BT Group's Response to the CMA's Areas of Focus Document

Anticipated Acquisition by Liberty Global, Telefónica and Infravia (through their Joint Venture, Nexfibre) of Substantial

20 July 2026

Overview

1. BT Group[1] (**BT**) agrees with the CMA's identification of issues in its 'Areas of Focus' document dated 7 July 2026. BT makes this submission in order to highlight two items which, in our view, are particularly important for the CMA's assessment.

2. First, the CMA's assessment will need to take into account the telecoms regulatory framework and, in particular, SMP regulation imposed by Ofcom at the network level. Telecoms regulation is relevant to the CMA's assessment, including to analysis of the effects of the proposed transaction, the counterfactual, consideration of any efficiencies (including any relevant customer benefits), and appropriate remedies (if required).

3. Second, BT agrees with the CMA's proposal to consider whether the relevant wholesale and retail markets are national or sub-national, taking into account the geographic footprint of different providers and local competitive conditions. To support the CMA's assessment, we provide our observations and references to evidence on how competition differs in different geographical areas.

SMP regulatory framework

Why this matters for the merger assessment

4. Current SMP regulation constrains Openreach's ability to respond to competition in a local and targeted way, and will continue to constrain it post-merger until 2031. While regulation remains unchanged, the constraint that it imposes impacts both upstream competitive dynamics and the extent to which the Parties' claimed merger benefits materialise. That is, the claimed pro-competitive effect of the merger can only be realised in a situation where Openreach can respond to increased competition in a dynamic and timely way, as we explain more fully below.[2] This is relevant to the CMA's assessment of whether the Parties would be incentivised to improve broadband quality, lower prices, or to achieve any other relevant benefits claimed.

[1] BT Group includes Openreach.

[2] While we have not seen the detail of the claimed benefits, the CMA refers to these in summary at paragraphs 37 to 42 of the Areas of Focus document.

Overview of regulatory framework

5. Fixed telecoms operators are subject to a suite of regulation. Much of this applies to the Parties as well as to BT and other communications providers (**CPs**),[3] but SMP (significant market power) regulation only applies to BT.[4] SMP regulation is set out in Ofcom's 2026 Telecoms Access Review (**TAR**).[5] While SMP Conditions are imposed on BT, their practical effect is primarily to constrain the activities carried out by Openreach, as BT's wholly-owned subsidiary.

6. The TAR imposes SMP regulation in four markets: the provision of physical infrastructure access (**PIA**), wholesale local access (**WLA**), leased lines access (**LLA**) and inter-exchange circuits (**IEC**). The CMA's Areas of Focus document makes clear that the CMA is focusing on the effects of the merger on the WLA market, i.e. the wholesale services that CPs purchase from Openreach and its competitors, in order to sell broadband to residential consumers and smaller businesses.

7. Ofcom divides the WLA market geographically between WLA Area 2 (where Ofcom considers that there is, or is likely to be the potential for, material and sustainable competition to BT) and Area 3 (where Ofcom considers this is not the case). BT is designated as an SMP provider in both geographic markets, but while SMP regulation is largely consistent across both geographies there are some differences.

8. BT draws the CMA's attention to the following SMP obligations which particularly constrain Openreach's commercial freedom in providing WLA services – these constraints are additional to and go beyond the constraints imposed by competition law:

    a. Openreach must provide WLA services to any CP on reasonable request (SMP 1 and 2). This requires Openreach to provide WLA services to all CPs.

    b. Openreach must provide WLA services on an 'equivalence of inputs' basis, and is subject to an obligation not to unduly discriminate (**NUD**) (SMP 4 and 5). In general, these restrictions limit Openreach's freedom to provide services on different terms to different customers. More specifically, the NUD obligation includes a restriction on Openreach charging different prices in different geographic areas within WLA Area 2 – any pricing differences are subject to Ofcom's consent. This limits Openreach's freedom to respond to competitive offers from network operators who have a sub-national presence.

    c. Openreach must publish a Reference Offer and may not depart from its terms (SMP 7). This further restricts Openreach's ability to adapt its commercial approach to meet different competitive conditions. It also means that Openreach's commercial terms are fully transparent to its competitors, enabling them to pitch their offers to CPs in a targeted way, while Openreach does not have equivalent visibility of its competitors' terms.

    d. Openreach must notify any contract changes or special offers according to strict timeframes, including 120 days for conditional offers (SMP 8). This limits Openreach's flexibility to meet competitive offers from network operators and effectively means that any competitive response that includes an element of conditionality is subject to Ofcom's consent. Ofcom assesses Openreach's prices against a reasonably efficient offer (**REO**) benchmark, which is stricter than benchmarks which would be applied under standard competition law principles.[6] As with Openreach's Reference Offer, this also means that Openreach's offers are fully transparent to its competitors.

    e. Openreach is subject to price controls for many of its services, including price controls on WLA services including MPF and SOGEA, as well as certain FTTC and FTTP services (SMP 12).[7]

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[3] For example, all providers of electronic communications networks or services must comply with relevant provisions of the General Conditions of Entitlement and the Telecommunications (Security) Act 2021.

[4] Except for Hull, where Kingston Communications (KCOM) is subject to separate SMP regulation.

[5] Statement: Promoting competition and investment in fibre networks - Telecoms Access Review 2026-31

[6] TAR Statement, Volume 3.

[7] The majority of FTTC and FTTP services are not charge controlled but are subject to a 'fair and reasonable' pricing obligation (essentially a regulatory prohibition on excessive pricing and margin squeeze). Ofcom has imposed charge controls on Openreach's 80/20 FTTP and FTTC services, which set a maximum price for those services and are intended to act as an 'anchor' which effectively constrains the ability to raise prices for other bandwidths while retaining a degree of pricing flexibility.

Relevance to assessment of the proposed transaction, including claimed efficiencies

9. TAR regulation will apply until 2031 (though Ofcom could extend regulatory principles beyond then).[8] The CMA's assumptions about the prevailing model of regulation in the period covered by the TAR and beyond are key to its assessment of competitive dynamics. They are also relevant to its assessment of the counterfactual, as we assume that Ofcom's regulation will continue to constrain Openreach's commercial conduct irrespective of the transaction.

10. We understand from the Areas of Focus document that the Parties are arguing that "*the Transaction will create a more effective and financially sustainable, scaled challenger to BT/Openreach*" and 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*". This presupposes that there will be effective dynamic competition between the merged entity and Openreach, such that the Parties are incentivised to pass any efficiency gains on to their end customers.

11. The regulatory constraints on Openreach's ability to compete mean that the full benefits of that competition will be limited. Today, *ex ante* regulation does constrain competition, in both the speed of competitive response and the types of response, notwithstanding requests for support from Openreach's customers. Notably:

    a. Openreach is not able to offer lower prices in areas of greater competitive intensity, without Ofcom's consent – and, as noted above, Ofcom applies a stricter (REO) cost standard than would apply under competition law, limiting the depth of discounts Openreach may offer.

    b. Openreach cannot offer bundles of services or put in place offers which are conditional on the volumes of orders placed, without notifying them to Ofcom.

    c. Openreach must notify offers publicly on up to four months' notice, reducing speed to market and providing an opportunity for its competitors to respond ahead of an offer taking effect.

12. While Openreach's contracts have a one-month rolling term and no exclusivity, the merged entity on the other hand will be free to offer deals on a long-term basis, with exclusivity and volume commitments.

13. The regulatory framework set by the TAR (and the Wholesale Fixed Telecoms Market Review 2021 before it) shapes how the market operates today. There is very limited geographic pricing at the wholesale level by scale network operators because the framework makes it challenging to introduce such pricing. That should not mask the reality that competitive conditions vary by geography today, reflecting the presence of different altnets in smaller geographic areas, and the nature of those altnets (e.g. whether they wholesale or are vertically integrated).

14. Openreach notified four commercial offers to Ofcom on 1 June 2026, which contain elements of geographic differentiation and/or conditionality.[9] These offers are designed to allow Openreach to compete with other network operators in a manner consistent with Ofcom's regulation and with competition law. However, there is a lack of precision in Ofcom's regulation which creates uncertainty as to whether Ofcom will ultimately allow Openreach to compete in this way. Ofcom appears to see some scope for geographic pricing to be permitted in areas where competition has clearly strengthened, but it is not clear what it will permit in practice. Understanding this is important to understanding how competition may or may not be constrained by regulation in any areas where the Parties overlap.

15. The regulatory consent process inevitably means that Openreach's competitive response will be delayed even if it is permitted, and provides an opportunity for Openreach's competitors to lobby against it.[10] Ofcom has published a call for inputs and indicated its intent to reach a view on the offers within the four-month timetable it has set out. In practice, the need for engagement with our customers[11] and Ofcom ahead of notification means that Openreach's competitive response inevitably takes considerably longer than the four-month regulatory process.

16. On the basis of current regulation, therefore, Openreach is unable to respond to customer requests for pricing support in competitive areas (including the merged business) without Ofcom consent and commensurate

[8] An interim market review is theoretically possible, but we consider it highly unlikely that Ofcom would carry one out.
[9] Details of these offers are set out in Ofcom's call for inputs: Openreach's proposed commercial offers.
[10] See, for example, the interview with Lutz Schuler of VMO2 with the Telegraph, dated 11 July 2026.
[11] Our discussions with our customers are inevitably time-consuming, given the regulatory requirements to treat them all equally.

delay. This will reduce the extent to which the merged business will be incentivised to compete and therefore reduces the potential benefits which could flow to end customers.

Relevance to remedies

17. If the CMA ultimately decides to clear the proposed transaction subject to remedies, it will need to ensure that those remedies directly address the SLC identified, taking into account *ex ante* regulation over the next five years.

WLA markets

18. BT agrees with the CMA's proposed approach to market definition. In relation to the product market, BT considers that there is a single product market covering all fixed broadband services. This market includes VMO2's hybrid fibre coaxial network.

19. The CMA's approach to geographic market definition will need to take into account the differing levels of (actual and potential) competitive intensity in different areas. We refer the CMA to Openreach's submissions to Ofcom in response to the TAR consultation, for details of the evidence we consider relevant on this point.[12]

20. Ofcom recognised in its TAR Statement that there are geographic differences in the presence of different network operators within WLA Area 2, noting in particular that it includes areas with varying current network presence and different stages of rival network development. However, Ofcom did not consider that competitive conditions in any part of Area 2 were sufficiently different or stable for it to sub-divide the market for the purposes of the TAR.[13]

21. Openreach provided detailed submissions on this issue in response to Ofcom's TAR consultation, setting out evidence that competitive conditions differ appreciably in different parts of the UK (and within Area 2). Ultimately, Ofcom decided to retain a single broad market for Area 2 on the basis that (in its view) there was considerable uncertainty about how competition would develop in the TAR period.[14] However, Ofcom's findings are not binding on the CMA and the nature of the analysis to be carried out by the CMA differs in a number of material respects from the exercise carried out by Ofcom:

    a. For the CMA, "*the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise*",[15] whereas for Ofcom market definition is a necessary prior step to the imposition of workable *ex ante* regulatory obligations.[16]

    b. Ofcom's exercise involves assessing competition across the whole country, which may contribute to Ofcom taking a more generic view of competitive conditions in different areas despite the differences in competitive conditions, which it acknowledges. In contrast, the CMA's principal focus will be on areas of overlap between the Parties, so it can be more targeted – and when looking at just those overlap areas, it is clear that very different conditions of competition on a local basis are dependent on the number and identity of networks present.

    c. The timeframes that are relevant to the CMA's analysis are different to the timeframes considered by Ofcom, which are necessarily more limited. While Ofcom tries to assess how the market will develop over a maximum five-year period, the CMA will need to consider how the transaction will change the competitive landscape in the long term.[17]

    d. Ofcom's decision to retain a single Area 2 was based heavily on its view that there was considerable uncertainty about how the market would develop over a five-year period. The proposed merger could remove that uncertainty. As the CMA has a one-shot opportunity to assess the impact of a structural market change, it should avoid the potential for longer term harm that would arise from such an

[12] All submissions are published on Ofcom's website: [Consultation: Promoting competition and investment in fibre networks: Telecoms Access Review 2026-31](#).
[13] Ofcom's TAR Statement, Volume 2, paragraph 4.244.
[14] Ofcom's TAR Statement, Volume 2, paragraphs 4.178-4.184, 4.203-4.209.
[15] CMA Merger Assessment Guidelines 2021, paragraph 9.1.
[16] Communications Act 2003, sections 78 and 79.
[17] Ofcom: "*Defining geographic markets requires us to consider expected or foreseeable developments and assess whether these are likely to affect competitive conditions over the 2026-31 review period.*" TAR Statement, Volume 2, paragraph 4.143.

approach. In addition, the proposed transaction itself would (if cleared) remove some of the uncertainty that influenced Ofcom's approach.

22. We consider that there are materially different competitive dynamics between local areas where Openreach faces competition from different competitors. These differences lie not just in the numbers of competitors present, but in the competitive pressure that individual competitors exert. We refer the CMA to the evidence Openreach provided in response to Ofcom's TAR consultation, including evidence which shows appreciably different competitive conditions within Ofcom's Area 2:[18]

    a. Areas where VMO2 is present (including nexfibre). VMO2's network covers almost 60% of UK premises with ambitions to reach 75%. It has a strong retail base and wholesale ambitions.

    b. Areas where CityFibre is present. CityFibre has a footprint of 4.1 million premises and a stated ambition to reach 8 million premises, as well as a customer base including all major independent CPs (who now all have multi-sourcing strategies in place in Area 2).

    c. The presence of large vertically integrated altnets such as Netomnia, Community Fibre and Hyperoptic. These cover 12 million homes in aggregate, with strong take-up.

    d. Areas with an overlapping combination of these networks (Ofcom identified that Openreach faces competition from two or more competitors in 22% of postcode sectors).

    e. Areas with no current competitive build, but Ofcom has identified that a network operator may have plans to deploy network.

23. Openreach also commissioned NERA to produce a report in response to the TAR. This report contains economic analysis which supports a view that there are significant differences in competitive conditions which should lead to different geographic markets being identified (and more localised geographic markets than Ofcom's wide Area 2).[19] We commend this report to the CMA's attention.

24. We would be happy to discuss any aspect of this response with the CMA and/or to provide a more detailed account of SMP regulation, if the CMA would find it useful.

[18] Openreach's response to Ofcom's Consultation: "Promoting competition and investment in fibre networks: Telecoms Access Review" , 12 June 2025 (**Openreach's TAR response**), document 1: Openreach 1, paragraphs 133-167; Openreach's TAR response, document 2: Openreach 2, paragraphs 17-23.

[19] Openreach's TAR response, NERA report: Openreach Annex 1, see in particular sections 2 and 4.