required for systems not covered by EOI e.g. management information systems, accounting systems
- The cost attribution rules in the RFS must change to reflect the new structure and in particular Openreach's much reduced use of BT Group services.
- EOI is a key element of reducing discrimination. Yet still today there are a number of key Openreach SMP products where there is no EOI including space in exchanges and power. Ofcom should consider (within the WLA review) whether EOI should be imposed on these
- To reduce discrimination in respect of passive products (i.e. PIA/DPA) it would be sensible to have a separate unit within Openreach to develop and sell passive products
- It is important to consider how compliance with margin squeeze rules (whether *ex ante* or *ex post*) will operate in this model. We consider that the responsibility for compliance should rest solely with the downstream division(s) and not with Openreach. Openreach's pricing decision should not reflect the need to comply with margin squeeze rules. There must be no coordination of Openreach and downstream pricing as a result of margin rules

3 Effective monitoring and enforcement

3.1 Monitoring is essential so that Ofcom can identify whether BT is complying with the Commitments and the new model is delivering the objectives.

3.2 It is important to monitor across a number of measures starting with 'inputs' as well as ultimate 'outcomes' and the key steps to get to those outcomes. We see four particular areas that should be monitored:

- Compliance with the Commitments both initial implementation and on-going
- Openreach behaviours e.g. interference by BT group in Openreach decision-making, recruitment approach, use of BT services
- Treatment of customers equally
- Delivery of Ofcom's investment, competition and quality objectives

- 3.3 We consider that Ofcom's proposed approach is inadequate in two particular ways:
- Its monitoring is only across the first and third of these areas¹³. Ofcom's monitoring ostensibly misses out how Openreach actually behaves and whether the new arrangement is delivering the changed investment, competition and quality that Ofcom is ultimately hoping for
 - Ofcom needs to lay out 'what good looks like' against each of these areas. Ofcom describes the mechanics of its process and the metrics that it will gather but there is very little (or no) explanation of what the desired outcome (aside from a vague reference to it needing to address Ofcom's competition concerns). As we describe in section 2 above it is essential that Ofcom describes in rough terms what success and failure are. There is little point in monitoring without also including an assessment of success
- 3.4 One of the obvious weaknesses of these Commitments is that Ofcom have absolutely no enforcement powers which means that BT's already weak incentives to comply are even weaker. If BT fail to deliver the Commitments or continues to operate in a non-independent manner then Ofcom is unable to impose any direct sanction. Indeed, BT can even amend the Commitments without Ofcom's agreement (see BTC §24.4, BTGP §A1.4) or without allowing enough time for Ofcom to consult publicly¹⁴. Rather than enforcement powers the only sanction or leverage that Ofcom has is the 'nuclear option' that it can initiate a review (which would consider structural separation). The lack of enforcement is a very obvious flaw of the Commitments.
- 3.5 In light of this obvious weakness it is particularly important that Ofcom makes as clear as it can (within legal constraints) the basis on which it would initiate a subsequent review and circumstances under which it would move to impose structural separation. Ofcom should also make clear that it does not need evidence of a 'smoking gun' of discrimination to move to structural separation. Without this 'stick' of a future review that may impose structural, BT will have even less incentive to comply and stakeholders will lack certainty.
- 3.6 Regarding monitoring we have a number of other comments:
- The OBARCC would be more effective if it had independent members – as the EAB does
 - There needs to be more frequent than annual reporting by the OBARCC at least in first 2-3 years (see BTGP §A2.20)
 - Ofcom should have access to all OBARCC minutes rather than an edited extract (see BTGP §A7.14)
 - It is not clear why Openreach needs to allow BT Group to comment on submissions to Ofcom regarding Openreach's compliance (see BTC §2.20)

¹³ Delivering a more independent Openreach March 2017 Figure 4. The Implementation and Governance Arrangements essentially relate to compliance with the Commitments. Independence and Equal Treatment relates to the third area

¹⁴ BTC §24.2 does not allow for a consultation period

4 Process and releasing BT from existing Undertakings

- 4.1 Ofcom's process in coming to its decision has been deficient.
- 4.2 Ofcom's July 2016 document tabled a proposal for Ofcom's preferred form of separation – a strong form of legal separation. Ofcom has now decided to accept BT's Commitments which are quite different to those proposed in July. There should have been a proper consultation on whether Ofcom should accept BT's Commitments or instead proceeded to impose regulation based on its preferred form of separation – and indeed TalkTalk expected there to be based on Ofcom's previous practice. Consultation is not a procedural nicety, it is an important way of scrutinising Ofcom's proposals and gaining input from stakeholders with relevant expertise (that Ofcom does not have).
- 4.3 If Ofcom did not re-consult then, at the very minimum, it should have provided an explanation of its reasoning for its decision to accept the Commitments – particularly in light of the complexity of the Commitments and apparent contradictions. Ofcom also failed to do this. The document Ofcom published on 17 March 2017 does not provide any meaningful reasoning – in essence the documents asserts (on repeated occasions) that the Commitments meets Ofcom's competition concerns. Proper reasoning should include, *inter alia*:
- A clear articulation of what Ofcom was trying to achieve
 - An explanation of the options and alternatives forms of legal separation that Ofcom considered e.g. use of a guarantee to provide the pension covenant instead of allowing BT to own Openreach's assets and to interfere in Openreach's decision making; use of insurance to address the loss of the Crown Guarantee; same model in Northern Ireland; constraints on Openreach scope; and/or, having fewer interference mechanisms
 - Ofcom's reasons for making the choices it did – in other words, the arguments and evidence that underpinned its decision. This should include why Ofcom rejected the suggestions tabled by all stakeholders (except BT). In effect, Ofcom has taken into account BT's suggestions and (seemingly) ignored those of all other stakeholders
- 4.4 To miss such an important procedural step(s) for such an important decision as whether/how to separate Openreach is a very significant procedural failing. Unsurprisingly Ofcom's approach is also inconsistent with Ofcom's own regulatory principle to act transparently¹⁵
- 4.5 Ofcom can partly remedy its procedural failings by including the missing reasoning in its upcoming statement in relation to releasing BT from its undertakings and monitoring approach. In particular this should include: a clear articulation of Ofcom's objectives; why it rejected the alternative approaches; a clear explanation

¹⁵ From Ofcom's website: *Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome.*

of the purpose of different parts of the Commitments; and, how it expects the new model to work and Openreach to behave.

- 4.6 Given the lack of consultation or reasoning on the key issue of whether to accept BT's Commitments we find it rather odd that Ofcom is now consulting on whether to release BT from its Undertakings. Given that Ofcom has decided to accept the Commitments and the Commitments are contingent on the Undertakings being released (BTC §1.1) then Ofcom has, in effect, agreed to release BT from its Undertakings. Thus the consultation on whether to release BT from the Undertakings appears to be otiose.