Inquiry Group (nexfibre / Substantial Merger Inquiry)
Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

Tuesday 20th October 2026

Dear Members of the Inquiry Group,

NON-CONFIDENTIAL SUBMISSION: RESPONSE TO THE CMA'S INTERIM REPORT ON THE ANTICIPATED ACQUISITION BY OPAL JVCO LIMITED (NEXFIBRE) OF SUBSTANTIAL TOPCO LIMITED (SUBSTANTIAL)

1. Executive Summary and Regulatory Context

Community Fibre Limited ('Community Fibre') welcomes the opportunity to submit this non-confidential response to the Competition and Markets Authority's ('CMA') Summary of Interim Report published on 2 October 2026.

As the leading London-focused independent network operator ('altnet') deploying gigabit-capable Fibre-to-the-Premises ('FTTP') infrastructure, Community Fibre considers the Inquiry Group's provisional finding of a Substantial Lessening of Competition ('SLC') in the wholesale supply of fixed broadband services to be fundamentally flawed. Specifically, the Inquiry Group has:

a) Underestimated the severe chilling effect that prohibiting market-led consolidation will exert on global infrastructure investment across the UK economy;
b) Overlooked the core regulatory compact established by Ofcom and HM Government under the 'fair bet' framework in the Wholesale Fixed Telecoms Market Review ('WFTMR') and Telecommunications Access Review (TAR), which explicitly recognised that high-risk capital deployments require viable consolidation and exit horizons; and
c) Constructed an unviable, multi-layered counterfactual that chains together several speculative contingencies, none of which reflect prevailing capital market conditions or operational realities.

This submission focuses specifically on the fundamental implausibility of the CMA's counterfactual, systematically contrasting each of the CMA's hypotheses against actual commercial, financing, and technical constraints.

2. Systematic Deconstruction: Counterfactual Hypotheses vs Commercial Juxtaposition

Under paragraph 3.13 of the CMA's Merger Assessment Guidelines (CMA129), the counterfactual must reflect the most likely scenario absent the transaction, grounded in robust, objective evidence. The Inquiry Group has instead constructed a composite counterfactual reliant on an unbroken chain of speculative events:

2.1 Branch 1: CityFibre's Financing Constraints and the Acquisition of Substantial

- **CMA Counterfactual Hypothesis:** Absent the transaction, Substantial would have been acquired by CityFibre at an acceptable valuation, funded via committed shareholder equity, third-party ISP proceeds, and syndicated debt.

- **Commercial Juxtaposition:**
    - **Capital Gearing vs Going-Concern Debt Gating:** While CityFibre's existing equity holders (including Antin Infrastructure Partners, Mubadala, and Interogo) indicated a willingness to commit £900 million of additional equity to support platform scale, this equity injection does not resolve the provider's structural debt constraints. CityFibre remains under active, complex debt-renegotiation processes with its syndication lenders regarding existing multi-billion-pound senior debt facilities to remain a going concern.

    - **Leverage Covenants and Capital Rationing:** In a high-interest-rate environment, senior infrastructure lenders enforce stringent debt-service cover ratios ('DSCR') and capex gating. Directing capital toward a multi-hundred-million-pound corporate acquisition—rather than preserving cash reserves to satisfy debt covenants and fund core operational capital expenditure—is commercially unviable. Debt syndicates are highly unlikely to consent to significant M&A-driven balance sheet leverage while structural debt restructuring remains unresolved.

    - **The Fallacy of Bid Certainty:** The CMA incorrectly equates conditional equity appetite with bankable, deliverable transaction execution. Without senior lender consent and an agreed capital restructuring plan, CityFibre was not in a deliverable position to complete an acquisition of Substantial on terms acceptable to Substantial's vendors.

2.2 Branch 2: Frictionless Carve-Out and Divestiture of Retail Operations (YouFibre)

- **CMA Counterfactual Hypothesis:** Following an acquisition of Substantial by CityFibre, Substantial's retail operations (YouFibre) would be cleanly and immediately divested to a third-party ISP, maintaining retail competition.

- **Commercial Juxtaposition:**
    - **Operational Entanglement and Migration Frictions:** YouFibre is intrinsically coupled with Netomnia's physical network via shared Operational Support Systems ('OSS'), Business Support Systems ('BSS'), network provisioning pipelines, IP transit routing, and shared engineering resources. Carving out an unbundled retail base in the altnet space requires intricate Transitional Service Agreements ('TSAs'), custom API middleware, and regulatory migration safeguards under Ofcom General Conditions, each introducing substantial friction and severe customer churn risk.

    - **Empirical Scarcity of Trade Buyers (The TalkTalk Precedent):** The CMA's assumption that there is ready, liquid demand from well-capitalised buyers for UK retail ISP customer bases is directly contradicted by observable market facts. Most notably, TalkTalk—a long-established national retail ISP—exhaustively tested the market and was unable to secure a commercial trade buyer for its retail subscriber business, ultimately collapsing into administration before being acquired out of insolvency in October 2026 by BT Group, with government oversight to safeguard consumer continuity. If an established national brand with over 1.5 million customers could not secure a commercial trade sale in the open market, the premise that a regional, unbundled altnet retail book like YouFibre could be cleanly and profitably offloaded to an independent third party without deep valuation write-downs or punitive wholesale commitments is detached from market realities.

    - **Absence of Acquirer Capital:** UK retail ISPs are currently rationing capital and absorbing heightened bad debt. Expecting an independent third party to acquire YouFibre at a valuation acceptable to Substantial's vendors—while committing to long-term take-or-pay wholesale contracts on the underlying network—is an unevidenced hypothesis.

2.3 Branch 3: Immediate Wholesale Migration to CityFibre Anchor ISPs

- **CMA Counterfactual Hypothesis:** Upon acquiring Substantial, CityFibre would immediately wholesale the combined footprint to its established anchor ISP partners (such as Sky and Vodafone Three), instantaneously introducing a three-player wholesale market across the footprint.

- **Commercial Juxtaposition:**
    - **Technical and Architectural Heterogeneity:** Netomnia and Brsk deployed specific GPON/XGS-PON optical line terminal architectures, differing optical splitting ratios, and distinct backhaul interconnect topologies that do not align out-of-the-box with CityFibre's standardised wholesale access architecture.

    - **IT and Gateway Integration Lead Times:** Onboarding an acquired footprint into Tier-1 ISP automated ordering, diagnostic, and field-dispatch systems requires extensive software integration. Major ISPs face significant internal development backlogs; assuming immediate wholesale activation across disparate physical assets disregards established UK telecom engineering and operational lead times.

2.4 Branch 4: Certainty and Timeliness of VMO2's Cable-to-FTTP Upgrades

- **CMA Counterfactual Hypothesis:** Absent the merger, VMO2 has a clear commercial incentive and ability to upgrade 100% of its legacy Hybrid Fibre-Coaxial ('HFC') network to FTTP, creating an estimated 82% direct network overlap with Substantial and establishing three-way wholesale infrastructure competition.

- **Commercial Juxtaposition:**
    - **Capex Phasing and Balance Sheet Discipline:** Upgrading VMO2's legacy cable estate requires billions of pounds in capital expenditure. In tighter macroeconomic conditions, capital return hurdles and balance sheet leverage necessitate disciplined phasing and potential deferral of full FTTP overbuild.

    - **Inconsistency in Analytical Assumptions:** In paragraph 26 of the Interim Report, the CMA assumes that standalone nexfibre is capital-constrained and unlikely to expand beyond c.2.6 million premises. Conversely, across the exact same operational footprint, the CMA attributes 100% execution certainty to VMO2 upgrading millions of HFC lines to FTTP. Speculative future builds cannot be selectively assumed to inflate theoretical overlap figures (to 82%) while simultaneously presuming capital paralysis for other joint-venture assets.

3. Summary Matrix of Counterfactual Fragility

The table below summarizes the compound fragility across the CMA's layered counterfactual:

Counterfactual Element	CMA Working Assumption	Commercial Reality / Operational Friction	Impact on Credibility
CityFibre M&A Execution	CityFibre easily secures funding to complete the acquisition of Substantial.	Existing £900m equity commitment is constrained by live senior debt renegotiations to remain a going concern; lenders will not permit M&A-driven balance sheet leverage.	Highly Unlikely
YouFibre Divestment	Clean, prompt sale of Substantial's retail arm to an independent third party.	Deep OSS/BSS entanglement and acute lack of retail buyers—underscored by TalkTalk's failure to find a commercial buyer for its ISP arm, requiring intervention by BT Group and Government.	Speculative
Wholesale Onboarding	Tier-1 ISPs (Sky, Vodafone Three) instantaneously light up the acquired Substantial footprint.	Disparate network topologies require extensive physical re-engineering; Tier-1 OSS integration backlogs create multi-year delays.	Unrealistic
VMO2 Network Upgrades	100% of VMO2's HFC network is fully converted to FTTP on an expedited timeline.	Multi-billion-pound capex demands and balance sheet constraints; conversion timelines remain subject to strict capital gating.	Unsubstantiated

Counterfactual Element	CMA Working Assumption	Commercial Reality / Operational Friction	Impact on Credibility
nexfibre Organic Build	Standalone nexfibre remains static at c.2.6 million premises.	Methodologically inconsistent: freezes one party's capital deployment while assuming seamless expansion for competitors.	Methodologically Flawed

4. Compounding Probability and Economic Implications

When an SLC finding rests upon a multi-stage counterfactual:

Probability of Counterfactual =
P(Debt Resolution) x P(Retail Carve-Out) x P(Systems Integration) x P(HFC Upgrade)

Even if each individual stage were assigned an optimistic 60% probability of success, the joint probability of this composite scenario materialising is below 13%.

By contrasting the proposed transaction against an improbable theoretical construct, the CMA:

1. **Misidentifies the Dominant Market Constraint:** The ubiquitous structural constraint across the UK footprint remains Openreach. Most fragmented, sub-scale altnets cannot independently support the national scale or IT integration costs demanded by Tier-1 ISPs to wholesale their networks.

2. **Manufactures Artificial Overlap:** Projecting an 82% overlap between Substantial and VMO2 relies on unbuilt, speculative future FTTP conversions rather than the real existing market conditions.

3. **Undermines Necessary Market Consolidation:** If the regulatory regime prevents network operators from combining complementary footprints to build scale, most sub-scale altnets face financial distress. The realistic counterfactual to a blocked deal is not an idealised three-player wholesale landscape, but stalled network investment, stranded infrastructure assets, and entrenched dominance for Openreach.

5. A More Plausible Commercial Counterfactual

Under the CMA's *Merger Assessment Guidelines*, the counterfactual must reflect the most realistic situation that would arise absent the Transaction. When the speculative assumptions of frictionless debt syndication, seamless retail carve-outs, and guaranteed HFC capital deployment are removed, the evidence points to a markedly different reality.

Absent the Transaction, the most plausible counterfactual consists of the following commercial dynamics:

- **Substantial Capital Rationing and Capex Halting:** As the CMA's own evidence acknowledges (paragraph 21), Substantial's standalone outlook deteriorated significantly, with shareholders actively seeking an exit. Absent an acquisition by a well-capitalised consolidator, Substantial will face continued capital rationing. This could result in the cessation of network expansion, deferral of customer-drop capex, and a retrenchment solely to cash preservation.

- **Financial Restructuring Rather Than Strategic M&A**: Given that CityFibre is actively engaged in restructuring its own senior debt syndicate to remain a going concern—rendering an M&A debt drawdown unviable—Substantial might not be acquired as an operating whole. Instead, Substantial would enter a protracted financial restructuring or lender-led work-out, severely disrupting build schedules and potentially service quality.

- **Retail Disruption and Subscriber Attrition**: With rationed capital to fund YouFibre's subscriber acquisition costs and customer service operations, YouFibre might experience rising subscriber churn rather than an orderly, value-accretive trade sale. As proven by the recent failure to find a buyer for TalkTalk's retail business and its subsequent administration, sub-scale retail subscriber bases facing debt headwinds cannot find ready, solvent buyers in the private market.

- **VMO2 Capex Discipline and Delayed HFC Overbuild**: Confronting persistent macroeconomic pressures and debt service costs, VMO2 would phase its capital allocation prudently. Rather than an immediate, ubiquitous 100% conversion of its HFC estate to FTTP, VMO2 would focus upgrades selectively on high-density, high-ARPU exchange areas, leaving many markets un-upgraded for an extended period. The theoretical 82% overlap cited by the CMA would fail to materialise.

- **Entrenchment of Openreach's National Monopoly**: The realistic counterfactual to a blocked deal is not the emergence of three vibrant, nationwide wholesale networks competing head-to-head. Rather, it is the fragmentation and neutralisation of the now capital constrained altnet challenge, leaving Openreach as the sole ubiquitous, national wholesale provider capable of serving Tier-1 ISPs across the vast majority of the UK.

6. Conclusion and Recommendations

The CMA's provisional finding of an SLC is built upon a counterfactual that is commercially untenable and methodologically flawed. By layering multiple improbable events—CityFibre debt syndication, unbundled retail asset sales, immediate wholesale systems onboarding, and 100% HFC conversion—the Inquiry Group has evaluated the Transaction against an idealised scenario that cannot exist in today's capital markets.

The transaction between nexfibre and Substantial represents the type of rational, private-capital consolidation that HM Government and Ofcom envisaged under the 'fair bet' framework. It establishes an anchor-backed, scaled wholesale platform exceeding 5 million premises, delivering the critical mass necessary to compete with Openreach for national ISP contracts.

Community Fibre strongly urges the CMA Inquiry Group to:

Adopt a realistic counterfactual that reflects prevailing capital market discipline, senior debt covenant realities, and altnet debt-service pressures;

Recognise the empirical evidence that retail ISP bases cannot be frictionlessly divested in the current UK market; and

Conclude that the Transaction does not result in an SLC, but rather secures the long-term viability of high-speed fibre infrastructure competition in the UK.

We remain at the disposal of the Inquiry Group.

Yours sincerely,

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