

ANTICIPATED ACQUISITION BY LIBERTY GLOBAL, TELEFÓNICA AND INFRAVIA (THROUGH THEIR JOINT VENTURE, NEXFIBRE) OF SUBSTANTIAL

Our areas of focus

7 July 2026

ME/7146/26

The reference

1. On 1 July 2026, the Competition and Markets Authority (**CMA**) referred the anticipated acquisition by Opal JVco Limited (**nexfibre**) of Substantial Topco Limited (**Substantial**) to an in-depth phase 2 investigation by a group of CMA panel members (the **Inquiry Group**) under [section 33\(1A\)](#) of the Enterprise Act 2002 (the **Act**).¹ The CMA refers to this acquisition as the **Transaction**.
2. nexfibre is a joint venture between Liberty Global Ltd (**Liberty Global**) and Telefónica S.A. (**Telefónica**) (together, also the owners of VMED O2 UK Limited (**VMO2**)) and Crown Infra Bidco Limited, an entity wholly owned by funds managed by InfraVia Capital Partners (**InfraVia**) (a private equity investor).
3. nexfibre, VMO2 and Substantial are together referred to as the **Parties**, and for statements relating to the future (if the Transaction was to proceed), nexfibre, VMO2 and Substantial are referred to as the **Merged Entity**.
4. The CMA made the reference having accepted a request by the Parties to use the ‘fast-track’ procedure provided for in the Act, which allows for a reference without completion of a phase 1 inquiry.²
5. Under [section 36\(1\)](#) of the Act, we must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation (**RMS**); and

¹ See CMA, [Decision to refer](#), 1 July 2026 and CMA, [Terms of reference](#), 1 July 2026.

² Sections [34ZD](#), [34ZE](#) and [34ZF](#) of the Act, introduced by the Digital Markets, Competition and Consumers Act 2024.

- (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this document

6. Typically, the starting point of a phase 2 inquiry will be the theories of harm on which the CMA determined at phase 1 that the statutory test for reference was met (and therefore the phase 1 decision should be considered to set out the theories of harm that the CMA will consider, at least initially, in its phase 2 inquiry). Where at the outset of a phase 2 inquiry, there is no detailed phase 1 decision because the case was fast tracked, as is the case here, the CMA will make clear which theories of harm the Inquiry Group intends to investigate.³
7. In this document, we set out the main issues that we wish to consider in reaching a decision on the SLC question (paragraph 5(b) above), having had regard to the evidence available to us to date, including the evidence obtained during pre-notification. This does not preclude the consideration of any other issues which may be identified during our inquiry in light of further evidence and/or further analysis.
8. We are publishing this document to assist parties submitting evidence to our phase 2 inquiry. We invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

9. nexfibre is a wholesale-only provider of fibre to the premises (**FTTP**) broadband to internet service providers (**ISPs**) in the UK, with VMO2 as its anchor tenant customer.
10. VMO2 is a vertically integrated UK telecommunications provider. It offers retail fixed broadband services, as well as other services such as wholesale and retail mobile services, business to business (**B2B**) connectivity services such as leased lines, and pay TV.
11. Substantial is a holding company which includes Netomnia Limited (**Netomnia**), Brsk Limited (**Brsk**) (which develop and operate FTTP networks), YouFibre Limited (**YouFibre**) and Brsk ISP Limited (**Brsk ISP**) (retail providers of FTTP broadband) (together, **Substantial Group**). The

³ [Mergers: Guidance on the CMA's jurisdiction and procedure \(19 December 2025\) \(CMA2\)](#), paragraph 12.6.

Substantial Group is currently owned by a consortium of sellers including funds operated by DigitalBridge, Advencap and Soho Square Capital.

12. The Parties are currently active, or may become active in the future, in the supply of: (i) retail fixed broadband services to individual and business customers; (ii) wholesale fixed broadband services to ISPs; and (iii) leased line access (**LLA**) to business customers.⁴

The Transaction

13. On 18 February 2026, nexfibre BidCo Limited, an indirect subsidiary of nexfibre, signed a sale and purchase agreement to acquire the entire issued share capital of Substantial.⁵
14. Contemporaneously with the Transaction, nexfibre and VMO2 will enter certain commercial arrangements whereby, among other things, nexfibre will agree to upgrade certain parts of VMO2's broadband network to FTTP (comprising c.2.1 million premises). Nexfibre will finance and own the upgraded network, which VMO2 will then use to deliver FTTP services.⁶
15. The Transaction is conditional on receiving merger control clearance from the CMA.⁷

Our inquiry

16. Below we set out the main issues we are likely to consider in our phase 2 inquiry, to help parties who wish to make representations to us.

Jurisdiction

17. We will consider whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an RMS.
18. The Parties have submitted that there is an RMS because:⁸
 - (a) as a result of the Transaction, Substantial will cease to be distinct from nexfibre (and also from nexfibre's shareholders and VMO2); and

⁴ Leased lines are connections used by business customers for high-capacity data services. Leased lines can be offered over a variety of technologies, including fibre-based ethernet services and dark fibre. As set out in paragraph 32 below, based on the evidence received so far, we do not propose to focus on LLA during the phase 2 inquiry. This document is therefore primarily concerned with the supply of wholesale and retail fixed broadband.

⁵ Parties, Final Merger Notice (**FMN**), 29 June 2026, paragraph 110.

⁶ FMN, paragraphs 2, 112, 114 and 158.

⁷ FMN, paragraph 122.

⁸ FMN, paragraphs 3, 108 and 156-157.

(b) the UK turnover attributable to Substantial was £104 million in FY2025, such that the turnover test under [section 23\(1\)\(b\)](#) of the Act is met.

Counterfactual

19. We will compare the prospects for competition with the Transaction against the competitive situation without the Transaction. The latter is called the ‘counterfactual’. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.⁹ At phase 2, we will form a view as to the most likely conditions of competition absent the Transaction.¹⁰
20. The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹¹ The appropriate counterfactual may therefore increase or reduce the prospects of an SLC finding.¹²
21. The Parties submit that the prevailing conditions of competition do not represent the appropriate counterfactual against which the competitive effects of the Transaction should be assessed.¹³ In particular, the Parties submit that each of nexfibre, Substantial and VMO2 would, absent the Transaction, experience reduced network investment, slower FTTP deployment and higher retail pricing than current conditions suggest.¹⁴
22. Our counterfactual assessment will include consideration of the following issues:
 - (a) The financial and operational positions of the Parties absent the Transaction, and the implications of this for their competitive position, including in terms of future network build.
 - (b) Whether nexfibre/VMO2 and/or Substantial would likely have competed in the supply of wholesale fixed broadband to ISPs absent the Transaction.
 - (c) Whether, absent the Transaction, Substantial would have consolidated with another alternative broadband network provider (**altnet**).
23. Our analysis will be informed by the Parties’ submissions and their internal documents, financial analysis, and (where relevant) evidence from third parties. We welcome any further evidence on this part of our assessment.

⁹ [Merger Assessment Guidelines \(March 2021\) \(CMA129\)](#), paragraph 3.1.

¹⁰ [CMA129](#), paragraph 3.13.

¹¹ [CMA129](#), paragraph 3.2.

¹² [CMA129](#), paragraph 3.2.

¹³ FMN, paragraph 259.

¹⁴ FMN, paragraph 259.

Assessment of the competitive effects of the Transaction

Market definition

24. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.¹⁵ The CMA is therefore required to identify the market or markets within which an SLC may arise. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹⁶
25. In assessing whether a merger may give rise to an SLC, we may take into account constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.¹⁷
26. As set out in paragraph 12, the Parties are currently or potentially active in the supply of fixed broadband services at both the retail and wholesale level. In each case, we will consider whether it is appropriate to define a single product market covering all fixed broadband services, or whether there should be segmentation based on factors such as speed, underlying technology or product offerings.
27. In terms of geographic scope, we will consider whether the relevant wholesale and retail markets are national or sub-national. As part of this assessment, we will consider (amongst other factors) the geographic footprint of different providers (at the wholesale and retail level) and how prices and other terms are set in practice, for example the extent to which they are flexed depending on local competitive conditions.

Theories of harm

28. The term ‘theory of harm’ refers to a hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.¹⁸ We will take a forward-looking approach to our assessment of the theories of harm, considering the effects of the Transaction both now and in the future.¹⁹

¹⁵ [Section 36\(1\)\(b\)](#) of the Act.

¹⁶ [CMA129](#), paragraph 9.1.

¹⁷ [CMA129](#), paragraph 9.4.

¹⁸ [CMA129](#), paragraph 2.11.

¹⁹ [CMA129](#), paragraph 2.14.

29. At phase 2, we are minded to focus our competitive assessment on the impact of the Transaction on competition between the Parties in the supply of wholesale and retail fixed broadband services.
30. In particular, we plan to focus on whether the Transaction gives rise to horizontal unilateral effects at the wholesale and/or retail levels of the supply chain. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint or would have done so in the future, allowing the Merged Entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.²⁰
31. Our assessment will also consider the links between the wholesale and retail levels of the supply chain, recognising that both VMO2 and Substantial are vertically integrated. For example, we will consider:
 - (a) whether the Parties' presence at the retail level affects their incentives to compete at the wholesale level (eg due to the potential cannibalisation of their retail customer base);²¹ and
 - (b) whether competition between the Parties at the wholesale level could have material indirect effects on competition at the retail level. For example, if Substantial were to offer competitive wholesale terms to ISPs absent the Transaction, whether this would materially increase competitive pressure on VMO2 at the retail level.
32. Based on the evidence gathered so far, we are not currently minded to focus on the impact of the Transaction on LLA services. The evidence so far indicates that Substantial sells very limited volumes of LLA services, and the CMA has not received any significant concerns from customers or other third parties.²² We welcome submissions on this point.
33. The theories of harm we consider and the relevant markets in which they could arise may evolve during the inquiry, and we may identify new theories of harm following receipt of additional evidence or following further analysis. Should any party have a reason to believe that we should investigate any

²⁰ [CMA129](#), paragraph 4.1.

²¹ To the extent that only one of nexfibre/VMO2 or Substantial would likely have competed in the supply of wholesale fixed broadband to ISPs absent the Transaction, we may consider an input foreclosure theory of harm. Specifically, we may consider whether the Merged Entity, due to the potential cannibalisation of its retail base, may have an incentive to refuse to supply at the wholesale level or increase the price or worsen the quality of its wholesale offering. [CMA129](#), paragraph 7.9.

²² We also note that in its latest Telecoms Access Review (**TAR**), Ofcom considered that Netomnia (ie Substantial) is unlikely to sufficiently overcome barriers to entry and expansion to exert a material and sustainable constraint in the LLA market in the review period (ie 2026-2031). Ofcom, [Ofcom TAR 2026-2031, Volume 2: Market definition and SMP assessment](#), 17 March 2026.

other theories of harm (including in relation to LLA), it should inform us and provide a reasoned submission.

How we propose to investigate the competitive impact of the Transaction in the relevant markets

34. As part of our inquiry, we will use the data and information collected during pre-notification and seek to expand this evidence base as appropriate. We will also be engaging closely and seeking technical input from the UK's communications regulator, Ofcom.
35. Amongst other factors, we will consider the market structure and position of the Parties, VMO2 and their competitors in the relevant markets; the extent to which the Parties and VMO2 compete closely with each other and other suppliers; and wider structural trends facing the industry.
36. We are mindful of the importance of broadband connectivity to consumers and businesses and the role of competition in the supply of this important service. Our assessment will carefully consider the potential impact of the Transaction on broadband quality, prices and other relevant factors.

Countervailing factors

37. We will consider whether there are countervailing factors which could prevent an SLC. There are two main ways in which this could happen: through merger efficiencies or through the entry and/or expansion of third parties in reaction to the effects of a merger.²³
38. The Parties submit that the Transaction will generate significant rivalry-enhancing efficiencies.²⁴ The Parties submit that the Transaction will create a more effective and financially sustainable, scaled challenger to BT/Openreach by unlocking the competitive potential of Substantial's network, realising scale economies across the Parties' combined network footprint.²⁵ Further, the Parties submit that a material share of these wholesale cost savings is expected to be passed through to end consumers in the form of lower retail prices.²⁶
39. We will assess these rivalry-enhancing efficiency claims as part of our phase 2 inquiry, as well as evidence of the prospects of entry and/or expansion by third parties triggered by the Transaction.

²³ CMA129, paragraph 8.1.

²⁴ FMN, paragraph 925.

²⁵ FMN, paragraphs 5, 89 and 925.

²⁶ FMN, paragraphs 28, 926 and 929.

Possible remedies and relevant customer benefits

40. Should we conclude that the Transaction may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so, what remedies might be appropriate.
41. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits (**RCBs**) that might be expected to arise as a result of the Transaction.²⁷ The Parties submit that the Transaction will provide immediate benefits for both wholesale and retail customers, by increasing competition between nexfibre and BT/Openreach at the infrastructure (wholesale) level, enabling ISPs to offer more competitive prices at the retail level.²⁸
42. The Parties also submit that the Transaction will increase and accelerate fibre uptake, delivering clear benefits for retail consumers. The Parties state that the Transaction creates strong financial incentives to migrate customers from VMO2's cable to fibre technology, which represents a clear consumer benefit through improved quality (including higher speeds, lower latency and greater reliability).²⁹

Responding to this document

43. Any party wishing to respond to this document should do so in writing, no later than **5pm on Monday 20 July 2026** by emailing nexfibre.substantial@cma.gov.uk.
44. We intend to publish responses to this document from merger parties and third parties on the CMA's case page. All parties are therefore asked to provide a non-confidential version of their submission (alongside their full submission) for publication. For further information on the CMA's approach to publishing submissions, see [CMA2](#), chapter 18.

²⁷ [Merger remedies \(19 December 2025\) \(CMA87\)](#), paragraphs 3.4 and 3.27-3.36.

²⁸ FMN, paragraphs 939-941.

²⁹ FMN, paragraphs 942-943.