NON-CONFIDENTIAL VERSION



Case ME/7146/26
Nexfibre / Substantial merger inquiry

Response to the Invitation to Comment on Remedies

23 October 2026

1. INTRODUCTION AND SUMMARY

1.1 This submission sets out CityFibre's response to the CMA's Invitation to Comment on Remedies in respect of nexfibre's proposed acquisition of Substantial (**ITCR**). Defined terms have the same meaning as in the ITCR, unless otherwise stated.

1.2 For the reasons set out below, CityFibre considers that prohibition of the Transaction is the only effective and proportionate remedy to the SLC and any resulting adverse effects provisionally identified in the Interim Report. No other remedy would address the SLC at source and restore the dynamic process of rivalry between wholesale providers that would be lost as a result of the Transaction.

2. PROHIBITION OF THE TRANSACTION IS THE ONLY EFFECTIVE AND PROPORTIONATE REMEDY

2.1 An effective remedy must restore the dynamic process of rivalry between firms which are incentivised to win customers' business over time by offering them a better deal. On the facts in this case, therefore, an effective remedy must preserve wholesale competition at the level which would have prevailed in the counterfactual, i.e. absent the Transaction. It follows that an effective remedy must ensure that there is no reduction in the level of wholesale competition in the areas covered by the Parties' network footprints.

2.2 The Interim Report concludes that, in the counterfactual, Openreach, VMO2/nexfibre and Substantial/CityFibre would engage in a dynamic process of competition in the areas where their networks overlap. These rival networks would have continuing incentives to improve their respective offerings over time in response to technological developments, changing customer requirements and the commercial propositions of their competitors. Any effective remedy would therefore need to replicate the benefits (including the non-price benefits) of competition between networks that could be expected from that continuing process of rivalry over the long term, rather than merely enabling third-party ISPs to access a network where the same commercial incentives to compete over the longer-term, particularly on non-price parameters, no longer exist. Given the high levels of network overlap between VMO2/nexfibre and Substantial, competition would be reduced across a material part of the UK if the Transaction is allowed to proceed, removing a vital alternative source of wholesale access for independent ISPs and leading to worse outcomes for consumers in terms of price, choice, quality, innovation and resilience.[1]

2.3 The importance of dynamic network competition from altnets, including to both Openreach and VMO2/nexfibre, is demonstrated by how the fixed broadband market has developed in practice,

[1] As noted in para 7.18 of CityFibre' Initial Submission of April 2026 (**Initial Submission**), the loss of wholesale competition in overlap areas will not be replaced by new entry or expansion, as all altnets have substantially reduced build activity and are unlikely to build within Substantial's footprint. See also Interim Report, para 7.46.

supported by consistent Government and Ofcom policy. Altnets such as CityFibre and Substantial have started to provide important non-pricing and pricing constraints on Openreach and VMO2/nexfibre;[2] and as the Interim Report notes, ISPs have indicated that CityFibre's wholesale offer is particularly strong in terms of price, network speed and reliability.[3] Openreach has specifically attributed its accelerated FTTP build, technology upgrades and recent wholesale pricing offers to competitive pressure from altnets.[4] A weaker competitive threat from CityFibre/Substantial following the Transaction means that Openreach's incentives to reduce prices, improve service quality and invest in technological improvements will be weakened.

2.4 The Government and Ofcom have consistently emphasised the benefits of network competition in recent years (see Annex A to CityFibre's Initial Submission). For example, in its Telecoms Access Review Statement of March 2026, Ofcom reiterated that network competition "*will deliver significant benefits to consumers in the longer term from innovation […], choice, stronger incentives to price keenly to attract customers, and higher quality of service*".[5] It also stated specifically in relation to VMO2 that "*[a]ltnets overlap with a significant proportion of VMO2's network footprint […]. If altnets exert a stronger competitive constraint then, as well as the direct impact this has on Openreach, they may also spur VMO2 to compete more vigorously. This competitive response from VMO2, in turn, may exert a further constraint on Openreach*".[6]

2.5 The latter point is important because it shows the importance of competition to VMO2/nexfibre from altnets, not only as a competitive constraint on VMO2/nexfibre directly but also as an indirect means to constrain Openreach if VMO2/nexfibre's competitive response to altnets means that Openreach also faces more vigorous competition from VMO2/nexfibre.[7] It is important to emphasise in this regard that a static, short-term assessment of competitive effects in this market is insufficient. This is a market in which investment, technological development and expansion form an important part of the competitive process and are key to understanding the competitive dynamic within it.[8] This applies just as much to the consideration of remedies as to the SLC assessment.

2.6 Prohibition of the Transaction is the **only effective remedy** which could restore that dynamic process of rivalry. If the Transaction is prohibited, VMO2/nexfibre and Substantial/CityFibre

[2] See [REDACTED], which highlighted the service and innovation benefits that CityFibre's offer to ISPs has brought to the market (in addition to price), including building the largest XGS-PON network with synchronous speeds and service metrics consistently far ahead of Openreach.

[3] Interim Report, paras 6.125-6.129.

[4] See CityFibre's Initial Submission, paras 2.21 and 2.29; and Annex A to CityFibre's Initial Submission, para A.10.

[5] TAR Statement, Volume 1, para 2.15.

[6] TAR Statement, Volume 3, footnote 7.

[7] Interim Report, paras 4.7, 6.72 and 6.79.

[8] See para 1.2(ii) of CityFibre' Initial Submission and paras A9-A12 of Annex A to CityFibre' Initial Submission.

would operate as independent competitors at the wholesale level, comprehensively and effectively preventing the wholesale SLC and its resulting adverse effects. No other remedy can replicate the conditions of competition in the counterfactual identified in the Interim Report (where CityFibre would acquire Substantial), since such other remedy would not restore, and indeed strengthen, an independent competitor.

2.7 Applying the statutory test and the CMA's Merger Remedies Guidance (CMA87), the CMA cannot accept an alternative remedy to prohibition unless prohibition would be disproportionate to the wholesale SLC and its adverse effects. That is not the case here because there is no less onerous effective remedy available.

2.8 **First**, the harm that would arise from the wholesale SLC and its resulting adverse effects in this case is significant. As set out in the Interim Report, the Transaction would significantly reduce wholesale competition by removing an alternative source of wholesale access for independent ISPs in overlap areas. The result would be worse outcomes for ISPs and consumers in terms of price, choice, quality and innovation.

2.9 **Second**, there are no significant, relevant costs of prohibiting the Transaction. In particular, the efficiencies and RCBs claimed by the Parties should be given no, or very little weight. As set out in the Interim Report:

(i) Absent the Transaction, VMO2/nexfibre would still have the incentive to invest in upgrading its cable network to FTTP to become a more effective competitor. Any efficiencies and RCBs claimed by the Parties are not merger-specific and dynamic competition is likely to be weaker with the Transaction than in the counterfactual.[9]

(ii) The Parties' claim that the Transaction would significantly increase their FTTP network scale, and therefore make wholesaling to independent ISPs viable, does not stand up to scrutiny. As the Interim Report states, VMO2/nexfibre already has a scale FTTP network and any incremental scale is limited to the c. 0.6 million non-overlapping Substantial premises (which would in any event be wholesaled by CityFibre in the counterfactual).[10] The Interim Report also notes that the Parties have provided limited

[9] Interim Report, paras 5.167, 7.26-7.28 and 7.32. See also Frontier Submission dated 21 August 2026, paras 1-12 and 54(a).

[10] Interim Report, paras 7.30 and 7.32.

evidence to support their claim that the Transaction would materially increase the likelihood of ISPs agreeing a wholesale deal with VMO2/nexfibre.[11]

(iii) Compared with the counterfactual, the Transaction would likely result in higher prices, lower quality and less resilience at both the wholesale and retail levels of the supply chain.[12]

2.10 It follows that prohibition of the Transaction is the only way for to the CMA to remedy, mitigate and prevent the wholesale SLC identified in the Interim Report and the adverse effects resulting from it.

[11] Interim Report, para 7.32(b).

[12] Interim Report, paras 6.203-6.205. See also Frontier Submission dated 21 August 2026, para 55.