Case ME/7146/26

Nexfibre / Substantial merger inquiry

Response to the CMA's Areas of Focus

1. Summary

1.1 This submission is provided in response to the CMA's Areas of Focus dated 7 July 2026 (the **AoF**). Defined terms have the same meaning as in the AoF, unless otherwise stated.

1.2 Overall, CityFibre agrees with the AoF, which rightfully recognises that the impact of the Transaction on wholesale and retail broadband competition requires careful scrutiny.

1.3 CityFibre's position is that the Transaction will give rise to a substantial lessening of competition (**SLC**) in one or more markets in the UK. In simple terms, VMO2 will acquire control over a close competitor in many parts of the UK where it already faces limited wholesale and retail competition. Furthermore, the Transaction risks undermining the long-term competitive future of the UK fixed broadband market and the regulatory framework that has been supporting its development. In particular, the CMA must recognise that:

(i) The UK fixed broadband market is a work in progress, and the CMA should assess the Transaction against a counterfactual where (independently or in combination) altnets continue to develop as a powerful third fixed infrastructure alternative.

(ii) The CMA should not confine itself to a static, short-term assessment of competitive effects. This is a market where "*[l]osses of dynamic competition are more relevant when the investments involved in entering or expanding represent an important part of the competitive process*".[1]

(iii) This case represents a pivotal 'decision point' for the future path of the market. In addition to its immediate local effects, the ultimate effect of allowing the Transaction to proceed would be to reduce the number of competing fixed broadband infrastructures from three to two, undermining the long-held regulatory goal of developing effective network competition in the UK.

2. The counterfactual

2.1 CityFibre considers that the most likely conditions of competition absent the Transaction would involve CityFibre acquiring Netomnia (the **CityFibre Counterfactual**). The second most likely counterfactual is one where Netomnia continues to operate in the market independently (the **Independent Netomnia Counterfactual**). Both of these counterfactuals are **materially more competitive** than the conditions of competition with the Transaction, which would result in an SLC for the reasons set out in section 3 below.

[1] CMA Merger Assessment Guidelines, CMA129, para 5.4.

2.2 Furthermore, the Parties' claims that conditions of competition in the counterfactual would be weaker than the prevailing (pre-merger) conditions of competition are unconvincing.[2] These claims are unsupported by the Parties' public statements: VMO2 has announced plans to upgrade its HFC network to FTTP by 2028; and Netomnia has also publicised its plans to continue FTTP deployment and investment. The Parties do not appear to be pointing to any structural changes in the market that would lead to reduced network investment, slower FTTP deployment and/or higher retail pricing.

3. Competitive effects of the Transaction

Market definition

3.1 CityFibre considers that the appropriate frames of reference for the Transaction are (i) a product frame of reference including both HFC and FTTP broadband (for both retail and wholesale customers); and (ii) geographic frames of reference encompassing both national and local dimensions of competition.

Theories of harm

3.2 CityFibre considers that the anticompetitive effects of the Transaction will be felt at both wholesale and retail levels, locally and nationally, and across both the short and medium term. This is for the following main reasons:

(i) **Reduction of wholesale competition in numerous local areas**. In the local areas where the VMO2/Nexfibre and Netomnia networks overlap, the Transaction is a 3-to-2 merger at the wholesale level. Given the high levels of overlap, this will reduce competition across a material part of the UK, removing an alternative source of wholesale access for independent ISPs and leading to worse outcomes for consumers in terms of price, choice, quality and innovation. Given the weak incentives of VMO2 to wholesale to independent ISPs, the Transaction could even result in Openreach emerging as the only wholesale provider within the Netomnia footprint.

(ii) **Entrenchment of national wholesale duopoly**. The harm to wholesale competition is not confined to areas where the VMO2/Nexfibre and Netomnia networks overlap. At the national level, the Transaction will undermine the emergence of a third rival scaled network and support the restoration of a durable Openreach/VMO2 duopoly. It will also remove a "maverick" competitor from the market. Competition from VMO2/Nexfibre

[2] See para 21 of the AoF: "*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. 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.*"

alone has not been sufficient to constrain Openreach in the past, and will not be sufficient to constrain Openreach in the future. Economic regulation of Openreach is likewise insufficient to prevent an SLC. Again, this will feed through to consumers in terms of the resulting deterioration in price, choice, quality and innovation.

(iii) **Harm to retail competition in local overlap areas**. At the retail level, VMO2 and Netomnia exert a significant competitive constraint on each other in areas where their networks overlap (which they do substantially), with VMO2 steadily losing customers to new altnet-based ISPs. The Transaction will harm retail competition in overlap areas by eliminating these constraints.

Countervailing factors

3.3 CityFibre considers that the Transaction does not result in any efficiencies that are merger-specific. Combining two overlapping fixed broadband networks is, in fact, fundamentally inefficient. The Transaction will not result in any new FTTP deployment and the claimed £3.5 billion of projected Nexfibre capex is investment that would have happened in any event absent the Transaction. Furthermore, VMO2 is already a scaled incumbent with an extensive gigabit-capable footprint and a lower-cost route to greater FTTP scale through upgrading its HFC network.