

Ten Point Plan for a better Openreach – (Vodafone, Talk Talk, Sky, Inca, FCS) -CWU Rebuttal

Reforming Openreach's governance so it can act independently

Giving Openreach clear purpose and accountability by:

1. Establishing Openreach as a legally separate company

Legally separating Openreach from BT will put BT's ongoing broadband investment programme at risk. It will restrict broadband coverage and undermine quality of service improvements. There is no evidence that Sky and Talk Talk will commit anywhere near the required levels of investment in Openreach to deliver a world class network right across the country. Legal separation will jeopardise the success of the Government's broadband USO.

None of this will lead to better outcomes for consumers or service quality.

In addition to all the above, unless BT agreed to the proposal, Ofcom will need to refer the case to the European Commission Directorate General for Communications Networks, Content & Technology (DG Connect) who will have the ultimate decision should there be a major change in governance of Openreach. Any inquiry would take time and more than likely a lengthy legal battle will ensue.

Consumers want an improved service now not in a few years time, therefore BT's managers should be addressing improving service not how to split the business.

2. Creating an independent Openreach Board

An independent board would not be able to make the long-term investment decisions that it currently makes as part of BT Group. It would not have that stability and access to capital that comes with being part of BT Group. With potential pressure from investors for dividends it would not be able to sustain anything like the level of BT's current network investment.

BT has however said that they would be open to inserting a board of some form to address the concerns of rival companies to be consulted on investment plans.

3. Creating an independent body to oversee the transition and act as an adjudicator

This is costly bureaucracy that again takes time and money away from addressing the key priorities for broadband in the UK.

Creating a confident and ambitious Openreach that has the autonomy to plan for the future by:

4. Giving Openreach full control and ownership of its assets

An overhaul in Openreach's governance, to make it a separate entity would force the company to renegotiate some £4m property and 32,000 employee contracts. This will be time consuming and expensive, diverting money and effort into modernising the network.

5. Ensuring Openreach has its own standalone corporate identity and brand

We fail to see how this will incentivise investment from other telecoms providers, create better outcomes for consumers and deliver a world class network across the country.

6. Allowing Openreach to be financially independent and make its own investment decisions

A vertically integrated BT provides Openreach with an 'anchor tenant' in BT Consumer that is prepared to provide guaranteed demand for new network investments. This supports the business case for BT to justify ongoing investment of around £1bn a year in Openreach, making up over 21% of its revenue. It also provides BT Group with a strong case to continue its £500m annual investment in research and development, which supports the creation of innovative new technologies that can be used by Openreach for the benefit of all customers, such as G.fast.

We also believe that Investment considerations must take account of the interests of those who work in the industry and the need for decent labour standards, which is essential for delivering a high quality of service.

Creating an Openreach that delivers for all

Making sure that Openreach serves the whole market fairly to improve choice, value and quality for its customers by:

7. Providing all Openreach services on the same basis, no matter the customer

The UK has the highest level of choice and the lowest prices for services amongst the leading EU countries, indicating that the current model of functional separation has helped to generate and sustain a highly competitive market. As Ofcom recently stated, the creation of Openreach as a functionally separate entity allowed all communications providers to access BT's network on equal terms, and this contributed to one of the most competitive broadband markets among major European economies.

An important element of BT's legally binding undertakings on functional separation and equivalence of inputs (EOI) is a strict obligation for Openreach not to discriminate between operators. Openreach serves 535 communications providers (CPs). All CPs – including downstream BT – receive an EOI exactly the same level of service, pricing, terms and conditions, information and confidentiality. Whilst some stakeholders have raised concerns about the potential for discrimination to occur, we do not believe there is any evidence of such behaviour taking place. The undertakings also include a requirement that Openreach employees are physically based away from the rest of BT to prevent the sharing of sensitive information, and there are no incentives for Openreach employees to prioritise one customer over another. We note that there have been problems with missed and rescheduled appointments, but this is an issue of quality rather than discrimination. Where there have been problems in relation to quality of service from Openreach, these issues have been experienced by all service providers on an equal basis, including BT Consumer.

Ofcom, when regulating in this area, should also ensure good customer experience is provided by all CPs.

8. Ensuring that Openreach consults with all of its customers about its future strategy and proposed investments

We strongly agree that future strategy and proposed investments should be consulted with all of BT's customers. BT positively welcomed the supply of its new fibre network to wholesale CP customers, and built these into its business case from the outset. The provision of fibre broadband on an equal basis EOI, meant no CP had an advantage. The fixed cost of investment meant Openreach had every incentive to make the service as attractive as possible to all CPs.

9. Introducing competition to Openreach by making BT Consumer's procurement truly contestable

See answer to question 7.

10. Ensuring that Openreach does not inhibit investment by independent network operators

Ofcom state that '*regulation needs to ensure consumers and the wider economy benefit from waves of private sector investment in successive generations of technology that is as widely available as possible*'. To incentivise private investment, regulation must take account of the ability of investors to earn a fair return on investment over a reasonable time period. Therefore future regulatory changes must take account of the long term nature of some investments and ensure there is regulatory certainty and that financial returns on the investment reflect the element of risk at the time of the investment. Regulatory freedom, avoiding intervention and allowing investors to make a fair return when taking risks can also contribute to greater private investment.

Openreach's network faces strong network competition in at least 50% of the country, and in more remote areas where investment returns are weaker. We therefore believe incentives for independent network operators to invest are down to the right regulation.

The CWU is concerned that regulation in telecoms has focused too heavily on promoting competition in the pursuit of lower prices and cost cutting and we believe this constrains investment which in turn limits service quality and undermines universal service provision.

In the telecoms sector, regulation could incentivise higher levels of investment in broadband infrastructure and funding for new innovative technologies by avoiding punitive access charge controls that prioritise lower prices at the expense of investment.

Yours sincerely



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