CASE ME/7146/26

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

Parties' response to the CMA's Interim Report ("IR")

Opal JVco Limited

and

Substantial TopCo Limited

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1 Executive Summary

(1) This is the joint response of Opal JVco Limited ("**nexfibre**") and Substantial TopCo Limited and its subsidiary undertakings (together, "**Substantial**" or the "**Target**") (and all together, with VMO2, the "**Parties**") to the CMA's IR dated 2 October 2026 (the "**IR**") (the "**IR Response**"). The Parties strongly disagree that nexfibre's anticipated acquisition of Substantial (the "**Transaction**") results in a substantial lessening of competition ("**SLC**") in the wholesale supply of fixed broadband services.[1]

(2) The IR's provisional finding of an SLC rests on foundational errors in concluding that, absent the Transaction, CityFibre would have acquired Substantial (the "**CityFibre Counterfactual**") and that VMO2 would upgrade its hybrid fibre-coaxial ("**HFC**") network to fibre-to-the-premises ("**FTTP**") (the "**VMO2 Counterfactual**"). Once these two counterfactual premises fail, so too does the provisional finding of an SLC.

(3) Since the IR, this counterfactual position has become even harder to sustain in light of significant new evidence and market developments: CityFibre's latest accounts and debt restructuring, which serve to reinforce its financial constraints both in February 2026 and today; VMO2's decision – which will be announced on 3 November 2026 – to stop all HFC network upgrade work on its balance sheet (the "**Fibre Up Programme**" or "**Fibre Up**") from the end of this year at the latest in light of **[REDACTED]** and market economics that do not support three overlapping networks[2]; and BT's acquisition of TalkTalk which will shrink the available wholesale market appreciably.

(4) Contrary to the IR's provisional findings, the Transaction is the only deal on the table which will immediately create an effective and financially sustainable challenger to the dominant Openreach. This will unlock £3.5 billion of investment in the UK, in support of the stated objectives of the Government and Ofcom for nationwide gigabit-capable connectivity to support the economic growth agenda.

(5) The IR's provisional analysis fundamentally misunderstands the economic and business realities of the fibre broadband market. The Parties have provided extensive internal and external evidence of curtailed and abandoned build programmes, redundancies, public contracts being handed back and key players falling into administration or requiring restructuring (with established operators such as Gigaclear, Toob, G.Network, Airband and, indeed CityFibre, recently experiencing structural financial issues).

(6) It follows that the CMA must recognise the significant benefits that the deal will bring for UK wholesale and retail customers and approve the deal unconditionally. The consequences of the CMA doubling down on errors in the IR are stark: the CMA will have blocked the only viable deal that can immediately create a scaled competitor to the dominant Openreach, and this in turn will have a chilling effect on investment for the altnet market.

1.1 The IR's provisional counterfactual is flawed and should be reassessed following new evidence since the IR

[1] For completeness, please note that terms defined in the Parties' previous submissions, such as the Final Merger Notice, are used throughout this submission and have not been redefined.

[2] **[REDACTED]**

The CityFibre Counterfactual cannot be reconciled with contemporaneous evidence and is untenable in light of CityFibre's demonstrable financial difficulties

(7) The IR pins its hopes on CityFibre's imagined funding position and substitutes conjecture for the real-world judgement of Substantial, its shareholders and its expert financial advisers, which crystallised over the course of lengthy negotiations with CityFibre (and is clearly evidenced in contemporaneous internal documents): namely that CityFibre – **[REDACTED]** – was unable to fund a deliverable transaction. This is the key error at the heart of the IR. Substantial's shareholders (professional investors with fiduciary duties to maximise returns for their investors), having every incentive to accept CityFibre's **[REDACTED]** offer, rejected it: precisely because it was not supported by committed funds and carried material deal uncertainty.[3] As explained further in Substantial's response to the IR, a deal with CityFibre was not and is not tenable.[4] These facts and evidence cannot be wished away. The CMA must make reasonable enquiries necessary to test the speculation in the IR.

(8) The IR's provisional conclusion on the counterfactual is a result of the CMA asking itself the wrong question in light of the legal test – to demonstrate an SLC on the balance of probabilities. In Phase 2, it is common ground that the CMA must reach a view as to the most likely counterfactual:[5] In circumstances, such as here, where the CMA is choosing between two binary counterfactuals, this means the CMA must, by the time it delivers its Final Report, reach a view that the CityFibre Counterfactual is more likely than not to eventuate absent the Transaction.

(9) Although superficially concluding that CityFibre "*would*" acquire Substantial absent the merger, the IR's underlying reasoning is replete with reliance upon mere possibilities: at no point does it identify any route by which CityFibre would (in the sense of being more likely than not - >50%) secure the funding necessary to acquire Substantial at a price acceptable to its shareholders, such that a viable deal could be completed. Instead, the IR relies on speculation, supposition and the self-interested submissions of the main complainant, CityFibre.

(10) CityFibre's ability to finance itself comprises four cumulative and separate conditions, none of which were or are in place: (i) committed equity from CityFibre's shareholders or third parties; (ii) the consent of Substantial's lenders to roll c. £**[REDACTED]** of debt (**[REDACTED]**) and a backstop **[REDACTED]** for lenders that do not roll; (iii) the consent and new funding of CityFibre's own lenders, whose 2025 terms permit only £160 million of acquired debt and who are now being asked to write down their existing loans; and (iv) the onward sale of Substantial's retail ISP businesses (the "**Substantial ISPs**").[6] A counterfactual cannot be "most likely" where the CMA cannot with confidence identify the price that would have been agreed, the source, magnitude and timing of any funding, the terms on which the transaction would have been

[3] The Parties maintain that nexfibre's bid represented market value for the Substantial business. As explained in paragraph 125 of the Final Merger Notice ("**FMN**"), despite media reports that the parties paid a "high" price for Substantial, the price was **[REDACTED]**.

[4] Substantial's response to the CMA's Interim Report: "CityFibre **[REDACTED]** – An acquisition of Substantial was *not* the most likely outcome absent the Transaction, either in February 2026 or today", 23 October 2026 ("**Substantial's response to the IR**").

[5] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraphs 3.13 and 3.31.

[6] It is noted that CityFibre relies on the proceeds of the back-to-back divestment to fund its acquisition. CityFibre also relies on the onward sale structurally, given that it does not have a retail ISP business.

implemented and where it is subject to material execution risks. Such uncertainty must, if the correct legal standard is applied, be fatal to the CityFibre Counterfactual.

(11) As recognised by the CMA's predecessor, the Office of Fair Trading, in its consideration of Sky's acquisition of a stake in ITV, it is important to exercise caution in relation to "*potentially outcome-determinative counterfactuals"*, not least due to the clear self-interest held by rival bidders (who can make claims which are "*easily alleged and difficult to verify*") but also to not indulge itself in a *"beauty contest".*[7]

(12) Moreover, the IR's conclusions also rest on manifest inconsistencies and errors of assessment: such as the statement that £**[REDACTED]**.[8] The reality is that at no point did CityFibre produce **[REDACTED]**.[9]

(13) CityFibre's failure to secure funding reflects the inescapable reality of a **[REDACTED]** business **[REDACTED]** CityFibre's recently published accounts show that as recently as 30 April 2026 its independent auditors have recorded a material uncertainty as to its ability to continue as a going concern, noting in particular risks associated with covenant tests in June 2027; it underwent a court-sanctioned scheme of arrangement to restructure its debts in 2025, **[REDACTED];** its most recent accounts show that: its finance costs reached almost £400 million in 2025 **[REDACTED]** its revenues of £169 million – and that its pre-tax loss **[REDACTED]** £545 million.

(14) Significantly, further evidence is now available to the CMA since the IR, which raises fresh questions about CityFibre's financial position and clearly demonstrates CityFibre's inability to execute a transaction with Substantial in February 2026, which endures today. It is clear that CityFibre is proposing a significant restructuring, the timing and outcome of which is highly uncertain, in which it will reportedly ask its own lenders to accept haircuts of as much as £2 billion.[10] The CMA must request and scrutinise the documents prepared for lenders in this context: the Parties submit they are likely to directly undermine any assertion that CityFibre could have funded an acquisition in February 2026 (a conclusion that is equally true today). Indeed, CityFibre publicly acknowledges that its "*capital structure needs to evolve*" and the need to facilitate "*a stable long-term platform*".[11] Put simply, a business that requires a material restructuring to become a "*stable platform*" has not been, and is not, a credible buyer of an altnet of Substantial's size, and no counterfactual can properly be built on the premise that it is.

(15) In summary, the CityFibre Counterfactual cannot be regarded as the "most likely" counterfactual. Substantial was not a failing firm – continuing as a standalone operator was a viable option. Perversely, in this case, the CMA accepts that Substantial is a viable standalone entity; but concludes that the "most likely" counterfactual is an acquisition by a company suffering significant financial challenges.

(16) The relevant counterfactual is that Substantial would have continued as a constrained standalone, retail-led operator. On this basis, it is clear that no SLC arises.

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[7] Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc, paragraphs 98 and 99, repeated in Tesco/Kwiksave, paragraph 18.

[8] IR, paragraph 5.90.

[9] IR, paragraph 5.49.

[10] The Telegraph, Banks Brace for £2bn loss from CityFibre Restructure.

[11] CityFibre Delivering Strong Underlying Performance as it Moves to Strengthen its Capital Structure and Prepares for Acquisition Drive.; IR, paragraph 5.124.

VMO2 will not upgrade its HFC network to FTTP

(17) The IR's counterfactual analysis dismisses the abundance of real-world evidence that, VMO2's financial position has worsened and VMO2 **[REDACTED]** and market economics that do not support three overlapping networks. VMO2 has £22 billion of debt on its balance sheet, **[REDACTED]**.[12]

(18) In dismissing evidence from internal documents corroborated by extensive external financial reporting and testimony from senior business representatives, the CMA relies on VMO2's putative theoretical incentives to upgrade its network to fibre (**[REDACTED]**), while discounting extensive, more recent, real-world evidence of **[REDACTED]**.

(19) As noted above, this IR Response demonstrates that, independently of the Transaction, VMO2 will stop all HFC to fibre upgrade work on its balance sheet from no later than 1 January 2027.[13] This decision will be announced to the market on 3 November 2026. Following this announcement, **[REDACTED]** The CMA must update its assessment to take account of the material changes in VMO2's circumstances and reflect the market reality.

(20) In any case, as explained in Section 3, VMO2's **[REDACTED]** under the CMA's counterfactual (i.e., in which CityFibre owns Substantial's assets and offers wholesale discounts to Openreach comparable to the discounts to Openreach prices that it offers today). Thus, VMO2's shareholders' decision with respect to Fibre Up, **[REDACTED]**.

The IR needs to be updated to reflect the profound and far-reaching impact of the BT/TalkTalk Transaction and the uncertain investment climate for UAE shareholders

(21) The CMA must update its findings to reflect important new market developments since its IR, namely the significant impact that BT's acquisition of TalkTalk/PXC ("**BT/TalkTalk Transaction**") will have on its assessment.[14] It reinforces the fragility of the sector and undermines key premises of the IR's findings, including by:

(i) significantly strengthening the position of Openreach by committing c.2.5 million captive wholesale customers to BT;

(ii) removing one of the three key Tier 1 ISP customers (equating to c.21% of the addressable retail market)[15] and a neutral aggregator in PXC – further eroding the sustainability of a three-player local market; and

(iii) materially weakening the business cases of all altnets (with CityFibre and its acquisition case for Substantial, in the Parties' view, expected to be disproportionately affected).

[12] Annex_IRR_001.

[13] See Section 3.3 for further details.

[14] On 5 October 2026, BT completed its acquisition of TalkTalk Telecommunications Limited and PlatformX Communications Limited ("**TalkTalk/PXC**") pursuant to which the Secretary of State for Digital, Culture, Media and Sport ("**Secretary of State**") issued a public interest intervention notice ("**PIIN**") enabling the Secretary of State to determine whether the transaction will be approved. Following an invitation to comment, on 19 October 2026, the CMA submitted its report to the Secretary of State and a final decision is now awaited. In light of the PIIN, the parties anticipate this transaction will be approved.

[15] Annex_IRR_003, Appendices (*Contestable Market Calculation*).

(22) Separately, the CMA must also take account of the recent developments regarding UAE investors, which have introduced additional uncertainty regarding further investments by CityFibre shareholders.

1.2 In any event, the IR's competitive assessment is flawed

No credible evidence that competition would be stronger under the CityFibre Counterfactual

(23) The IR's provisional finding of an SLC depends almost entirely on the premise that, absent the Transaction, CityFibre would have acquired Substantial. This is on the dual bases that: (i) the Transaction reduces the share of the total nexfibre and VMO2 network where there is overlap with CityFibre and Openreach (from c.32% to c.18%); and (ii) CityFibre is considered by the CMA to be a "*vigorous*" wholesale competitor.[16]

(24) As to the first contention, the evidence does not show overlap as a key parameter of competition or why the reduction of overlap would weaken competition between nexfibre and VMO2 and CityFibre. The IR also fails to assess whether competition between three overlapping network operators would be sustainable. Evidence from nexfibre's internal modelling[17] and from VMO2[18] clearly demonstrates this is not the case.

(25) The second contention rests on the premise that CityFibre's current prices are sustainable and would persist in the counterfactual. The available evidence **[REDACTED]**. Against this evidence, the IR undertakes no apparent assessment of CityFibre's costs, margins, business plan, or expected future pricing (which may, in the Parties' view, be expected to be **[REDACTED]** by the additional financing required) to support its assertion that CityFibre's current prices would persist in the counterfactual. The IR cites CityFibre's restructuring in 2025 and its current recapitalisation as evidence of sustainability and shareholder commitment, but these points merely reinforce CityFibre's financial problems.[19]

(26) Finally, the IR is irrational to proceed on the basis that Openreach, the dominant incumbent, would be unable to constrain the merged entity simply because Openreach is a "*regulated entity that cannot freely compete on key metrics such as price and service*".[20] Openreach's regulated state, which is subject to periodic review and can be adjusted by Ofcom at any time, is a direct result of its significant market power. The existence of regulation is not sufficient to remove the competitive constraint of a super-dominant incumbent, and the CMA fails to consider whether Openreach's regulation would be adjusted or even whether Openreach would be permitted, under current arrangements, to compete even more vigorously on price.

The evidence demonstrates that wholesale competition is national

(27) The IR's provisional conclusion that the relevant geographic market consists of the Parties' combined network footprint is not consistent with how competition operates in the market. The CMA's assessment rests on the premise that networks do not face material competition from non-overlapping networks.

[16] IR, paragraphs 6.95-6.96 and 6.143.

[17] nexfibre's internal modelling also shows that **[REDACTED]**

[18] As explained in Section 5.

[19] IR, paragraph 6.104.

[20] IR, paragraph 38.

(28) This claim is contradicted by real-world evidence, including third-party ISPs' and operators' responses and internal documents referenced in the IR. This evidences that suppliers and customers consistently consider scale and price, rather than network location or overlap, as the most important parameters of competition and also shows that ISPs routinely benchmark non-overlapping operators' offers against each other. ISPs negotiate contracts covering a provider's entire footprint, regardless of where that is located geographically (and in the case of the nexfibre/Substantial footprint, that is in towns and cities across the UK), with principal commercial terms applied uniformly across that footprint. A provider therefore competes (in the key parameters of price and scale) for an ISP's national requirements.

(29) Openreach's competitive pressure is central to this national competitive process. Openreach is available throughout the UK and provides the common national alternative against which altnets' wholesale parameters are benchmarked. All altnets, regardless of where their networks are located or overlap, therefore compete to attract ISP volumes away from Openreach. It is inconsistent and irrational to refer to limits on Openreach's ability to introduce geographic variation into its pricing in the competitive assessment but then disregard that same evidence when defining the geographic market.

(30) As further detailed in this IR Response, the evidence shows that the geographic market should be defined at the national level.

1.3 The IR rests on a highly inconsistent and selective reading of the evidence

(31) In addition to the conceptual and analytical failings in the IR, there are key defects in the treatment of evidence that are prevalent throughout the IR's approach to the counterfactual and substantive assessment and undermine the validity and robustness of the CMA's provisional conclusions. Given the atypical nature of the CityFibre Counterfactual and its pivotal role in the CMA's provisional findings, the CMA should be relying on a particularly robust evidence base. Instead, it has selectively credited self-interested third-party evidence while dismissing the Parties' evidence even where it is based on objective, verifiable facts. These key defects are:

(32) First, insufficient scepticism to self-serving third-party submissions: the IR relies in significant part on speculation, supposition and the self-interested submissions of the main complainant, CityFibre and its shareholders, which are not subjected to the requisite level of robust scrutiny. The CMA accepts CityFibre's contention that its 2025 restructuring demonstrated the appetite of CityFibre's shareholders to "*make continued equity commitments in pursuit of building scale*"[21]; rather than a restructuring in circumstances where CityFibre was within weeks of running out of cash.[22] Similarly, it uncritically accepts CityFibre's contention that its current restructuring shows the availability of funding to support M&A; ignoring the reality of CityFibre's financial position and the highly uncertain nature of the restructuring process.

(33) The CMA's treatment of evidence is not even-handed in this regard. For instance, the CMA discounts the conclusion of one of Substantial's shareholders **[REDACTED]** that CityFibre's bid was **[REDACTED]** on the basis that it was contained in an investment committee approval for the nexfibre transaction. This is a serious accusation: the implication is that **[REDACTED]** is misleading its own investment committee as to the

[21] IR, paragraph 5.83.

[22] Annex_IRR_004.

relative attractiveness of a CityFibre bid. Substantial's response to the CityFibre Counterfactual provides further contemporaneous evidence from shareholders that supports the content in these materials.

(34) Second, inconsistent treatment of evidence that post-dates the Transaction: the IR relies heavily on developments which post-date the Transaction in the context of the CityFibre Counterfactual (without adequate consideration of the degree to which they are inextricably linked with the Transaction – a merger effect – and hence inadmissible); while discounting **[REDACTED]** which arise independently from the Transaction. If the CMA accounts for evidence which post-dates the Transaction, it must account for other significant developments – including the BT/TalkTalk Transaction and current uncertainty regarding investment in the UK by UAE investors.

(35) Third, reliance on speculation rather than observable evidence: for its assessment of the importance of network overlap in wholesale competition (a key issue for geographic market definition as well as closeness of competition), the IR relies heavily on speculative views of potential future market developments and a selective reading of self-interested feedback from third parties. The CMA ignores the abundant real-world evidence of how competition actually operates in drawing its conclusion as shown in Section 1.2 above.

(36) Fourth, failure to enquire/obtain relevant evidence: the CMA has seemingly undertaken no assessment of the sustainability of CityFibre's business plan, despite **[REDACTED]**. **[REDACTED].**[23] Relatedly, the CMA has undertaken no assessment of the economic viability of competition between three scaled overlapping network operators, despite this being a critical component of the CMA's competitive assessment.

1.4 The consequences of an erroneous decision by the CMA are material for a key sector: it will chill investment and reinforce Openreach's dominance

(37) The IR's provisional conclusions give rise to serious policy concerns. The CityFibre Counterfactual is not only flawed on the evidence, but is also improbable. In the likely event that the CityFibre Counterfactual turns out to be incorrect, a prohibition by the CMA will have long-lasting consequences for the UK broadband market. It would risk a market where there is no meaningful wholesale competition to Openreach.

(38) The consequence for competition of a CMA prohibition decision is clear – if the IR's provisional conclusions are upheld, the result would be to block the emergence of scaled, financially sustainable wholesale competition to Openreach for the first time in the UK, with no credible alternative in the wings given CityFibre's inability to fund a transaction. The only winner here would be Openreach, which would further entrench its dominant position already exacerbated by BT's acquisition of TalkTalk (and its wholesale arm PXC).

(39) It would not only deny the UK broadband market the certainty of significant capital investment for which it is crying out, with InfraVia alone committing to invest c.£1 billion of new equity investment as part of the Transaction, but would also preclude the significant rivalry-enhancing efficiencies ("**REEs**") and relevant customer benefits arising from the merger from coming to fruition. The efficiencies generated by the Transaction will benefit consumers and businesses in the UK, including by directly

[23] **[REDACTED]**. IR, footnote 294.

supporting the UK Government's ambitions to improve growth and productivity through faster and scaled-up fibre roll-out, and the CMA risks jeopardising this outcome.

(40) Given this, by putting so much weight on such a highly uncertain counterfactual, the CMA is effectively using merger review to unravel the outcome of a competitive M&A process and to favour a particular market participant. The practical effect is to "pick a winner". For the case at hand, this is to bet the future of a critical infrastructure sector on the highly doubtful prospects of a single company, given it appears to represent the CMA's preferred outcome (despite the empirical evidence from the market that it could not prevail in a competitive transaction process). Indeed, the IR's approach to the counterfactual and competitive assessment would make it materially more difficult for nexfibre to acquire other altnets with a material footprint (given the resulting overlap with the VMO2 network would be too high). From a wider policy perspective, the IR's approach risks undermining its commitment to the "predictability" limb of the CMA's 4Ps framework. If merging parties must assess their deal against all potential other bidders outside a failing firm context, it becomes almost impossible to predict merger inquiry outcomes.

(41) This interventionist and distortive approach will have a further chilling effect on consolidation in the altnet sector – which, as recognised by Ofcom in its recent TAR, is badly needed in light of the precarious financial state of the altnet sector,[24] with multiple altnets recently exiting the market. It is also liable to elicit investment uncertainty more broadly as clearly evidenced by market commentary, with experts reported in the Financial Times saying that the CMA's provisional decision could *"potentially delay consolidation in the highly fragmented sector"* and "*has sent shivers through the sector"*.[25] Similarly, sector analysts New Street Research noted following the IR that, "*we would like to think a rational view can prevail and network consolidation is possible – but if not, which seems increasingly likely, there is likely to be a gloomy time ahead for the UK fixed market with too much infrastructure" and "debt writedowns."*[26] This outcome is obviously contradictory to the CMA's duties under its Strategic Steer from the Government to "*clearly, and unambiguously, reflect the need to enhance the attractiveness of the UK as a destination for international investment".*[27]

(42) The Parties reiterate their commitment to constructive engagement with the CMA to ensure that the CMA's Final Report reflects the clear new evidence that has emerged since the IR regarding the economic and business realities of the market and corrects for the errors identified in this IR Response alongside the correct interpretation of evidence previously provided and a better understanding of the state of the market.

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[24] ISPreview UK, 'Consolidation Tracker for Alternative UK Gigabit Broadband Networks', which notes challenging market conditions for altnets; Distressed debt buyer applies to put UK broadband operator into administration; Enders Analysis, "UK Altnets: Something's got to give" [2025-104]; 'Investor INPP Declines Further Funding for UK Altnet Broadband ISP Toob'; ISPreview UK, 'Administrators reveal financial details of Voneus' acquisition of Airband'; and Financial Times, 'Distressed debt buyer applies to put UK broadband operator into administration'.

[25] Financial Times, "*UK watchdog signals it may block major broadband deal";* Financial Times, *"How BT's TalkTalk swoop left broadband rivals fuming".*

[26] Annex_IRR_002, Page 1; In this piece, New Street Research also say that they "*continue to be very uncertain"* the counterfactual would have been a CityFibre cash bid for Netomnia, noting that "*it remains a big ask for the* [CityFibre] *creditors*" and is a "*huge leap of faith to the CMA to take given all that* [New Street Research] *understand in the market*" (Page 1).

[27] The government's Strategic Steer to the CMA, published on 15 May 2025.

(43) The rest of this IR Response is structured as follows[28]:

(i) Section 2 explains that the most likely counterfactual for Substantial is as a constrained standalone operator.

(ii) Section 3 explains that the most likely counterfactual for VMO2 is that it stops Fibre Up build.

(iii) Section 4 explains that the market for wholesale FTTP in the UK is national.

(iv) Section 5 explains that the CMA's competitive assessment is flawed.

(v) Section 6 explains that the Transaction will deliver significant REEs that will benefit retail ISPs and UK broadband customers.

[28] The Parties have focused their response on key issues. As a result, the IR Response addresses the CMA's provisional SLC findings only. For the avoidance of doubt, the Parties consider that no concerns can, on the evidence, arise in relation to retail competition or on the basis of vertical concerns. To the extent that the IR contains any indications to the contrary, the Parties consider that these are incorrect. Further, to the extent that the Parties do not specifically address any particular findings or comments in any part of the IR, this should not be read as indicating agreement with the CMA's position.

2 CityFibre Counterfactual[29]

2.1 Introduction

(44) The IR rests on a foundational error which pervades every aspect of its interim analysis, namely that the appropriate counterfactual is an acquisition of Substantial by CityFibre which would be more competitive than the counterfactual with the Transaction. This Section explains that a CityFibre Counterfactual, if upheld in the CMA's Final Report, would be unsound as a matter of law and damaging as a matter of policy.

(45) The CityFibre Counterfactual is not grounded in an objective reading of the evidence in front of the CMA. Moreover, since the IR, this counterfactual position has become ever harder to sustain in light of significant new evidence and market developments including: (i) further evidence of CityFibre's **[REDACTED]**; (ii) BT's acquisition of TalkTalk/PXC, which, if approved, would significantly shrink the addressable market for wholesale access providers (including CityFibre and nexfibre) and undermine their future business plans; and (iii) UAE-based investors facing more uncertain investment prospects in the UK. These developments raise further material questions regarding CityFibre's ability to transact in February 2026 (and show this persists today) and the CMA should update its assessment to reflect this clear evidence.

(46) The key undisputed fact is that Substantial ran a competitive sale process and contracted with nexfibre – **[REDACTED]** – on the basis that CityFibre was unable to make a funded offer despite **[REDACTED]** of engagement. The IR substitutes a speculative view of CityFibre's ability to fund a transaction, based on its own self-serving representations, for the empirical real-world judgement of Substantial and its shareholders (comprising sophisticated investors with the greatest incentives), which crystallised over the course of protracted negotiations: namely that CityFibre was unable to fund the transaction. In doing so, the IR substitutes its own view not only of the ability of CityFibre to execute a transaction, but also of the value that Substantial should have accepted and the way in which Substantial should have run its M&A process.

(47) The key question for the CMA is a binary one: namely, could CityFibre have funded an acquisition of Substantial. If not, a CityFibre acquisition cannot be the "most likely" counterfactual. While it is not disputed that CityFibre "*were highly motivated to acquire Substantial*" [30], strong incentives cannot override a lack of practical ability. The provisional view in the IR that CityFibre would have the ability to acquire Substantial in

[29] This analysis is being provided by nexfibre to the CMA for the specific and sole purpose of responding to the CMA's Interim Report and in particular its assessment of the counterfactual. Neither nexfibre nor any of its directors, officers, shareholders or representatives undertakes or accepts responsibility to any other person. It is not being provided for the purposes of use, publication or redistribution. This analysis has been prepared by reference to publicly available information and third-party research and market data, the sources of which are identified in this paper. nexfibre accepts no responsibility for the accuracy of such information, and no representation or warranty, express or implied, is made by nexfibre as to the accuracy or completeness of such information which has not been independently verified. Insofar as nexfibre expresses opinions or draws inferences in this submission, those opinions or inferences are provided in good faith based on the available information to it as at 23 October 2026. They may change in light of information not available to nexfibre, which is why nexfibre invites the CMA to test them against CityFibre's own documents and, in particular, the views of its lenders. Any person reviewing this analysis should make their own assessment. Where figures are nexfibre's own calculations derived from these sources, such figures may differ from metrics reported by CityFibre. Nothing in this analysis is intended to suggest, and nexfibre does not suggest, any impropriety or misconduct on the part of CityFibre, its directors, shareholders or lenders.

[30] IR, paragraph 5.65.

the counterfactual is simply not one which is open to the CMA on any reasonable view of the evidence. As explained in further detail in this Section:

(i) **The CityFibre Counterfactual cannot be regarded as the "most likely" counterfactual**. A counterfactual cannot be "most likely" where the CMA cannot identify the price that would have been agreed, the source and magnitude of any funding, when the funding would have been available, the terms on which the acquisition would be made, the basis on which the Substantial business would have been separated and where it is subject to material execution risks. This uncertainty goes to the fundamental feasibility of a deal, not the detail of the transaction terms. In reaching its interim conclusions, the IR is fatally undermined by a series of serious evidential flaws and reliance on evidence shaped by the Transaction itself (Section 2.3).

(ii) **CityFibre was, and still is, a company with [REDACTED].** Its latest accounts show that it has £3.8 billion in debt **[REDACTED],**[31] **[REDACTED].** Prior to its court-sanctioned debt restructuring in September 2025, **[REDACTED].**[32] In its latest accounts, its auditors have stated a material concern over CityFibre's **[REDACTED]** It has recently commenced **[REDACTED]** restructuring where it is reportedly asking lenders to **[REDACTED]** £2 billion **[REDACTED]** as discussed in Section 2.4 below.

(iii) **The CMA's contention that CityFibre's ability to fund was simply a function of M&A deadlines is fanciful**: it disregards the fact that CityFibre's inability to fund was insoluble based on over **[REDACTED]** of engagement on multiple transaction structures (as explained in Substantial's response to the IR). Given the failure of CityFibre to obtain funding over such a **[REDACTED]**, it takes an irrational leap of faith to assume that it could have done so with a little more time. This notion cannot be sustained in light of CityFibre's current financial restructuring as is discussed in Section 2.8 below.

(iv) **The CityFibre Counterfactual cannot be reconciled with the contemporaneous evidence**. The CMA adduces no contemporaneous evidence that **[REDACTED]** in mid-February 2026. At that point, discussions with Substantial's lenders had **[REDACTED]**, the planned ISP onward sale was at an early stage and the 2025 restructuring does not appear to have repaired its balance sheet sufficiently. The relevant contemporaneous evidence clearly demonstrates that a CityFibre acquisition is not the most likely counterfactual as shown in Section 2.9 below.

(v) **The CMA relies heavily on developments subsequent to February 2026, which cannot be disassociated from the impact of the Transaction**. To the extent legally permissible for the CMA to rely on these developments, they merely reaffirm that the CityFibre Counterfactual cannot be considered "most likely":

[31] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), page 64.

[32] Annex_IRR_004, paragraph 28.

(a) Eight months since the Transaction was signed, the CMA's analysis shows that there is still **[REDACTED]** as of July 2026 (and that position remains the same today).[33] Moreover, it is clear from public reporting that shareholder funding is inextricably linked to the major debt restructuring where it is reported to be asking lenders to take a haircut of up to £2 billion (the outcome and timing of which is highly uncertain). The CMA must request and scrutinise the documents prepared for lenders in this context: the Parties submit they are likely to directly undermine any assertion that CityFibre could have funded an acquisition in February 2026 (a conclusion that is equally true today).

(b) Intervening developments have likely further undermined the ability of CityFibre to execute such a deal. BT's acquisition of TalkTalk/PXC will materially weaken the business case of all altnets (including CityFibre), while there is an uncertain investment climate for UAE investment to invest further in the UK following recent developments concerning Manchester City Football Club.

(vi) **The CMA failed to make the necessary reasonable enquiries.** As regards the matters above, the CMA has failed to put itself in a position to answer the statutory questions. In particular, there has been no attempt to investigate whether CityFibre had a financeable business plan for its acquisition of Substantial, which would be crucial for its ability to raise finance (including by convincing Substantial's lenders to roll existing debt). This is despite **[REDACTED]**. Similarly, the CMA has not attempted to obtain the views of Substantial's lenders on whether they would consent to the change of control and roll in the event of a CityFibre acquisition.

(vii) **The CMA takes no account of material execution risks in its assessment of CityFibre's bid.** These include: (i) the back-to-back divestment of the Substantial ISPs, which was at a very early stage and inherently uncertain; and (ii) mandatory regulatory clearances that would have been needed (notably under the UK's National Security and Investment Act ("**NSIA**")).

(48) This submission must be read alongside the equivalent submission from Substantial and its shareholders, which addresses the CMA's counterfactual as it relates to Substantial and its shareholders in more detail. This shows, *inter alia*, that a transaction with Substantial is not realistic as **[REDACTED]**. As an overarching point, however, the CMA's analysis does not dispute that Substantial is a viable independent competitor and is not in immediate financial difficulties. It is inconsistent and irrational for the IR to assume that CityFibre would have raised finance given more time; but fail to recognise that Substantial would equally have had more time to explore other options. In fact, they would have had every incentive to do so were competitive tension with nexfibre and VMO2 removed.

(49) The CMA's flawed approach to the Substantial counterfactual gives rise to serious policy concerns. The CMA's approach in effect results in merger policy unravelling the outcome of a competitive M&A process and "picking a winner", CityFibre, on the basis

[33] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

of a highly speculative counterfactual. The CMA should adopt an objective approach to assessing the future of the market rather than supplanting its own judgement for the expert views of Substantial, its shareholders and expert advisers. The CMA's provisional view risks leading to excessive and misdirected intervention. The CMA's approach to its counterfactual and competitive assessment – which amounts to the CMA conducting a beauty contest of two bidders – is, as far as we are aware, unprecedented, absent a "failing firm" counterfactual. Perversely, in this case the CMA accepts that Substantial is a viable standalone entity; but concludes that the "most likely" counterfactual is an acquisition by a company with significant financial challenges.

(50) In this case the CMA has taken an approach to the counterfactual assessment that its predecessor, the OFT, expressly warned against. In its review of Sky's acquisition of a stake in ITV, the OFT noted "*consistent caution in relation to outcome-determinative counterfactuals",* explaining that there is an "*inherent risk of speculation associated with claims that a rival transaction is procompetitive relative to prevailing conditions because it is generally far from certain that (i) the rival transaction would in fact proceed but for the merger before the OFT; and (ii) such a transaction would in fact be pro-competitive."*[34] When explaining the caution against the approach which the CMA has taken with respect to its counterfactual assessment here, the OFT noted that "*rival bidders generally have a self-interest in this context by claiming a merger is anticompetitive (and their own as pro-competitive)"*, that such claims from third parties are "*easily alleged and difficult to verify",* and its historic practice of avoiding "*indulging in a beauty contest."*[35]

(51) The CMA's proposed highly interventionist approach will have a chilling effect on consolidation in the fragmented altnet sector. The corollary of the CMA's approach is that altnets cannot rely on a competitive bidding process to realise value: the CMA's decision "picks a winner" in CityFibre and makes it materially more difficult for nexfibre and VMO2 to execute any transaction of scale in the altnet space (given the resulting overlap with the VMO2 network would also be high). The wider consequence is that equity investors will look for exits rather than injecting further capital, dampening further investment in the sector as investors fear weaker returns on disposal. This will only exacerbate the pervasive financial distress in the sector.

(52) Given our submission that CityFibre is **[REDACTED]**, the consequence of the CMA's decision is equally clear – the CMA is poised to block the emergence of scaled wholesale competition for the first time in the UK, with no real confidence of an alternative in the wings. The only winner here would be Openreach, which would further entrench its dominant position – already exacerbated on the assumption that BT will be permitted to retain TalkTalk (and its wholesale arm PXC).

2.2 The CMA's process is procedurally flawed in refusing access to CityFibre's underlying submissions

(53) First, the Parties have not received adequate disclosure of the evidence underpinning the CMA's conclusion on the CityFibre Counterfactual.

(54) In *R (Law Society) v Lord Chancellor [2019] 1 WLR 1649* the Divisional Court (Leggatt LJ and Carr J) held at §73: *"[I]n judging whether non-disclosure of particular information*

[34] Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc, paragraph 98.

[35] Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc, paragraph 99.

made a consultation process so unfair as to be unlawful, relevant considerations in our view include: (1) the nature and potential impact of the proposal put out for consultation; (2) the importance of the information to the justification for the proposal and for the decision ultimately taken; (3) whether there was a good reason for not disclosing the information; and (4) whether consultees were prejudiced by the non-disclosure."[36]

(55) The Divisional Court went on to explain at §74 that the last criterion requires consideration of "*whether the non-disclosure of information ha[d] prejudiced consultees by depriving them of the opportunity of making representations which it would have been material for the decision-maker to take into account*".[37]

(56) In *Spreadex Limited v Competition and Markets Authority [2025] CAT 13* at §9, the CMA itself recognised that the mere gist of third-party evidence may omit key information, the lack of which may prevent the parties "*from making material representations that it would have wished to make*".[38]

(57) This is precisely the Parties' concern. The CityFibre Counterfactual is determinative of the CMA's assessment. It is based on third-party commercial and financial assessments and predictions which can only be understood and addressed by reference to their detail. The summaries with which the parties have been provided lack the detail necessary to allow them to make material representations on this material.

(58) On 6 October 2026, we wrote to the Inquiry Group Chair requesting disclosure, within the confidentiality ring established for this Merger Inquiry, of the underlying submissions, internal documents, RFI and Section 109 Notice responses, call notes and transcripts from CityFibre, its shareholders and financial advisors, that the CMA has relied upon to support the CityFibre Counterfactual. This request was refused by the CMA in writing on 9 October 2026. This refusal followed the CMA's dismissal of the Parties' earlier request (made to the CMA case team on 7 August 2026) for CityFibre's underlying submissions to be shared with the Parties' external legal advisors.

(59) The Parties maintain their view that procedural fairness requires access to these materials to understand the "gist" of the CMA's case. The CityFibre Counterfactual is the foundational plank of the CMA's analysis and is ultimately the main obstacle to the Transaction being cleared. The CMA's interim conclusion is overwhelmingly driven by evidence from CityFibre: the main complainant and clearly a self-interested party. It also turns on considerations relating to debt and equity funding where the CMA should exercise caution in reaching conclusions which fly in the face of real-world evidence from financial experts.

(60) We consider the CMA's refusal to disclose these materials to be procedurally unsound and compromise the Parties' rights of defence.

2.3 The CMA's general approach to its assessment of the correct counterfactual was legally flawed

2.3.1 The relevant question and legal standards

[36] R (Law Society) v Lord Chancellor [2019] 1 WLR 1649, paragraph 73.

[37] R (Law Society) v Lord Chancellor [2019] 1 WLR 1649, paragraph 74.

[38] Spreadex Limited v Competition and Markets Authority [2025] CAT 13, paragraph 9.

(61) The CMA correctly identifies that, consistent with the CMA's MAGs, it must select the most likely conditions of competition absent the merger as its counterfactual.[39] At Phase 2, the CMA is required to apply a higher "balance of probabilities" threshold, compared to the lower "realistic prospect" test used at Phase 1.[40] As a result, conclusions drawn at Phase 2 must be supported by a robust evidence base such that, taken together, they compel the conclusion that the merger is more likely than not to result in an SLC. Logically, that requires an assessment by reference to a counterfactual which is more likely than not to occur.[41]

(62) The Parties recognise that, in line with the MAGs, establishing the appropriate counterfactual to assess the merger against is an inherently uncertain exercise. That does not, however, absolve the CMA from the need to have a sufficiently robust and probative evidence base to underpin its conclusions. This is clear from the CAT's decision in JD Sports Fashion plc v Competition and Markets Authority, where the CAT found that "*there must be evidence available to the [CMA] of some probative value on the basis of which the [CMA] could rationally reach the conclusion it did*"[42] and that the decision-maker "*must take reasonable steps to acquaint itself with the relevant information to enable it to answer each statutory question posed for it*."[43] Were this matter to be judicially reviewed against that standard, the CAT would "*examine closely the complaints made about the decision and its evidential underpinning*", performing a "*deep dive*" into the evidence that would equip it with the information necessary to make a judgment as to whether the decision was "*properly justified*". Moreover, because of its own institutional expertise, the CAT can be "*critical of relatively complex evaluations … even where a non-specialist court might not be*".[44]

(63) The need for robust evidence is especially important because, by adopting the CityFibre Counterfactual, the CMA is departing from its standard prevailing conditions of competition counterfactual. While the MAGs recognise that "*uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual [emphasis added]*"[45], it is submitted that – where the CMA departs from the prevailing conditions of competition counterfactual – it is consistent with this proposition in the MAGs that it must do so on the basis of commensurately robust evidence (that is to say, evidence which is so compelling that it overcomes the inherently speculative nature of a hypothetical future that diverges from the *status quo ante*).

(64) The requirement for a robust evidential underpinning is all the more pertinent on the facts of this case given that the: (i) counterfactual assessment is determinative of the CMA's SLC finding; and (ii) CMA recognises that the target (Substantial) is viable on a standalone basis (making divergence from the *status quo ante* all the more improbable compared with a "failing firm" situation).

2.3.2 The CMA asked itself the wrong question

[39] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 3.13.

[40] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 2.31.

[41] Stagecoach Group plc v Competition Commission [2010] CAT 14 at paragraph 20.

[42] JD Sports Fashion plc v Competition and Markets Authority [2020] CAT 24, paragraphs 70 and 153.

[43] JD Sports Fashion plc v Competition and Markets Authority [2020] CAT 24, paragraphs 70 and 153.

[44] Cerelia Group Holdings SAS v Competition and Markets Authority [2024] EWCA Civ 352, paragraphs 38 & 40.

[45] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 3.5; see also IR, paragraph 5.6.

(65) The IR's analysis shows that, in practice, the CMA has asked itself the wrong question – applying, at most, a "realistic prospect" test. The fact that the CMA's analysis has failed to apply the more likely than not standard is evidenced by the following examples:

(i) **Sale price***: "it is not possible to determine with precision or certainty what an amount acceptable to Substantial's shareholders would have been absent the Transaction"*.[46]

(ii) **On funding from existing shareholders**: *"with additional time, Substantial's* [sic, CityFibre's] *shareholders, could have been prepared to invest more*"; "*With more time … the investment from existing shareholders could have increased to at least £***[REDACTED]**".[47]

(iii) **On shortfall in sale price of ISPs**: "*it cannot be excluded that Substantial may have been prepared to agree to a price reduction … it is unclear whether… a lower transaction value would have been acceptable to Substantial*."[48]

(iv) **Third-party equity**: "*CityFibre remained at a relatively early stage in its discussions with* **[REDACTED]** *potential new shareholders … It is unclear how those discussions would have progressed absent the Transaction. In any event, we do not consider it necessary to conclude definitively on how likely the injection of third-party equity would be. This is because … CityFibre also had other funding options including* **[REDACTED]***"*.[49]

(v) **[REDACTED]**: "*it is not possible to conclude on the precise terms Substantial would have offered …*"[50]

(vi) **[REDACTED]**: "*it is uncertain what the level of debt rollover may have been*"; "*there is uncertainty in relation to whether Substantial's lenders would have agreed to roll over their debt facilities and the extent of any shortfall …*"[51]

(vii) **CityFibre's current restructuring**: "C*learly, there is uncertainty around these developments*."[52]

(66) The CMA's overall conclusion also shows that it asked itself the wrong question: *"In our provisional conclusion below we consider all of the evidence in the round in relation to whether CityFibre could have funded a bid for Substantial"*;[53] "*absent the Transaction and with more time to obtain funding, a deal structure offered by CityFibre could have looked different …given the number of variables at play as well as the difficulty of isolating any influence the Transaction may have had on the relevant events, it is not possible to determine the precise amount that CityFibre would have been able to raise…Substantial*

[46] IR, paragraph 5.72.

[47] IR, paragraphs 5.92, 5.133. See also IR, paragraph 5.91, which makes clear the preparedness of the shareholders to fund the transaction was contingent on "*the terms of any deal*".

[48] IR, paragraphs 5.97-5.98.

[49] IR, paragraph 5.102.

[50] IR, paragraph 5.107.

[51] IR, paragraphs 5.114, 5.116.

[52] IR, paragraph 5.133.

[53] IR, paragraph 5.98.

may have accepted a lower amount;"[54] *"Our task is to assess what would most likely have happened but for the transaction, including whether CityFibre could have raised funding for an amount that would have been acceptable to Substantial's shareholders".*[55]

(67) Despite assertions to the contrary in the IR, a counterfactual cannot be "most likely" where the CMA cannot identify the price that would have been agreed, the source and magnitude of any funding, when the funding would have been available, the terms on which the acquisition would be implemented and where it is subject to material execution risks. Indeed, while the CMA has identified a series of possible funding sources, it has not only failed to show that they are individually likely to come to fruition, but also has not shown a coherent transaction pathway whereby all the necessary funding and execution conditions would have been satisfied simultaneously. That pathway required four cumulative and separate conditions, none of which were or are in place, as noted in paragraph (10) above (i.e., committed equity, the consent of Substantial's lenders to roll, the consent and new funding of CityFibre's own lenders, and the onward sale of the Substantial ISPs). Properly analysed, it is clear that the IR does not apply the standard which it ought to have done in assessing the probability of the CityFibre Counterfactual.

2.3.3 The CMA's general approach to its assessment of the counterfactual is unreasonable

(68) The Parties submit that the CityFibre Counterfactual is not the "most likely" counterfactual on any rationally founded view of the evidence in front of the CMA. The CMA's counterfactual analysis amounts to a series of speculations, depending on the self-serving assertions of CityFibre and its shareholders, which fly in the face of what actually happened in the present case over a protracted period (namely that, **[REDACTED]**, CityFibre was unable to obtain the funding necessary to close a deal).

(69) The CMA has previously dismissed the possibility of a transaction with an alternative potential purchaser based on much lesser degrees of uncertainty. For instance, in ABF/Hovis the CMA disregarded an alternative purchaser on the basis that its offer was conditional on the performance of "*red flag due diligence*" which meant there was "*material uncertainty about whether any offer would be made on those or similar terms and whether any such offer would result in a sale in the counterfactual."*[56]

(70) While the CMA is not required to undertake a mathematical probabilistic assessment, the number of steps and sheer uncertainty make clear that the CityFibre Counterfactual is based on a complex and contingent probability that cannot in any sense be regarded as the "most likely" counterfactual. The CMA's chosen counterfactual depends on a series of contingent and speculative steps, each of which has material uncertainty attached to it (see Table 1 below). The CMA's reasoning with regard to the CityFibre Counterfactual is addressed in more detail in Section 2 below.

Table 1. IR evidence against the CMA's assumptions for the CityFibre Counterfactual

[54] IR, paragraphs 5.136-5.138.

[55] IR, paragraph 5.139.

[56] Anticipated Acquisition by Associated British Foods plc (Through ABF Grain Products Limited) of Hovis Group Limited, paragraph 4.329.

Assumption made by the CMA	Evidence in Chapter 5 of the IR that does not support the assumption being realised
CityFibre has a viable business plan	• CityFibre's signed 2025 accounts **[REDACTED]** [57] • The IR does not address, and contains no evidence or analysis of, CityFibre's business plan (**[REDACTED]** • Recent public reporting shows **[REDACTED]: [REDACTED]** that CityFibre's 2025 accounts show finance costs of almost £400 million against revenues of £169 million and a pre-tax loss of £545 million, or that CityFibre is now pursuing a major restructuring under which its lenders are reported to face losses of up to £2 billion on debts over £3.8 billion.[58]
CityFibre would obtain committed equity	• In February 2026, there was **[REDACTED]**.**[REDACTED]** Executive Committee gave only "*support in principle*"[59] on 3 February 2026, and the Investment Committee meeting to consider the investment was cancelled on 17 February 2026. **[REDACTED]** had not sought formal Investment Committee approval.[60] The only evidence of "*agreement*" cited by the CMA is an email from **[REDACTED]** to its own shareholders.[61] • The CMA adduces no evidence of any **[REDACTED].**
CityFibre would obtain the necessary support from lenders/banks	• At the point the SPA was signed, there were **[REDACTED]** [62] • With respect to alternative backstop options such as **[REDACTED]**, the CMA does not refer to evidence that these developments had progressed.[63]
The sale of Substantial's ISPs to [REDACTED]	• In February 2026, CityFibre had **[REDACTED]** non-binding offers from **[REDACTED]**.[64]
Substantial shareholders accepting CityFibre's offer	• The IR does not consider whether the Substantial Board and shareholders would accept the CityFibre offer. The track record – i.e. a **[REDACTED]** negotiation process in which Substantial's shareholders had serious concerns about the viability and executability of the CityFibre bid – suggests that they would not have accepted (as explained further in Substantial's response to the IR). • Relatedly, the CMA does not consider in any detail if the Substantial shareholders could have explored organic growth alternatives remaining as a standalone entity.

[57] IR, paragraph 5.85.

[58] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), page 64.

[59] IR, paragraph 5.63(a); see also paragraph 5.90(a).

[60] IR, paragraph 5.90(b).

[61] IR, paragraph 5.90.

[62] IR, paragraph 5.116.

[63] IR, paragraph 5.116.

[64] IR, paragraph 5.94; see also paragraph 5.94(a)-(b).

Transaction execution risks	• The IR does not consider execution risks such as negotiation of the acquisition documentation, the sale of the ISPs or the clearance required under the NSIA for a CityFibre acquisition.

2.3.4 The CMA relies to a significant degree on evidence that post-dates the Transaction

(71) The CMA's analysis of the CityFibre Counterfactual rests significantly on evidence that post-dates the Transaction. For instance, the CMA places weight on its conclusion that "*the evidence gathered on recent developments shows that there would likely have been other sources of funding available to CityFibre absent the Transaction*."[65] While the CMA notes that it must "*interpret this evidence with caution insofar as it may have been influenced by the Transaction itself*", there is no evidence of this critical evaluation in practice.[66]

(72) The Parties submit that the CMA should attach greatest weight to contemporaneous evidence from February 2026 (which has previously been recognised by the CMA[67]), which clearly demonstrates that CityFibre could not fund a transaction with Substantial. With respect to events that post-date the announcement, it is clear in CMA guidance that "*only events that would have happened in the absence of the merger under review—and are not a consequence of it—can be incorporated into the counterfactual*."[68]

(73) In the present case, the trajectory of CityFibre's current fundraising cannot be divorced from the effects of the Transaction itself, rendering it inadmissible as part of the CMA's counterfactual assessment. This is explicit in the evidence in front of the CMA, particularly with respect to its shareholders' motivations. For instance, **[REDACTED]** putative £**[REDACTED]** contribution was "**[REDACTED]***"* [69]

(74) The conduct and public announcements of CityFibre must also be assessed against the backdrop of a live CMA merger enquiry where CityFibre is arguing that CityFibre is the relevant purchaser of Substantial. For instance, the CMA cites evidence from **[REDACTED]** that – even in the absence of any **[REDACTED]** - the decision of CityFibre's shareholders to **[REDACTED].***[70]* **[REDACTED]** A more plausible motive for the **[REDACTED]** publication would be to seek to influence the ongoing CMA merger control review.[71]

2.3.5 The CMA has made manifest errors and drawn essential conclusions for which there is no evidence

[65] IR, paragraph 5.133.

[66] IR, paragraph 5.122.

[67] Completed acquisition by FNZ of GBST, Final report on the case remitted to the CMA, 4 June 2021, footnote 69, where the CMA held that "*[c]ontemporaneous evidence at the time of the acquisition is the most relevant to our assessment of the counterfactual*".

[68] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 3.4.

[69] IR, paragraph 5.63(b).

[70] IR, paragraph 5.126.

[71] IR, paragraph 5.126.

(75) This is aptly demonstrated by the fact that the CMA claims that £**[REDACTED]** in equity funding from CityFibre's shareholders is "*agreed*" in February 2026[72] and later contrasts the position on equity with other sources of funds which "**[REDACTED]**[73]**[REDACTED]**

(76) Of **[REDACTED].**[74] **[REDACTED].**[75] This is an error of fact which is crucial to the CMA's overall assessment of CityFibre's ability to raise the required funding. The CMA characterises this evidence inconsistently in the IR. It describes shareholder funding as "*agreed*" but also describes the funding as requiring "*formal sign-off*", "*contingent on the terms of any deal to acquire Substantial*"[76] – as such, it was clearly not agreed and far from legally binding or enforceable by any party.

(77) Similarly, in concluding that a "*majority*" of Substantial's lenders will consent to the change of control and roll, the IR identifies no executed rollover agreement, no change-of-control consent and no positive commitment from Substantial's lenders that they will fund. In fact, there is clear evidence that **[REDACTED]** lenders (**[REDACTED]**) will not roll **[REDACTED]**.[77] This plainly does not presuppose or support a conclusion that other lenders would have done so.

2.3.6 The IR uncritically accepts CityFibre's evidence at face value and fails to seek additional evidence needed to corroborate these submissions

(78) The CMA states that it will "*have regard to the interest a party has in the outcome of our investigation, the timing of the relevant documents... and the extent to which the evidence is consistent with other evidence provided to us*",[78] and that conduct during the negotiation period "*may have been influenced by the Transaction*," requiring evidence to be "*carefully interpreted*."[79] Notwithstanding this preamble, the CMA relies extensively on evidence after the deal was signed from CityFibre, its shareholders and financial advisers to substantiate the CityFibre Counterfactual. This is in circumstances where CityFibre is the primary complainant and its vested interest is plain to see.

(79) In relation to CityFibre's 2025 fundraising, for example, the CMA accepts CityFibre's narrative that this demonstrates the willingness of CityFibre's shareholders to make continued equity commitments to build scale; rather than a reflection of the fact that CityFibre was within weeks of running out of cash in 2025. As will be explained below, CityFibre's public statements regarding its fundraising do not appear consistent with the reality shown in the court documents.

(80) Similarly, in concluding that the £**[REDACTED]** shareholder funding was agreed in February 2026, the CMA accepts unquestioningly **[REDACTED]** that funding would have been forthcoming, despite **[REDACTED]**s statement that it had merely "**[REDACTED]**[80] Similarly, it places weight on **[REDACTED].**[81]

[72] IR, paragraph 5.90; see also paragraph 5.91.

[73] IR, paragraph 5.134.

[74] IR, paragraph 5.90.

[75] IR, paragraph 5.90.

[76] IR, paragraph 5.91.

[77] IR, paragraph 5.114 (b).

[78] IR, paragraphs 5.13. to 5.14.

[79] IR, paragraph 5.122.

[80] IR, paragraph 5.90(b).

[81] IR, paragraph 5.128.

(81) More recent statements from CityFibre's shareholders that £**[REDACTED]** for M&A but is explicitly "**[REDACTED]**"[82] are given substantial weight in the provisional conclusion that CityFibre "*is likely to have obtained the necessary funding absent the Transaction*,"[83] notwithstanding the fact that these are statements made many months after the Transaction, by stakeholders with an interest in the outcome of the ongoing CMA inquiry and are, in any case, framed as non-binding and contingent.

(82) This is at odds with the scepticism with which the CMA treats the Parties' submissions. For instance, the CMA discounts the conclusion of one of Substantial's shareholders **[REDACTED]** that CityFibre's bid was **[REDACTED]**on the basis that: **[REDACTED]**[84] This is a serious accusation: the implication is that **[REDACTED]** is misleading its own investment committee as to the relative attractiveness of a CityFibre bid, which it had no reason to do. On the contrary, the only rational conclusion is that the statement reflected its genuine belief that **[REDACTED]**. Moreover, as explained in Section 6.2 of Substantial's response to the IR, **[REDACTED]**. A similar scepticism is demonstrated by the CMA's treatment of VMO2's submissions on Fibre Up (see Section 3).

2.3.7 The CMA adopts an inconsistent assessment as between the standalone and CityFibre Counterfactuals

(83) The IR adopts inconsistent positions as between the Substantial standalone and CityFibre Counterfactual.

(84) For example, the fact that Substantial could come **[REDACTED]** is treated as militating in favour of a sale and Substantial's shareholders accepting a lower purchase price – notwithstanding the fact that, based on scenario analysis conducted by Substantial's advisers, **[REDACTED]**.

(85) By contrast, CityFibre's own signed 2025 accounts record an auditor's going-concern warning: "**[REDACTED]**" The CMA, however, concludes that given "*its shareholders and lenders were still willing to support CityFibre in general and in its M&A activities... We therefore consider this support would extend to* **[REDACTED]**."[85] As noted above, this is entirely unevidenced: CityFibre's shareholders had to support the business to avoid insolvency in 2025, there is no guarantee that this would continue in perpetuity or that it would extend to pursuing a highly ambitious c.£2 billion acquisition.

(86) Similarly, the CMA only considers two possible counterfactual options for Substantial – continue as is or sale to CityFibre. Having accepted that Substantial is not in any immediate financial difficulties and can continue to operate as is, the CMA appears to fail to consider alternative options for Substantial in a standalone scenario other than a sale to CityFibre. As a result, the CMA has failed to have regard to a highly material consideration.

2.3.8 The CMA fails to undertake reasonable enquiries to ground its analysis

(87) In *JD Sports Fashion plc v Competition and Markets Authority*, the CAT concluded that the CMA acted irrationally in that it came to conclusions as to an influential factual circumstance (i.e. the likely effects of the COVID-19 pandemic) that were of material importance to its overall decision, without having the necessary evidence from which it

[82] IR, paragraph 5.126.

[83] IR, paragraph 5.139.

[84] IR, paragraph 5.81.

[85] IR, paragraph 5.85.

could properly draw those conclusions. The CAT adopted the *Ecolab/BAA v Competition Commission* test: the decision-maker "*must take reasonable steps to acquaint itself with the relevant information to enable it to answer each statutory question posed for it."*[86]

(88) In its assessment of the counterfactual, the CMA has not undertaken the enquiries necessary to ensure a sufficiently robust evidence base to exercise its judgment in an informed manner.

(89) *Failure to analyse CityFibre's business plan evidence*. Significantly, the CMA has undertaken no assessment of the sustainability of CityFibre's business plan – which would have been a minimum condition for lender consents. Analysis of CityFibre's business plan is crucial to assessing the key question of whether CityFibre would have been capable of financing the acquisition of Substantial. The CMA's failure to consider this is a material omission. This is all the more material given the CMA cites evidence **[REDACTED]**: **[REDACTED].**[87]

(90) *Failure to obtain evidence/views from Substantial's lenders*. Similarly, in concluding that a **[REDACTED]** Substantial's lenders would have consented to the change of control and rolled their debt with CityFibre, the CMA relies on evidence that is weak, anecdotal and derives in significant part from CityFibre. Given the uncertainty that is expressly acknowledged by the CMA,[88] it should, at a minimum, have requested and analysed evidence from Substantial's lenders to test this point.

(91) *CMA must now obtain and analyse CityFibre's proposed restructuring documentation*. The CMA must request and scrutinise the documents that have been prepared for lenders in this context of CityFibre's latest restructuring: the Parties submit they are likely to directly undermine any assertion that CityFibre could have funded an acquisition in February 2026 (or indeed today). In particular, the CMA should use its powers under Section 109 of the Enterprise Act 2002 to obtain from CityFibre: (i) its October 2026 lender presentation, which reportedly records that CityFibre's debt "*has hindered earlier acquisitions*";[89] (ii) the proposed restructuring terms and the conditions attached to the £**[REDACTED]** shareholder injection; (iii) its lenders' responses to that proposal; (iv) its auditors' latest reports; and (v) its current cash-flow and covenant-compliance forecasts.

2.4 CityFibre is a company that faces [REDACTED] financial challenges

(92) The CMA's view that CityFibre would acquire Substantial in the counterfactual is at odds with commercial realities. The CMA must recognise that CityFibre is a financially challenged **[REDACTED]** in February 2026 and persists today.

(93) The Parties have prepared an analysis of CityFibre's financial position using publicly available information, in particular its statutory audited accounts, court documents relating to its 2025 debt restructuring and the company's own public statements (see Annex_IRR_003).[90] In short, this analysis reveals **[REDACTED]** On this basis, it seems

[86] JD Sports Fashion plc v Competition and Markets Authority [2020] CAT 24, paragraph 70.

[87] IR, footnote 294.

[88] IR, paragraph 5.116: "*there is uncertainty in relation to whether Substantial's lenders would have agreed to roll over their debt facilities".*

[89] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[90] Annex_IRR_003.

that CityFibre would not be in a position to conclude an acquisition without completing the capital restructuring as proposed in CityFibre's Q32 2026 trading update.[91]

(94) Each year CityFibre consumes significant amounts of capital, with over £3 billion of cash consumed over the past three financial years combined. By way of illustration, in FY25, it raised £980 million in external funding and yet spent £925 million of this, of which £327 million related to interest and financing alone.[92] Even with its reduced build programme, **[REDACTED]**.[93]

(95) Its balance sheet is highly leveraged, with £3.8 billion of external bank debt and with finance costs in FY2025 of ~£393 million, amounting to ~233% of revenue.[94] The company's auditors have highlighted the risks, noting in their 30 April 2026 opinion the material uncertainty that CityFibre will be able to continue as a going concern.[95] Recent media reports suggest that the company is now asking its lenders to write off up to £2 billion of their loans as part of a capital restructuring.[96]

(96) This is CityFibre's second restructuring in little over a year. In September 2025, the company went through a court restructuring of its debts. **[REDACTED]**[97]**[REDACTED]**.[98] CityFibre also stated that **[REDACTED]**[99] In mid-to-late 2026, CityFibre is instead asking its lenders to write down material proportions of their debt, with new investor equity reportedly conditional on this occurring.[100]

(97) These financial prospects are, in the Parties' view **[REDACTED]**[101]

(98) Public reporting demonstrates the risk that **[REDACTED]**. For example, New Street Research observes that: **[REDACTED]***[102]*

(99) That is the path already taken in 2026 by the lenders to four other UK altnets facing the same combination of high leverage, slow take-up and closed capital markets: Gigaclear, where an April 2026 recapitalisation handed control to 11 lenders, including the National Wealth Fund, NatWest and Lloyds, with haircuts reported at up to 40%; Toob, where its existing lender Ares converted debt to equity in August 2026 after its shareholder INPP declined to provide further funding and gave up its £24.1 million stake for a nominal sum; G.Network, which entered administration in January 2026 after a rescue deal collapsed, with its secured debt and equity sold to FitzWalter; and Airband, which entered administration in August 2026, with control passed to its lenders

[91] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[92] CityFibre Infrastructure Holdings Limited, Consolidated Annual Report and Financial Statements for the year ended 31 December 2025 (Companies House, company no. 08772997), page 41.

[93] In FY25 Finance and Operating cash costs were £327 million and £48 million; revenue was £169 million.

[94] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), pages 54 and 64.

[95] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), page 33.

[96] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[97] Annex IRR_004, paragraphs 26.5 and 27.

[98] Annex IRR_003.

[99] Annex IRR_004, paragraphs 46, 69.1 and 69.4.

[100] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[101] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), page 31.

[102] Annex_IRR_002, page 2.

and its assets sold to Voneus.[103] CityFibre acquired none of them. On Bloomberg's account, it is under pressure to agree terms with its lenders or face creditors "*taking the keys*" as soon as next year.[104]

2.5 CityFibre [REDACTED] in light of its financial position

(100) In May 2026, CityFibre significantly reduced the number of premises it will deliver under every single one of its ten UK Government Project Gigabit contracts: it now stands to deliver just 227,000 premises under these contracts, against an originally contracted figure of 495,500 premises[105] (**[REDACTED]**).[106] This amounts to a reduction of over half. In fact, CityFibre handed back the entirety of its £58.6 million Nottinghamshire and West Lincolnshire Project Gigabit contract.[107]

(101) CityFibre's financial struggles **[REDACTED]**[108]

2.6 CityFibre's M&A track record also points to [REDACTED]

(102) CityFibre publicly asserted its ambitions for altnet consolidation for a number of years and vaunted its own credentials as a potential consolidator. Yet, despite these long-stated ambitions, and shareholders who profess to support such an M&A-led strategy, CityFibre has never completed an acquisition anywhere near the size or complexity of Substantial. Its acquisitions have been confined to sub-scale transactions, and over the past few years have been exclusively where the investors were prepared to accept CityFibre's equity, with CityFibre not advancing any (or any material component) of cash consideration, for example acquisitions of Lit Fibre (c. 220,000 premises, 2024)[109] and Connexin (c. 80,000 premises, 2025).[110]

(103) **[REDACTED]**. Of 19 UK altnet transactions between 2020 and 2025, CityFibre was a party to only three. It described Lit Fibre as "*the first of several deals*" it expected to close within two years: only one further altnet deal (Connexin) followed.[111] In March 2025, up to 850,000 altnet homes were reported to be under exclusivity with CityFibre: Connexin added only c. 80,000 premises.[112] In September 2025, its then CEO reportedly said that four deals were "ready to go" once the refinancing completed: none have been delivered. CityFibre's own lender presentation reportedly records that its debt "*has hindered earlier acquisitions*".[113] If CityFibre could not buy small or distressed altnets, it calls into serious question its ability to fund and execute a c. £2 billion acquisition of Substantial.

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[103] ISPreview, Lenders Take Control of Rural UK Full Fibre Broadband ISP Gigaclear; ISPreview, Investor INPP Declines Further Funding for UK Altnet Broadband ISP Toob; ISPreview, UK Broadband Provider G.Network Files Notice to Appoint an Administrator; and ISPreview, Alternative UK Rural Broadband Network Voneus Acquires Airband.

[104] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[105] Project Gigabit contracts - GOV.UK; and ISPreview, The Hidden Impact of CityFibre's UK Project Gigabit Broadband Contracts Retreat.

[106] Annex_IRR_003.

[107] Project Gigabit network build contract - Nottinghamshire and West Lincolnshire - GOV.UK.

[108] Banks brace for £2bn loss from CityFibre restructure

[109] CityFibre Completes its Acquisition of Lit Fibre | CityFibre.

[110] CityFibre delivers record performance in 2025 | CityFibre.

[111] CityFibre Completes its Acquisition of Lit Fibre | CityFibre.

[112] ISPreview, CityFibre Target 850k UK Homes Covered by Full Fibre Altnets for Consolidation.

[113] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

(104) The CMA has dismissed, for the most speculative of reasons, the reality of CityFibre's financial position in adopting the CityFibre Counterfactual.

2.7 The CMA uncritically accepts CityFibre's accounts of its own financial position, disregarding [REDACTED] its financial challenges

(105) The CMA's analysis does not dispute the severity of CityFibre's financial position. The CMA cites CityFibre's independent auditor's report which states **[REDACTED].**[114] **[REDACTED].**[115]

(106) Remarkably, the CMA considers CityFibre's financial straits to be evidence supportive of its capacity to undertake M&A activities on a scale which it has never undertaken before, i.e. the acquisition of Substantial. The CMA reasons that, notwithstanding the note in its 2024 financial accounts, (a) in 2025, CityFibre was able to raise £**[REDACTED]** in debt **[REDACTED]**; and (b) CityFibre has since late 2025 "*been in discussions*" with its shareholders and lenders about securing further funding. From this, the CMA concludes that there is "*shareholder and lender appetite to finance M&A opportunities*" and shareholder preparedness to "*inject significant additional equity to support the business in 2026*", which would extend to **[REDACTED].***[116]*

(107) That conclusion is perverse in circumstances where (a) there is no verifiable evidence of the extent to which the funding raised in 2025 **[REDACTED]** (as opposed to a response to very serious financial challenges); (b) there is no reason to suppose that such appetite or preparedness extends to funding an acquisition on the scale of Substantial, especially where 2024-2025 was the very period in which CityFibre's shareholders and lenders had prima facie the opportunity to provide such funding but failed to do so; (c) there is no evidence adduced of **[REDACTED]**; and (d) the CMA ignores the fact that **[REDACTED]** court-sanctioned scheme of arrangement has taken place, **[REDACTED].**

(108) The Parties' analysis at Annex IRR_003 contains examples of a disjunction between the ambition in CityFibre's public statements and the reality of its financial position.[117]

(109) The detail of Substantial's earlier interactions with CityFibre is telling. In August 2025, CityFibre told Substantial's shareholders that its shareholders had **[REDACTED]** that its lenders had extended **[REDACTED]** and that **[REDACTED]**.[118] The scheme documents show that: the new money was needed to fund operations "*through early to mid-2027*"; the £960 million super-senior facility was for capital expenditure, transaction costs and finance charges; the facilities **[REDACTED]** mature on 24 June 2029, extending to 2031 only if CityFibre shows it is fully funded to 2031, as validated by a lender-nominated adviser; the accordion was an uncommitted basket, drawable only after further equity injections or completed acquisitions; and that only £160 million of acquired debt may rank in the capital structure, against the c. £**[REDACTED]** of Substantial debt that CityFibre's Final Offer assumed would roll.[119] Every element

[114] IR, paragraph 5.85.

[115] IR, paragraph 5.85.

[116] IR, paragraph 5.85.

[117] Annex_IRR_003.

[118] Annex SBS-00000735 and Annex SBS-00000973 of Substantial's Consolidated Index of Annexes.

[119] Annex_IRR_004, paragraphs 46, 52–53, 56.4, 64.2–64.3, 66–67 and 69.4.

presented to Substantial as M&A capacity was uncommitted, conditional or needed simply to keep the business running.

2.8 CityFibre's inability to secure financing cannot credibly be seen as a function of the deadline for committed funds imposed by Substantial

(110) The IR concludes that the "*evidence therefore shows that the* **[REDACTED]** *deadline was a function of the competitive process involving the nexfibre Consortium bid*",[120] and that, absent the Transaction, Substantial would "*likely have given CityFibre longer to negotiate with Substantial and obtain funding commitments*". This conclusion is both vague (in that it does not seek to identify the amount of time which Substantial would have given CityFibre to obtain funding commitments) and represents an unwarranted leap of faith: the evidence shows that CityFibre was not close to a funded and executable offer in February 2026 and, given its intervening restructuring, it is clear that CityFibre could not have presented a funded and executable offer under any reasonable timeframe. An objective reading of the evidence shows that CityFibre's failure to make a fully funded offer by the **[REDACTED]** deadline was a symptom of **[REDACTED]**.[121]

(111) As an initial matter, M&A processes typically provide for specified timelines and deadlines. Apart from a desire to maintain competitive tension, a prolonged M&A process distracts management from running the operations of the business, and the resulting uncertainty can adversely affect employees, customer relationships, and supplier terms. Insofar as the CMA's counterfactual is predicated on Substantial and its shareholders engaging with CityFibre for an open-ended period and without seeking alternative options, in circumstances where CityFibre has demonstrated an inability to fund the transaction for over the preceding **[REDACTED]**, it is divorced from commercial reality.

(112) In any event, CityFibre's ability to fund, rather than timing, was (and continues to be) the main constraint. The fact that Substantial continued engaging with CityFibre and explored alternative transaction structures[122] demonstrates only that Substantial was willing to investigate whether a transaction could be made to work. It does not establish that CityFibre was capable of delivering a funded and executable offer. Sophisticated sellers routinely engage with bidders in circumstances where there remains substantial uncertainty as to funding, valuation and execution.

(113) The contention that CityFibre's inability to secure financing for a transaction was based on the timing constraints of the M&A timetable is fanciful. Despite a **[REDACTED]** process, **[REDACTED],**[123] **[REDACTED],**[124] **[REDACTED]**[125] **[REDACTED]**[126] **[REDACTED]** This cannot credibly be construed as a near miss or a marginal funding gap.

(114) The CMA's analysis of the deadline for committed funds fails to recognise that CityFibre's Final Offer followed a prolonged period of **[REDACTED]** prior engagement

[120] IR, paragraph 5.77.

[121] IR, paragraph 5.77.

[122] IR, paragraph 5.82.

[123] IR, paragraph 5.63; see also paragraph 5.90.

[124] IR, paragraph 5.102.

[125] IR, paragraph 5.114.

[126] IR, paragraph 5.94.

in relation to various transaction structures (as explained in detail in the Substantial submission). CityFibre had ample time to secure the requisite funding, if it had the ability to do so. **[REDACTED]** reflected a persistent inability to fund an acquisition of Substantial in light of the serious financial constraints detailed above. There is no verifiable evidence to support CityFibre's contention that it was "*on track to obtain the necessary funding*".[127] CityFibre has made such claims before: **[REDACTED]**.[128] Indeed, almost 9 months after the announcement of the deal with nexfibre, CityFibre still has **[REDACTED]** and is in the midst of a highly uncertain debt restructuring process. Please refer to Substantial's response to the IR (sections 4.4, 6.2 and 6.3) for additional evidence explaining why additional time would not have enabled CityFibre to complete a transaction.

2.9 The CMA fails to consider if CityFibre has a sustainable and financeable business plan for its acquisition of Substantial

(115) The IR does not address, and contains no evidence or analysis of, CityFibre's business plan. This would be a prerequisite for obtaining lender approvals.

(116) In fact, the CMA has evidence which suggests that CityFibre would not be able to produce **[REDACTED]**: **[REDACTED]**.[129]

(117) The Parties' analysis at Annex_IRR_003 **[REDACTED]**[130]:

(i) CityFibre's signed 2025 accounts noted a forecasted covenant breach in a reasonably possible adverse scenario, indicating a material uncertainty as **[REDACTED].**

(ii) CityFibre's 2025 accounts show finance costs in FY2025 of almost £400 million against revenues of £169 million and a pre-tax loss of £545 million.[131]

(iii) CityFibre is now pursuing a major capital restructuring under which its lenders are reported to face losses of up to £2 billion on debts of close to £4 billion.[132] **[REDACTED]**.

(118) Rather than considering CityFibre's business plan, the CMA has relied on and taken at face value self-interested submissions from CityFibre and its shareholders (who have a clear and obvious incentive to influence the CMA's decision as the selected alternative purchaser). For instance, the CMA refers to CityFibre's prior restructuring as evidence of its shareholders willingness to invest and hence the sustainability of its business model: **[REDACTED]**

2.9.1 CityFibre had [REDACTED] February 2026 and was nowhere near obtaining fund certainty

(i) CityFibre had [REDACTED] from existing shareholders

(119) The CMA states that "*by 4 February 2026, CityFibre's shareholders had agreed to provide £***[REDACTED]** *in equity funding, as confirmed in an email from CityFibre's CEO to its*

[127] IR, paragraph 5.52.

[128] Annex SBS-00000735 and Annex SBS-00000736 of Substantial's Consolidated Index of Annexes.

[129] IR, footnote 294.

[130] Annex_IRR_003.

[131] Connect Infrastructure TopCo Limited, Consolidated Annual Report and Financial Statements for the year ended 30 December 2025 (Companies House, company no. 11319944), pages 54, 55 and 64.

[132] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

shareholders that day, and further communicated to Substantial on 6 February"[133] and "*by 4 February had confirmed their proposals to invest* £**[REDACTED]** *of equity capital*."[134]

(120) The CMA is drawing the wrong inferences from the evidence in concluding that shareholder funding was "*agreed*" at this point. It is clear from a closer examination of the evidence cited in the CMA's analysis, that all purported support from CityFibre's shareholders in February 2026 was either conditional, caveated **[REDACTED]**:

(a) **[REDACTED]** only had "*support in principle*" for a proposed investment at **[REDACTED]**. Not only is this support conditional, but it had not been considered by **[REDACTED]**. The IR notes that the follow-up Investment Committee meeting was cancelled on 17 February 2026 "*as the* **[REDACTED]** *CityFibre deal team suspected... that Substantial was close to announcing a deal with the nexfibre Consortium*"[135] – meaning formal approval was never obtained.

(b) **[REDACTED]**[136] The CMA accepts this contention at face value: there is **[REDACTED] [REDACTED]** to **[REDACTED]** the likelihood of such investment being forthcoming and what conditionality would attach to it. Indeed, given CityFibre's failure to secure committed funding over a lengthy, real-world M&A process, and its shareholders' obvious incentive to scupper the Transaction, that is a contention which ought to be treated with great scepticism by the CMA.

(c) **[REDACTED]** CMA confirms that **[REDACTED]**[137]

(121) The evidence above demonstrates that CityFibre had **[REDACTED]**

(122) Generally, to evidence certainty of funds through an equity commitment, any seller (including the Substantial Shareholders) would expect to see signed equity commitment letters from the relevant shareholders or entities, substantively evidencing that the acquirer has a legally enforceable right to call on the funding. **[REDACTED] [REDACTED]**. Equity funding cannot be said to have been "*agreed*" in the **[REDACTED]** existing and without due consideration of the conditions, if any, which attach to that proposed equity commitment.

(123) **[REDACTED]**, it is a manifest error of fact for the CMA to conclude that £**[REDACTED]** was "*agreed*" from shareholders in February 2026 – which is a proposition which underpins a central part of the CMA's reasoning.

(124) It also defies logic for the CMA to suggest that CityFibre only had "*limited time*" to obtain funding from its existing shareholders, **[REDACTED]**. As previously noted, CityFibre had been engaging with Substantial for over **[REDACTED]** in full recognition of the fact that it would have to raise new equity. **[REDACTED]**. It is also inconsistent with the IR's position that CityFibre's previous fundraising evidenced its shareholders' appetite for M&A. **[REDACTED]**.

[133] IR, paragraph 5.90.

[134] IR, paragraph 5.55 (a).

[135] IR, paragraph 5.90(a).

[136] IR, paragraph 5.90(b).

[137] IR, paragraph 5.63(c); see also paragraph 5.126.

(125) **[REDACTED]**, the CMA has not considered the complex and uncertain negotiations that would be required between CityFibre shareholders to facilitate any existing equity solution.

(126) **[REDACTED]** – impacting not only valuation of underlying deal with Substantial but also how CityFibre is valued and how the shareholders' governance is set up. This provides ample scope in the Parties' view for disagreement between the shareholders, in particular for a company requiring imminent restructuring. The CMA has not referred to any evidence to show that such discussions between the CityFibre shareholders had even begun.

(ii) The sale of the Substantial ISPs heightens execution risk and discussions with bidders were at an early stage

(127) The **[REDACTED]**.[138]

(128) This is notwithstanding the fact that:

(a) CityFibre only had non-binding offers from each of **[REDACTED]**. Given the non-binding nature of these offers **[REDACTED]**.

(b) CityFibre's own internal documentary evidence suggests concerns with **[REDACTED]**[139]**[REDACTED]**

(129) **[REDACTED]**[140]**[REDACTED]**[141]

(130) To rely on the proceeds of a back-to-back divestment to fund an acquisition, a well-advised target/seller would expect to see that the back-to-back buyer had completed diligence, agreed final terms, negotiated long-form documents and obtained fund certainty from its buyer. CityFibre was a long way from being able to demonstrate any of this in February 2026 (and it is no better placed now).

(131) **[REDACTED]** but that it now disowns and views as "*unrealistic*", leaving a funding gap of £**[REDACTED]**.[142] This **[REDACTED]** and makes clear that it is unsafe to place any weight on its representations about its funding position. The CMA speculates that this funding gap could have been met through an unidentified alternative funding source or a reduction in the price paid to Substantial which the CMA "*cannot exclude*".[143] A "cannot exclude" standard falls far short of the "most likely" standard required to support its preferred counterfactual. Those vague possibilities do not on any view justify a conclusion that the CityFibre Counterfactual is "most likely".

(132) In summary, it is wrong for the CMA to choose a counterfactual based on mere speculation that CityFibre could have obtained **[REDACTED]** for the sale of Substantial's ISPs **[REDACTED]**. As explained below, the requirement that CityFibre sells the ISP businesses also gives rise to material deal execution risk which has not been factored into its assessment by the CMA.

(iii) The CMA's analysis indicates that [REDACTED]

[138] IR, paragraph 5.98.

[139] IR, paragraph 5.94(b).

[140] **[REDACTED]**

[141] **[REDACTED]**

[142] IR, paragraph 5.96.

[143] IR, paragraph 5.97.

(133) The CMA does not refer to any evidence that third-party equity is forthcoming. Indeed, the CMA cites evidence that **[REDACTED]**.[144]

(134) **[REDACTED]**. It is highly unlikely that these potential investors would undertake an equity investment without substantial concessions from CityFibre's existing lenders (which is itself uncertain). Indeed, this is the precise basis for the company's proposed current restructuring.[145]

(135) **[REDACTED]**

(136) In any case, the CMA recognising that discussions with the named potential investors "*remained at a relatively early stage*",[146] ultimately concludes that "*we do not consider it necessary to conclude definitively on how likely the injection of third-party equity would be*" as "*CityFibre had other funding options*".[147] As explained in the balance of this Section, however, there is no proper basis for the conclusion CityFibre would likely have obtained this funding from other options.

(iv) [REDACTED]

(137) The Parties refer to the submission made by Substantial in relation to the **[REDACTED]** where it is explained that:

(a) **[REDACTED]**.

(b) The evidence does not establish that Substantial would have accepted **[REDACTED]**, particularly given CityFibre's financial position and its subsequent need for a wider recapitalisation.

(c) **[REDACTED]**

(138) The CMA acknowledges that the likely progress of those discussions absent the Transaction is unclear, and states that it does not need to reach a definitive conclusion given that other funding options were available. However, as explained in the balance of this Section, there is no basis to conclude that alternative sources were likely to bridge the funding shortfall.

(v) No evidence that CityFibre would have secured the [REDACTED] of lender consents

(139) **[REDACTED]**[148]

(140) The CMA concludes that the **[REDACTED]** of Substantial's lenders were expected to consent to the change of control and roll over their debt and that CityFibre had feasible alternative routes to backstop this funding, albeit that "*given the number of variables at play as well as the difficulty of isolating any influence the Transaction may have had on the relevant events, it is not possible to determine the precise amount that CityFibre would have been able to raise.*"[149] Such an approach is wrong in principle: the CMA

[144] IR, paragraph 5.101.

[145] See, for example, Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[146] IR, paragraph 5.102.

[147] IR, paragraph 5.102.

[148] IR, paragraph 5.55(d).

[149] IR, paragraph 5.137.

must be able to identify at least one route to funding a successful transaction that is more likely than not to transpire. It has not done so.

(141) As set out in more detail below, there is no proper evidentiary foundation for a conclusion that the **[REDACTED]** of Substantial's lenders would in fact rollover their debt in these circumstances. In February 2026, CityFibre had not received **[REDACTED]**. There is no feedback from lenders that they would consent to the change of control and roll; whereas the CMA cites clear evidence that certain named lenders would not (**[REDACTED]**).

(142) Indeed, CityFibre submitted that **[REDACTED]**."[150] As explained above, however, CityFibre **[REDACTED]** in February 2026 (and there is no reason to suppose the position will change in the near term). **[REDACTED].**

(143) The evidence cited in the IR does not substantiate that **[REDACTED]** of lenders would roll:

(a) CityFibre's view from August 2026 that "**[REDACTED]***"* will be unwilling to roll[151], post-dates the SPA signing, is not underpinned by any contemporaneous evidence and, in any case, does not justify an inference that a **[REDACTED]** of lenders will roll.

(b) Similarly, the fact that Substantial's advisers identified **[REDACTED]** lenders (**[REDACTED]**) that would not roll, plainly does not justify an inference that a **[REDACTED]** of others will.

(c) **[REDACTED]**[152] **[REDACTED].**

(144) **[REDACTED]** Substantial's response to the IR explains that the IR's provisional view that the majority of Substantial's debt would have been rolled over in a CityFibre transaction is also incorrect. **[REDACTED].**

(145) The CMA cites several factors that "*could have*" militated in favour of lenders rolling:

(a) **Overlap between CityFibre's and Substantial's lenders**: the IR finds that the overlap was in fact "**[REDACTED]**".[153] In any case, CityFibre undertook the scheme of arrangement in 2025 and is now reportedly seeking to agree a very significant debt haircut with its lenders. As such, it cannot be assumed that a lender overlap would increase CityFibre's ability to secure the requisite consents.

(b) **[REDACTED]**: the CMA concludes that this: "*could have been a further factor for both debt and equity providers backing the business case*".[154] This is speculative given that discussions with Substantial's **[REDACTED] [REDACTED]** In any case, as explained below, **[REDACTED]** would only have been one facet of a wider business case and the CMA does not appear to have considered whether the wider business case would have been

[150] IR, paragraph 5.111.

[151] IR, paragraph 5.114(a).

[152] IR, paragraph 5.114(c).

[153] IR, paragraph 5.113.

[154] IR, paragraph 5.120(c).

sustainable. This is an important omission, given the CMA has views from third party investors that suggest **[REDACTED] [REDACTED]**.[155]

(c) **[REDACTED].**[156] **[REDACTED].**

(d) **[REDACTED]**

(i) **[REDACTED]**

(ii) **[REDACTED]**

(146) It bears noting that the nexfibre consortium's lender consent process was **[REDACTED]**

(147) **[REDACTED]**

(148) The consent process for any CityFibre request would be as challenging, uncertain and time-consuming. The CMA accepts that "*lenders willing to roll under the nexfibre consortium may not have been equally as prepared to roll over to CityFibre*."[157] The Parties strongly agree, given there are reasons to expect that Substantial lenders may not want to be exposed to CityFibre's credit given:

(a) The material uncertainty relating to CityFibre's ability to continue as a going concern (as reflected in its latest accounts);

(b) CityFibre's 2025 debt restructuring, implemented via a scheme of arrangement, evidences that the business came close to running out of cash; and

(c) Uncertainty as to CityFibre's **[REDACTED]** funding commitments.

(149) As noted above, the Parties submit that the CMA should have tested the views of Substantial's lenders on these points **[REDACTED]**.

(150) Since February 2026, the financing environment in the altnet sector has also deteriorated markedly, with lenders facing significant losses and having had to take control of a number of businesses, including Gigaclear and Toob, while G.Network, Airband and TalkTalk have gone into administration. This means that any new financing process for CityFibre would likely have been commensurately harder. External developments such as these that post-date the Transaction are relevant to the CMA's counterfactual assessment, given that, under the CMA's own analysis, any alleged CityFibre acquisition of Substantial would have taken significant time post-February 2026.

(151) The IR provisionally concludes that "*the requirement to meet the change of control consents contained in Substantial's loan facilities could have been met through a combination of rollover by Substantial's lenders and* **[REDACTED]**."[158] However, the CMA uncritically accepts CityFibre's confidence that there were alternative options available to backstop any shortfall, and this cannot be said to be "likely", even based on the CMA's own analysis:

[155] IR, footnote 294.

[156] IR, paragraphs 5.117–5.119.

[157] IR, paragraph 5.120.

[158] IR, paragraph 5.141(e).

(a) **[REDACTED]** the CMA cites no contemporaneous and verifiable evidence that this was a realistic possibility beyond very high-level email correspondence (that is so vague that this evidence is incapable of being tested) and, with respect to the **[REDACTED]**, the CMA concludes that it has "*not seen evidence to suggest how far these discussions had advanced*".[159] The CMA has not undertaken any independent analysis of whether any of these solutions would be possible let alone likely. To take just one example, the CMA has not confirmed whether the terms on which **[REDACTED]** had provided its £**[REDACTED]** facility would have conditions which precluded its use for rolling over existing debt.

(b) **[REDACTED]** underplays the significant complexity and lender approvals that would be required to utilise it. To satisfy itself that this was a realistic alternative, the CMA would need cogent evidence that its lending syndicate would do this. There is none. The Parties anticipate that the lending syndicate would have been reluctant to consent to this in isolation, given the imminent debt restructuring that CityFibre would have been negotiating with its lenders. In any case, CityFibre's own evidence is that: "**[REDACTED]**".[160]

(c) **[REDACTED]** and therefore cannot be considered a viable alternative option (as further explained in Substantial's response to the IR).

2.9.2 CMA ignores significant execution risks

(152) The CMA's assessment of the CityFibre Counterfactual disregards significant execution risks associated with any CityFibre bid.

(153) First, there is significant execution risk in relation to the back-to-back sale of the ISP business. **[REDACTED]**. It is notable that in ABF/Hovis the CMA disregarded an alternative purchaser on the basis that its offer was conditional on the performance of "*red flag due diligence*" which meant there was "*material uncertainty about whether any offer would be made on those or similar terms and whether any such offer would result in a sale in the counterfactual.*"[161]

(154) Second, the IR does not consider execution risks relating to regulatory clearances such as the mandatory clearances required under the NSIA for a CityFibre acquisition (and any ISP sale).

2.10 Recent developments – including since the IR – further undermine the CityFibre Counterfactual

(155) This Section demonstrates that intervening events since February 2026 do not support the CMA's counterfactual. Moreover, the CMA should update its analysis to reflect material new evidence and developments since the IR. Whilst these events post-date the Transaction they are relevant to the CMA's counterfactual assessment if the CMA's logic is accepted that a hypothetical CityFibre purchase of Substantial would have taken some time post-February 2026.

2.10.1 Developments in CityFibre's ability to fund M&A since February 2026

[159] IR, paragraph 5.115(b).

[160] IR, paragraph 5.115(c)(ii).

[161] Anticipated Acquisition by Associated British Foods plc (Through ABF Grain Products Limited) of Hovis Group Limited, paragraph 4.329.

(156) CMA rightly notes that "*we must interpret this evidence with caution insofar as it may have been influenced by the Transaction itself*".[162] Despite this caveat, however, the IR's conclusions uncritically accept the self-serving submissions and public statements of CityFibre.

(157) The CMA's interim conclusions in any case materially mischaracterise the nature of the restructuring process that CityFibre is proposing and its implications for CityFibre's alleged funding for the Transaction. The CMA should request these restructuring documents from CityFibre to consider whether they support CityFibre's ability to execute a transaction in February 2026.

(158) As an initial point, the **[REDACTED]** and its stated role show the fragility of CityFibre as a business and the need for it to go through another restructuring, where it will reportedly ask lenders to accept up to a £2 billion haircut. The fact that CityFibre admits in this context the need to create a "**[REDACTED]**" is telling. Businesses that require a material restructuring to become a "**[REDACTED]**" are highly unlikely to be able to undertake a complex £2 billion M&A transaction in the short term.[163]

(159) The CMA is wrong to conclude that the "*evidence indicates that: the investment from existing shareholders could have increased to at least £***[REDACTED]** *within a reasonable timeframe"*[164] and that the amount shareholders were prepared to invest has "*since the Transaction was agreed increased to £***[REDACTED]**".[165] In doing so, the CMA accepts uncritically CityFibre's assertion that shareholder funds would be available for M&A and that, once the recapitalisation is complete, the deleveraging requirement would be removed and CityFibre could raise more senior debt financing.

(160) This conclusion does not follow from the evidence: the reality, as the CMA itself acknowledges, is that **[REDACTED]** by CityFibre shareholders: "**[REDACTED]** [emphasis added]"[166] and that "**[REDACTED]**."[167]

(161) **[REDACTED].**[168] **[REDACTED].**

(162) **[REDACTED].**[169] **[REDACTED].** That is not a credible timeframe as intervening events have demonstrated.**[REDACTED]**[170]**[REDACTED]**.[171] There is simply no proper basis for the CMA's conclusion that shareholder funding would be available in the "**[REDACTED]**."

(163) The Parties strongly disagree with the conclusion that the £**[REDACTED]** could be available for M&A within a reasonable timeframe. Indeed, it is reported that the **[REDACTED]** is now linked to and conditional upon a debt restructuring to be agreed with CityFibre's lenders (that has taken 2.5 months since original engagement) – so what appears to have been accepted by the CMA as an unconditional equity commitment is reportedly highly conditional and linked to a complicated debt

[162] IR, paragraph 5.122.

[163] IR, paragraph 5.124.

[164] IR, paragraph 5.133.

[165] IR, paragraph 5.141(e).

[166] IR, paragraph 5.126.

[167] IR, paragraph 5.131.

[168] IR, paragraph 5.131.

[169] IR, paragraph 5.133.

[170] IR, paragraph 5.131.

[171] IR, paragraph 5.133.

restructuring to be negotiated. It would also reportedly be advanced to CityFibre's holding company as a shareholder loan ranking equally with the part of the bank debt to be moved there, rather than as loss-absorbing equity.[172]

(164) Bloomberg has reported that: *"The company has asked banks to take a partial write-down on an approximately £2 billion loan in exchange for an equity stake, according to a presentation viewed by Bloomberg News…Coming to an agreement with lenders is a condition for CityFibre's stakeholders [….] to inject a further £900 million into the company to fund expansion and deals."*[173] Our submission is that **[REDACTED]**. According to this report, lenders are faced with a very significant write down of their debt obligations in return for non-interest paying equity instruments and reportedly capitalising interest rather than cash-paying on a significant portion of the debt that remains.

(165) Even if the £**[REDACTED]** shareholder contribution materialises, it is uncertain whether it could be deployed for M&A. As an example, **[REDACTED]**. In the court documents pertaining to CityFibre's 2025 debt restructuring by way of scheme of arrangement, it is clearly set out that the £**[REDACTED]** was uncommitted, and that only £**[REDACTED]** was available to use for M&A.[174]

(166) Public commentary indicates that the **[REDACTED]**

(167) Based on the Parties' understanding from public commentary, **[REDACTED]**.

(168) **[REDACTED]**

(169) This significantly undermines the credibility of the CityFibre Counterfactual. An acquisition of Substantial by CityFibre would **[REDACTED].** The CityFibre Counterfactual is accordingly not a realistic outcome and, in the Parties' view, should not be relied upon.

(170) In the Parties' view, **[REDACTED].**

(171) In summary, developments since February 2026 do not support CityFibre's ability to fund a transaction with Substantial, and events subsequent to the IR appear to compound this further: they indicate the gravity of its financial challenges.

2.10.2 BT's acquisition of TalkTalk will weaken the business case for all Altnets

(172) The acquisition of TalkTalk/PXC by BT – if permitted to proceed as is widely expected - will materially weaken the business case for all altnets (including nexfibre and CityFibre), given that it permanently shrinks the non-BT "addressable retail market" for providers of wholesale broadband ("**WLA**").

(173) As confirmed in the BT Group's press release, the TalkTalk acquisition transfers approximately 2.5 million customers to BT (approximately 1.5 million TalkTalk retail and approximately 1.0 million PXC wholesale/affiliate customers) which will then effectively be captive to Openreach going forward.[175] According to nexfibre's analysis, this contracts

[172] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund M&A Deals.

[173] Bloomberg, CityFibre Asks Banks to Restructure Debt and Fund New M&A Deals.

[174] Annex_IRR_004, paragraphs 47.1 and 56.3; IR, paragraph 5.83(b)

[175] BT Group has acquired TalkTalk and PlatformX.

the addressable retail market for WLA providers from around 12 million customers to around 9.5 million customers – a reduction of c.21%.[176]

(174) The permanent contraction of the addressable wholesale market, the reduction in wholesale customers at every tier and the removal of PXC as a neutral aggregator, will entrench Openreach's already dominant wholesale position and materially weaken the position of challengers such as nexfibre and CityFibre.

2.10.3 The investment climate has evolved detrimentally, especially for [REDACTED]

(175) The IR recognises that **[REDACTED]** is one of the three largest investors in CityFibre. The IR also notes that **[REDACTED]** told the CMA that "*it was willing to increase its contribution to* £**[REDACTED]** *million (subject to completing due diligence and finalising deal terms) in support of CityFibre's new target equity raise of* £**[REDACTED]**" and that "*in respect of the acquisition of Substantial, it would have been ready to increase its contribution if that would have enabled the deal to be reached*".[177] The IR accords these vague assertions significant weight in reaching its conclusions regarding developments in CityFibre's ability to fund M&A post February 2026.

(176) As noted above, **[REDACTED]** views (like those of CityFibre's other investors) reflect its own interest in the Transaction being blocked, post-date the Transaction and are not reflected in contemporaneous internal documents, and which are advanced in the context of opposition to a rival merger. Such views should not be accepted by the CMA at face value and rather, it is essential that the CMA scrutinises these claims with an appropriate degree of scepticism.

(177) Indeed, even if **[REDACTED]** claims are taken at face value, they are so provisional and embryonic that they cannot support the conclusion that additional shareholder equity will be forthcoming. As set out above, **[REDACTED]** own description of its position – **[REDACTED]**[178] **[REDACTED]**only further confirms that **[REDACTED]** when the IR was published.

(178) Moreover, following the publication of the IR, there is a markedly more challenging investment climate for **[REDACTED]** investors in the UK. There have been indications in the media that, in response to findings by **[REDACTED]**[179] In the **[REDACTED]**, this heightens the risk of this**[REDACTED]** not being obtained which would, in turn, undermine the prospects of CityFibre's entire fundraising process.

2.10.4 Conclusion: recent developments show the CityFibre Counterfactual to be unsustainable

(179) To the extent that the CMA considers developments post-dating February 2026 on the basis that CityFibre would have had and/or taken more time to hypothetically transact these three recent developments: (i) CityFibre's ongoing restructuring process, (ii) BT's acquisition of TalkTalk – if approved – challenging the sustainability of other wholesalers' business plans by shrinking the addressable market; and (iii) a challenging climate for UAE-based investors to invest in UK infrastructure, make the CMA's identified counterfactual even more unlikely. The CMA should investigate these matters

[176] Annex_IRR_003, Appendices (*Contestable Market Calculation*).
[177] IR, paragraph 5.128
[178] IR, paragraph 5.90(b).
[179] **[REDACTED]**

and the impact they have on the appropriate counterfactual against which to assess nexfibre's acquisition of Substantial.

3 nexfibre and VMO2 Counterfactual

3.1 nexfibre Counterfactual

(180) The CMA provisionally concludes that, absent the Transaction, nexfibre would be unlikely to **[REDACTED]** (**[REDACTED]**), but that it would not **[REDACTED]** from the nexfibre and VMO2 wholesale proposition.[180]

(181) The Parties agree with the recognition in the IR that, absent the Transaction, nexfibre will likely remain in a **[REDACTED]** and that its shareholders **[REDACTED]**. As the CMA recognises, the evidence is clear with respect to nexfibre's **[REDACTED]**. As the Parties have explained in their previous submissions, the Transaction is transformational for nexfibre, providing a route to **[REDACTED]**.

(182) While the Parties have not argued that nexfibre would necessarily have **[REDACTED]** absent the Transaction, it remains the case that nexfibre's **[REDACTED]** absent the Transaction. The Parties do not agree with the CMA's provisional position that – **[REDACTED]** – then the FTTP network would remain **[REDACTED]** In any event, it would clearly be a scenario resulting in zero to low ongoing investment in broadband infrastructure, including in nexfibre's network.

(183) Following VMO2's decision to stop fibre upgrades on its own balance sheet from no later than 1 January 2027, there is a **[REDACTED]** risk that nexfibre and VMO2 will not attract meaningful third-party wholesale volumes absent the Transaction.[181] While nexfibre and VMO2 are in **[REDACTED]**.

(184) The Parties have also provided clear internal documentary evidence that their current network is of insufficient scale to be attractive to **[REDACTED]**. In previous negotiations **[REDACTED]**.[182] This is also clearly reflected in ISP feedback to the CMA regarding nexfibre's proposition to be of insufficient scale: **[REDACTED]** rated nexfibre and VMO2's wholesale offering as weak citing its lack of history of supplying wholesale services and noting its only "*moderate*" scale.[183] Moreover, whilst the **[REDACTED]**

(185) Further, securing wholesale demand cannot in any case be equated with exercising an effective and sustainable constraint in the market. The CMA fails to consider whether the penetration levels associated with a single ISP customer would be sufficient for **[REDACTED]**. This is a particularly important consideration in light of (i) the CMA's CityFibre Counterfactual, which makes **[REDACTED]**; and (ii) the BT/TalkTalk Transaction, which materially reduces the contestable demand for altnets. As the Parties note below, a network overlap where three scaled wholesalers co-exist involves splitting traffic across three networks; limiting the penetration any individual operator can achieve, whilst being economically unsustainable. Such a scenario does not allow all players to achieve the penetration they need to reach profitability.

(186) In summary, absent the Transaction, nexfibre (including through its joint proposition with VMO2) is likely to continue to **[REDACTED]** and to lack the scale necessary to meaningfully constrain Openreach.

3.2 VMO2 Counterfactual

[180] IR, paragraph 5.155.

[181] VMO2 has not excluded **[REDACTED]**.

[182] FMN, paragraph 976.

[183] IR, paragraph 6.118.

3.2.1 Introduction

(187) The IR provisionally concludes with respect to VMO2 that:

(i) VMO2 would continue to upgrade the entirety of its HFC network to FTTP in the counterfactual, with a build pace falling somewhere between the "**[REDACTED]**" and "**[REDACTED]**" scenarios (two of the three build scenarios considered by VMO2, the other being a "**[REDACTED]**" scenario).[184]

(ii) While VMO2's future upgrade will **[REDACTED]** areas of **[REDACTED]**, VMO2 will ultimately upgrade the entirety of its network to FTTP.[185]

(188) The CMA dismisses the Parties' evidence in relation to the **[REDACTED]** in part given that the CMA does not consider that they "*have provided evidence to indicate that these long-term incentives have significantly changed in the intervening period since the above POR documents were prepared*".[186] In particular, the CMA places determinative weight on VMO2's internal documents evidencing a long-term strategic incentive to complete Fibre Up, **[REDACTED]**.[187]

(189) As an initial point, the CMA considers that VMO2 will upgrade "*the large majority of its HFC network over (approximately) the* **[REDACTED]***, and the entirety of its network over the* **[REDACTED]***, or shortly thereafter*."[188] While this Section will show that the substance of this conclusion is incorrect, assessing a **[REDACTED]** time horizon over which VMO2 would "*ultimately*" complete its network based on an incentive assessment from 2025 is highly speculative. Indeed, the CMA's approach here is inconsistent with their conclusions with respect to VMO2's incentives to wholesale, where it recognises that: "*wholesale supply becomes* **[REDACTED]***. However, forecasts over such a long time horizon are subject to substantial uncertainty, as the Parties' acknowledge, particularly in a market characterised by evolving technology, changing competitive conditions and uncertainty regarding ISP wholesale demand."*[189]

(190) The CMA's provisional view that VMO2 would continue Fibre Up,**[REDACTED]**is wrong and cannot be supported by the relevant evidence. This IR Response explains that the CMA's provisional conclusion that VMO2 has long-run incentives to upgrade its entire HFC network to fibre is incorrect and leads to an irreconcilable inconsistency in relation to the CMA's counterfactual positions (see Section 3.3.1(iii)).

(191) Significantly, in placing determinative weight on VMO2's long-term incentives to upgrade its network, the IR disregards the abundance of real-world evidence submitted by VMO2 that it lacks the ability to do so on account of **[REDACTED]**.

(192) This IR Response explains the clear business reality which is that VMO2 will stop fibre upgrades on its own balance sheet from no later than 1 January 2027. This decision is independent of the Transaction and reflects that **[REDACTED].**

[184] IR, paragraph 5.167.

[185] IR, paragraph 5.166.

[186] IR, paragraph 5.163.

[187] See the internal documents referenced in IR footnotes 391-394.

[188] IR, paragraph 5.165

[189] See IR appendix E.21.

(193) The CMA's provisional conclusions on the VMO2 Counterfactual must now be updated to reflect VMO2's clear business reality.

3.2.2 The IR wrongly discounts evidence of VMO2's lack of ability to sustain Fibre Up

(194) The IR is wrong to provisionally discount the reality of VMO2's **[REDACTED]**.[190] Given **[REDACTED]** (described further below), it is clear that the IR position does not apply the appropriate weight to the extensive evidence of VMO2's **[REDACTED]**.

(195) The IR provisionally dismisses the Parties' recent submissions in relation to VMO2's ability to fund Fibre Up as these submissions rely:

(i) on relevant documents produced after Transaction contemplation had become more serious (including after the Transaction was signed and after the CMA's merger inquiry commenced);[191] and

(ii) primarily on external sources and reporting regarding **[REDACTED]**.[192]

(196) As an initial point, the CMA relies on evidence relating to CityFibre and its shareholders which post-dates the Transaction in the context of the CityFibre Counterfactual; whilst rejecting such evidence for the VMO2 Counterfactual. This is particularly problematic given the evidence that post-dates the Transaction in relation to the CityFibre Transaction cannot be divorced from the effects of the Transaction; whereas VMO2's **[REDACTED]** arise independently of the Transaction and pre-dated the Transaction (albeit they have **[REDACTED]** in recent months).

(197) VMO2's prior submissions have explained that **[REDACTED]**. The **[REDACTED]** is consistent with (i) the extensive evidence of VMO2's **[REDACTED]**, (ii) VMO2 management's active consideration to **[REDACTED]**[193] and (iii) VMO2's pursuit of **[REDACTED]** (**[REDACTED]**).[194]

(198) VMO2's **[REDACTED]** are evidenced by the fact that:

(i) VMO2 has **[REDACTED]**. VMO2 is a heavily levered business with £22 billion of debt on its balance sheet. As its commercial performance declines, its leverage continues to grow as does its cost of debt reinforcing cash flow and **[REDACTED]**.

(ii) **[REDACTED]**[195] While this trend was independent of and pre-dated the Transaction, since the IR some of VMO2's biggest creditors are reportedly seeking legal advice as VMO2's bonds have plunged into distressed territory. See the Bloomberg updates of 5 and 14 October 2026 entitled "*Virgin Media Bonds Sink to Record Low as Broadband Deal in Doubt*" and "*BlackRock, Pimco Hire Lawyers Over Faltering Virgin Media Deal*" respectively.[196]

[190] IR, paragraphs 5.163-5.164.

[191] IR, paragraph 5.158, citing VMO2 Annex to P2-s109(01)-VMO2, "**[REDACTED]**, pages 49-50 and 55-56).

[192] IR, paragraph 5.163.

[193] IR, paragraph 5.161, citing VMO2 Annex to P2-s109(01)-VMO2, "**[REDACTED]**, pages 49-56).

[194] IR, paragraph 5.150; see also the **[REDACTED]**.

[195] Annex_IRR_001

[196] Annex_IRR_005; Annex_IRR_006.

(iii) Fitch Ratings also downgraded VMO2's Long-Term Issuer Default Rating (IDR) to 'B+' from 'BB-' in June 2026.

(199) As to the contention that the Parties' most recent submissions rely primarily on external sources and reporting regarding VMO2's **[REDACTED]**, the Parties submit that this IR Response provides clear internal documentary evidence which will be reinforced by VMO2's public announcement on 3 November 2026. The fact that the reality of VMO2's **[REDACTED]** is reflected both in its internal documents and extensive external commentary, credit rating downgrades and bond market pricing, lends clear supporting and evidential weight to these submissions.

3.3 VMO2 is stopping its Fibre Up Programme using its own balance sheet from no later than 1 January 2027

(200) VMO2 has now decided to stop all Fibre Up build using its own balance sheet. The Fibre Up Programme will complete the upgrade of premises that are already in progress, but all new upgrades will stop from no later than 1 January 2027. Following the announcement on the 3 November 2026, VMO2 will **[REDACTED]**

(201) The decision to stop the Fibre Up Programme was taken by VMO2's shareholders on **[REDACTED]** The options presented to the shareholders' representatives are set out in **[REDACTED]**[197] **[REDACTED].**

(202) VMO2's internal documents – including updates for the VMO2 board and shareholders – reflect the rationale for this position:

(i) The **[REDACTED]** deck presented to the shareholders explains that **[REDACTED]** The decision is taken in light of **[REDACTED]** [198]

(ii) The POR Update for the VMO2 board dated 29 September 2026 notes "**[REDACTED]**", "**[REDACTED]**" and "**[REDACTED]**." [199] Similarly to the "**[REDACTED]**", the document steps through the "**[REDACTED]**" and sets out the **[REDACTED]** and "**[REDACTED]**." [200]

(203) This decision to **[REDACTED]**. The Parties have consistently explained in past submissions that VMO2's Fibre Up Programme has been subject to **[REDACTED]**, driven by VMO2's **[REDACTED].**[201]

(204) While the Parties recognise that VMO2's historic internal documents – notably its previous POR – have not shown a decision to "**[REDACTED]**", the evidence provided to the CMA showed that "**[REDACTED]**.[202] The letter from InfraVia, Liberty Global and Telefonica to the CMA dated 2 September 2026, clearly explained that VMO2 will very likely have to **[REDACTED]** in its mobile and fixed broadband businesses and contending with high interest rates.

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[197] Annex_IRR_007, slide 2.

[198] Annex_IRR_007, slides 2 and 9.

[199] Annex_IRR_008, slide 3; **[REDACTED]**.

[200] Annex_IRR_008, slide 4.

[201] See the FMN, the Areas of Focus Response, the Buyside Counterfactual submission and the Quantification of Pro-Competitive Efficiencies report.

[202] For instance, in October 2025, VMO2 actively **[REDACTED]** instead. Furthermore, in VMO2's May 2026 internal review, management identified **[REDACTED]** as one of three live options in response to a **[REDACTED]"** (Annex_CF_1.01_**[REDACTED]**, page 18). VMO2's internal planning documents **[REDACTED]**, pages 48 and 49). VMO2's internal analysis of September 2026 indicates that VMO2 is actively considering **[REDACTED]**.

(205) **[REDACTED]**, it becomes commensurately less economically attractive to **[REDACTED]**. The real-world costs of **[REDACTED]** large-scale infrastructure build programme, undermines the overall economic incentives to upgrade. **[REDACTED].** This is well-evidenced in VMO2's September 2026 board update document, which consider the practical implications of **[REDACTED]**, noting "**[REDACTED]** and that the *"***[REDACTED]***."*[203] As explained below, VMO2 has strategic optionality **[REDACTED]**; **[REDACTED].**

(206) In summary, the business reality for VMO2 is clear: VMO2 will independently of the Transaction stop upgrading its network to fibre using its balance sheet from no later than 1 January 2027. The CMA's counterfactual needs to be updated to reflect the clear real-world evidence of VMO2's commercial reality.

3.3.1 The IR's analysis of VMO2's incentives to upgrade to fibre is flawed

(i) The CMA's analysis of VMO2's long-term incentives fails to engage with the option of [REDACTED]

(207) Without prejudice to the primary point above, it is erroneous for the CMA (or indeed Ofcom) to assume that VMO2 has no option but to upgrade its HFC network to fibre over the longer-term. Given VMO2's decision noted above, it is apparent that the CMA should have more properly considered the viable alternatives for VMO2.

(208) In particular, the CMA's provisional assessment **[REDACTED]**. As previously explained to the CMA, **[REDACTED]**. **[REDACTED]**) which is in the process of implementing.[204] **[REDACTED]**[205]**[REDACTED]**

(209) The CMA's provisional conclusion does not properly engage with VMO2's **[REDACTED]**. **[REDACTED]** is a live commercial project that **[REDACTED]**. Moreover, **[REDACTED]**. **[REDACTED]**. Critically, as set out in Section 3.3.1(iii), the CMA fails to consider the impact of its provisional CityFibre Counterfactual on **[REDACTED]** options and incentives.

(210) Moreover, the CMA misinterprets the Parties' evidence on the long-term financial downsides **[REDACTED]**.[206]

(a) First, **[REDACTED]**. **[REDACTED].**

(b) Second, as reflected in internal documents previously shared with the CMA, as of October 2025, based on the comparison of customer economics of the two strategies **[REDACTED]**), VMO2 considered that **[REDACTED]**[207] **[REDACTED]**[208] **[REDACTED]**.

(c) Third, further sensitivities of this model (presented in Sections (ii) and (iii) below) clearly demonstrate **[REDACTED].**

[203] Annex_IRR_008, slide 3

[204] VMO2 Annex to P2-s109(01)-VMO2, "**[REDACTED]**, pages 35 and 43); VMO2 Annex to P2-s109(01)-VMO2, "**[REDACTED]**, pages 15 and 18); and the **[REDACTED]**.

[205] VMO2 Annex to P2-s109(01)-VMO2, **[REDACTED]** pages 35 and 43); VMO2 Annex to P2-s109(01)-VMO2, **[REDACTED]**pages 15 and 18); **[REDACTED]**

[206] See 'Annex 9.1.254_20251017_**[REDACTED]**; and VMO2 annex to P2-s109(01)-VMO2: '**[REDACTED]**, pages 2-3 and 11).

[207] **[REDACTED]**

[208] **[REDACTED]**

(211) Importantly, the October 2025 modelling does not consider **[REDACTED]**. As explained further below in Section 5.1, competition between three overlapping scaled networks is not sustainable **[REDACTED]**. Thus, any trade-off between VMO2's alternatives would change materially.

(212) Nonetheless, the CMA erroneously applies this model directly to its counterfactual, assuming that the wholesale price and penetration parameters will remain consistent between its counterfactual and the commercial realities reflected in the POR. This is irrational as the **[REDACTED]**, thereby making the conclusions of the October 2025 model not directly relevant to the IR's counterfactual.

(ii) A sensitivity analysis of VMO2's internal model confirms that [REDACTED]

(213) **[REDACTED]**

(214) **[REDACTED]** The CMA applies the conclusions of the October 2025 model without adjustment, despite these factors differing considerably in its counterfactual. Under the provisional counterfactual, **[REDACTED]**.

(215) If the CMA's own provisional view that CityFibre would offer its current, discount-driven wholesale pricing strategy within Substantial's footprint is accepted (**[REDACTED]** as discussed in Section 2.9); **[REDACTED]** This clearly shows that the two limbs of the CMA's counterfactual, whereby (i) CityFibre/Substantial offers wholesale under CityFibre's current terms, and (ii) VMO2 completes its Fibre Up Programme, cannot work together.

(216) VMO2's internal sensitivity analysis builds on its assessment of the relative customer economics of **[REDACTED]**, discussed in paragraph (210) above. Specifically, it **[REDACTED].**[209] **[REDACTED].**[210] **[REDACTED].**

(217) In particular, VMO2 adjusted its original model to consider how **[REDACTED]** This allows for a better assessment of VMO2's strategic outcomes under the CMA's counterfactual, because, as detailed in this Section, CityFibre's acquisition of Substantial would **[REDACTED]** available in the overlap areas. **[REDACTED]**

(218) Specifically, **[REDACTED]**

(219) When taking the likely impact the counterfactual will have on **[REDACTED]**, the results of VMO2's internal analysis are clear: **[REDACTED]**.[211]

(220) Compared to the scenario where VMO2 **[REDACTED]** for all likely sensitivity cases possible under the CMA's counterfactual over a ten-year period. **[REDACTED].**[212] **[REDACTED]**.[213]

(221) **[REDACTED]**

[209] As explained above, **[REDACTED]**. The CMA itself acknowledges that VMO2 has considered delaying or **[REDACTED]**, and that the Parties have previously submitted that VMO2's **[REDACTED]** absent the Transaction.

[210] **[REDACTED]**

[211] **[REDACTED]**

[212] IR, paragraph 6.96.

[213] Table (II) of Annex_IRR_009.

(222) Further, and without prejudice to the fact that VMO2 must focus on its short-term cash flow constraints, **[REDACTED].**[214] **[REDACTED].**

(223) Last, the analysis above is likely to **[REDACTED].**

(iii) This sensitivity analysis shows VMO2 [REDACTED]

(224) VMO2's analysis also exposes a fundamental contradiction in the CMA's provisional counterfactuals. The CMA seeks to rely on both of the following propositions, even though they cannot rationally coexist:

(a) On the one hand, CityFibre would acquire Substantial and become a stronger wholesale competitor within VMO2's footprint.[215]

(b) On the other hand, VMO2 would nevertheless finance Fibre Up across its entire HFC footprint, including in areas overlapped by that strengthened CityFibre wholesale proposition.[216]

(225) These two counterfactual propositions cannot be assessed independently. A stronger CityFibre, following its acquisition of Substantial, **[REDACTED]** would materially alter **[REDACTED].**

(226) In particular, the presence of a scaled CityFibre/Substantial would **[REDACTED]** VMO2 could realistically expect to achieve in areas where it overlaps with both Openreach and CityFibre/Substantial. **[REDACTED]** given that a prospective ISP would already have access to two established FTTP networks. Further, stronger retail competition may cause VMO2 to have **[REDACTED]**.

(227) VMO2's internal documents accordingly assess its prospect of **[REDACTED]** in such three-network overlap areas as **[REDACTED]**. Treating VMO2 as **[REDACTED]**.

(228) As noted above, VMO2's internal sensitivity analysis indicates that **[REDACTED].**[217] **[REDACTED]**.[218]

(229) Taken together, this evidence shows that the CMA's CityFibre Counterfactual, in which CityFibre acquires Substantial, directly undermines its separate assumption that VMO2 would continue its Fibre Up Programme in the Substantial areas.

3.4 Conclusion

(230) For the reasons set out above, the CMA should update its provisional conclusions to reflect the new evidence that demonstrates that VMO2 **[REDACTED]**.

(231) Moreover, the CMA should therefore revisit its provisional view of VMO2's incentives, in light of the new analysis in this IR Response, in particular by:

(i) assessing VMO2's incentives **[REDACTED]** against its own accepted CityFibre Counterfactual rather than the Transaction-enabled scaled combined footprint;

[214] Table (III) of Annex_IRR_009.

[215] IR, paragraphs 5.154-5.156.

[216] IR, paragraphs 5.164-5.166.

[217] Table (II) of Annex_IRR_009 .

[218] IR, paragraphs 5.150 and 5.165.

(ii) reconsidering incentives sensitivities consistent with the CityFibre Counterfactual and VMO2's current financial position; and

(iii) properly factoring in the purchase of wholesale access **[REDACTED].**

(232) If the CMA updates its findings to reflect this new evidence, the “most likely” counterfactual is that VMO2 does not upgrade its HFC network to fibre. The CMA also cannot reasonably conclude that VMO2 would continue to have the incentives to complete Fibre Up in areas overlapped by a strengthened CityFibre/Substantial.

4 Market Definition

4.1 Product market definition

(233) The Parties agree with the CMA's provisional findings on the product scope of the relevant market, which is for the supply of WLA to downstream ISPs.[219] The Parties also agree that the relevant market:

(i) includes fixed broadband services supplied to residential and business customers excluding leased lines access ("**LLA**") services;[220]

(ii) excludes HFC/RFOG as there is no third-party wholesale demand for HFC/RFOG services in the UK (in line with the Parties' submissions);[221] and

(iii) includes Openreach's legacy copper networks.[222]

4.2 Geographic market definition

(234) The Parties strongly disagree with the CMA's provisional conclusion on the relevant geographic market.[223] The IR errs in provisionally concluding that the relevant geographic market comprises all networks within the Parties' combined FTTP network footprints. In reaching its provisional conclusion, the IR relies primarily on the claim that non-overlapping networks (or non-overlapping parts of networks) are not demand-side substitutes and networks only face direct competition from networks present in each area (i.e., overlaps).[224]

(235) This proposition does not withstand scrutiny for three reasons. *First*, the IR ignores evidence in front of the CMA and cited elsewhere in the report that ISPs choose between wholesale providers primarily on price and scale, not overlap or network location, and that they compare scaled networks without regard to where those networks overlap. *Second*, the IR dismisses and misinterprets the clear evidence the Parties provided of competition from network operators outside of their own footprints, without sufficient basis. *Third,* the IR cites no direct evidence of ISPs treating overlap as relevant to their choice of provider, relying instead on a selective reading of a small number of questionnaire responses.

(236) The CMA's market definition places disproportionate weight on Ofcom's hypothetical vision of how it would like wholesale competition to develop, rather than any concrete evidence of competition actually operating in a way that only reflects overlaps: either in the nascent market for wholesale FTTP access, or indeed in more mature comparator markets, which provide relevant evidence of how competition may develop where similar structural features are present. Conversely, the evidence already provided by the Parties, and the further evidence provided in this IR Response, clearly shows that competition is national in scope. Outside the context of ex ante regulation of a dominant incumbent – such as Ofcom's area-based assessment of Openreach's SMP – it would be highly unusual to define a merger control market by reference to the merging parties'

[219] IR, paragraph 6.31.

[220] IR, paragraph 6.19.

[221] IR, paragraph 6.25.

[222] IR, paragraph 6.30.

[223] IR, paragraph 6.55.

[224] The IR claims that this is also on the basis that contracts and parameters are mostly set at the level of network footprints (paragraph 6.55). However, this fact supports wider and even national market definitions. The IR suggests this may change in future, but this is speculative and based almost exclusively on Ofcom's feedback.

own network footprint. This is especially so given the CMA expressly departs from that area-based approach in relation to the product market.[225] The CMA's approach is clearly insufficient to support the provisional geographic market and legally flawed.

(237) When assessed appropriately, the evidence demonstrates that the relevant geographic market is clearly wider than the Parties' combined network footprint. The determinative factors are that:

(i) ISPs agree wholesale contract terms uniformly across a wholesale provider's network footprint (regardless of the location of that network footprint and of the degree and location of overlaps with other providers);

(ii) the key parameters of competition are set nationally and applied uniformly across geographic areas; and

(iii) footprint scale is the key competitive parameter for wholesale providers (alongside price).

(238) None of these factors are influenced by the providers' respective network boundaries. The Parties have provided ample evidence on these points throughout the merger inquiry. The CMA acknowledges these submissions but fails to accord them appropriate weight.

4.3 Summary of the IR's provisional geographic market definition

(239) The IR provisionally concludes that the relevant geographic market is sub-national, defined specifically as the Parties' combined FTTP network footprints.[226]

(240) This is primarily on the basis that parameters of competition are mostly set at the level of network footprints and that the only direct competition firms face "*is from firms that also have networks in these areas*".[227] Considering that parameters of competition being set uniformly across network footprints is consistent with national markets (and is precisely what would be observed in national markets), the IR's provisional conclusion rests critically on the claim that it found no evidence that non-overlapping networks would continue to be significant competitive alternatives to ISPs.[228]

(241) More specifically, the IR sets out the following reasoning for adopting the geographic market in wholesale supply of fixed broadband (including FTTP and Openreach legacy technologies in the product market):

(i) The IR uses the Parties' combined network footprints as the initial frame of reference and evaluates whether to widen or aggregate this market by testing (i) demand-side substitution, (ii) supply-side substitution, and (iii) parameter flexing.[229]

(ii) On the demand-side, the IR finds that substitution is constrained by physical location and that non-overlapping networks are not direct demand-side substitutes.[230] The IR claims that the evidence shows

[225] IR, paragraphs 6.26-6.27.

[226] IR, paragraph 6.55.

[227] IR, paragraph 6.55.

[228] IR, paragraphs 6.39 and 6.42.

[229] IR, paragraph 6.37.

[230] IR, paragraph 6.38.

operators' competitive focus is where networks physically overlap, rather than across non-overlapping footprints.[231] Further, the IR states that while demand-side substitution between altnets in different geographic areas (as claimed by the Parties) would be plausible in the short-term, it would not be in the medium- to long-term, as the resource constraints that prevent ISPs from negotiating with multiple suppliers would diminish.[232]

(iii) On the supply-side, the IR finds that it is not appropriate to aggregate markets across networks on the basis of similar supply-side factors across network operators.[233] This is because all networks beyond Openreach are sub-national, which means that different providers are active in different areas using different assets, so the conditions of competition differ between these areas.[234]

(iv) On parameter flexing, the IR notes that commercial terms are set at the level of network footprints.[235] The IR indicates that there is some evidence of local flexing within network footprints and this will become more common in future based on Ofcom's views.[236] However, the IR considers that the overall evidence suggests competitive parameters are set at the network footprint level.[237]

4.4 The IR ignores its own evidence that price and scale, not overlap or location, drive ISP choice

(242) The CMA provisionally concludes that it is not appropriate to widen the market beyond the Parties' footprint, as it found no evidence that non-overlapping networks are considered as significant competitive alternatives to ISPs.[238] The Parties note at the outset that such evidence is not routinely deemed necessary for the CMA to find a national geographic market in analogous markets in which commercial terms are set nationally. In *Cellnex/CK Hutchison*, the CMA defined a national market without assessing the extent to which non-overlapping networks are substitutes. Instead, as previously submitted by the Parties, the CMA based its conclusion that the market was national on key features that equally apply to the Transaction.[239] The IR does not properly engage with this submission and fails to explain the reason for the different conclusion it reaches despite the clear analogies between the cases.

(243) However, in any event, the CMA has direct evidence from a third-party ISP's internal document. The CMA's review of **[REDACTED]** internal documents shows that **[REDACTED]** internally benchmarked **[REDACTED]** against its existing wholesale **[REDACTED]**, as well as against the Openreach wholesale offer.[240] This is despite **[REDACTED]** and, particularly, **[REDACTED]**, only having very limited overlap with

[231] IR, paragraphs 6.40 and 6.41.

[232] IR, paragraph 6.42.

[233] IR, paragraph 6.47.

[234] IR, paragraph 6.47.

[235] IR, paragraphs 6.49 and 6.52.

[236] IR, paragraphs 6.50 and 6.51.

[237] IR, paragraph 6.52.

[238] IR, paragraphs 6.38 and 6.42-6.43.

[239] Parties' submission, '**[REDACTED]**, 5 June 2026, page 5.

[240] IR, paragraph 6.112(b)(i).

[REDACTED] (**[REDACTED]**% for **[REDACTED]**, and **[REDACTED]**% for **[REDACTED]**).[241] The fact that **[REDACTED]** benchmarks **[REDACTED]** against **[REDACTED]**'s and **[REDACTED]**'s offers therefore provides direct evidence for demand-side substitution between substantially non-overlapping networks – precisely the evidence the CMA argues it would need to consider a wider geographic market definition. As further detailed in Section 4.5 below, similar evidence is available to the CMA **[REDACTED]** (i.e., **[REDACTED]**).

(244) Furthermore, the IR's geographic market definition is inconsistent with its own findings elsewhere in the IR. Most notably, when considering the nature of competition and whether altnets beyond CityFibre could compete, the IR acknowledges that network scale is a key parameter of competition (alongside price) which would normally militate in favour of a national geographic market, yet this finding has no bearing on the IR's conclusions on its geographic market definition. Historically, evidence such as uniform, national contract terms and footprint scale as a key parameter of competition have been interpreted by the CMA as indicative of a national geographic market. As also noted in paragraph (242) above, this was the CMA's reasoning in its investigation of *Cellnex/CK Hutchison*, despite the underlying physical assets also being local and suppliers having differing regional coverage.

(245) The third-party responses to the CMA's questionnaires show that the most frequently cited parameters for wholesale competition are prices and network scale.[242] This is followed by network location (interpreted by the CMA as a proxy for the importance of network overlap), and is less frequently cited than considerations of price and scale. There is also material divergence in the opinions of customers and suppliers as regards the importance of network location, with only one supplier citing network location among the five most important factors. In the questionnaires, ISPs also rank WLA suppliers according to these key parameters of competition.

(246) The IR seems to give significant weight to these responses throughout, except when considering geographic market definition.[243] With respect to network scale, the IR concludes this evidence is sufficiently strong to rule out other altnets (apart from CityFibre) as an effective competitive constraint, either individually or jointly.[244] However, when considering geographic market definition, the CMA appears entirely to disregard this evidence.

(247) In particular, the CMA's conclusion that the relevant market is limited to the Parties' footprint depends crucially on "direct" network competition being stronger than "indirect" network competition. However, this logic implies that a smaller wholesale operator with a greater degree of network overlap presents a stronger constraint than a larger wholesale operator with a non-overlapping network: a finding which is completely at odds with its own survey evidence showing that scale (and price) matter more than location.

(248) In any event, even if the CMA's reasoning were accepted (*quod non*) that non-overlapping providers do not exert competitive constraint, the strength of a provider's competitive restraint in overlap areas must still depend on its overall scale, including its

[241] IR, table C.1.

[242] See section 4.4.

[243] See section 4.4 for how these responses influenced the CMA's conclusions regarding demand-side substitution.

[244] IR, paragraph 6.193.

network in non-overlapping areas. This is especially true given the CMA agrees that competitive parameters, including price, are set and applied at the network level. The geographic market should therefore include (at least) the entire footprint of all networks that overlap with the Parties' network footprint, which includes Openreach's national network. Nevertheless, even if the CMA retains its footprint-based market, the competitive assessment must capture national bargaining and scale effects.

4.5 The IR misinterprets and dismisses the Parties' clear evidence on demand-side substitution without sufficient basis

(249) The IR fails to properly engage with the evidence submitted by the Parties on demand-side substitution which, as noted above, is corroborated by evidence it has received from third parties. Furthermore, as set out below, the IR dismisses and misinterprets each of the internal documents previously submitted by the Parties to support this claim.

(250) First, in the case of Substantial's interactions with **[REDACTED]**, the ISP had benchmarked the wholesale pricing and other commercial terms offered by Substantial against **[REDACTED]**'s pricing and commercial terms.[245] This can be viewed as direct evidence that, from a demand-side perspective, **[REDACTED]** is considered as a substitute to Substantial, despite the lack of overlap. The IR discredits this evidence on the basis that Substantial was pushing back on this benchmarking. However, Substantial's response has to be interpreted in the context of a commercial negotiation – and in any case, the response cannot invalidate the clear evidence that from the ISP's (i.e., **[REDACTED]**) perspective, a non-overlapping network was considered to be a demand-side substitute.

(251) Second, Substantial's interactions with **[REDACTED]** provide direct evidence that Substantial itself benchmarks its prices internally against **[REDACTED]**, despite the lack of meaningful overlap. As shown by the evidence presented to the CMA, the draft proposal to **[REDACTED]** included benchmarking against **[REDACTED]**[246] This suggests that **[REDACTED]** rates have a direct impact on Substantial's pricing and as such that Substantial considers **[REDACTED]** to be a relevant competitive constraint. The CMA is wrong to dismiss this evidence *entirely* on the basis that the comparison was removed from the final version of the proposal.[247]

(252) Third, nexfibre and VMO2 supported evidence that **[REDACTED]** compared their wholesale proposal to those of *"***[REDACTED]***"* and *"***[REDACTED]***"*.[248] The CMA argues that the fact that **[REDACTED]** compared nexfibre and VMO2's proposal to those of other WLA providers is not relevant to the argument that non-overlapping networks constrain the Parties, as (i) **[REDACTED]** does not refer to specific alternative providers, and (ii) VMO2 overlaps with all providers anyway.[249] On this basis it argues that this example does not provide evidence of non-overlapping networks constraining nexfibre and VMO2.

(253) The IR misinterprets this evidence. The **[REDACTED]** document is consistent with the questionnaire responses in showing that scale and price, not location or overlap, are

[245] IR, paragraph 6.41(a).

[246] Annex_IRR_010, page 33.

[247] IR, footnote 474.

[248] IR, paragraph 6.35; '**[REDACTED]**, section 2, page 6.

[249] IR, paragraph 6.41(b).

what matter most to ISPs.[250] Correctly read, it indicates that competition is about much more than the extent of overlap. Indeed, if competition took place only in areas of overlap, as the IR's market definition implies, **[REDACTED]** would be expected to have asked nexfibre and VMO2 about overlap with particular networks and would have used the threat of direct switching to other wholesalers in these areas to secure better terms. **[REDACTED]** did not do this. On footprint, **[REDACTED]** asked for guidance on when VMO2 will hit scale **[REDACTED]**.[251] On price, **[REDACTED]** stated that it expects **[REDACTED]**.[252]

(254) nexfibre and VMO2 note that, similar to **[REDACTED]**, **[REDACTED]** also benchmarked nexfibre and VMO2's offered wholesale price against **[REDACTED]**, which clearly appears to include non-overlapping rivals.[253] Similar to **[REDACTED]**, **[REDACTED]** also did not make any reference to the extent of overlap with any rivals.

(255) Together with the evidence referenced in paragraph (243), the above therefore shows that **[REDACTED]** (**[REDACTED]** and **[REDACTED]**), as well as **[REDACTED]** view the market consistently with the Parties' submission: they consider wholesale network providers as alternatives and benchmark them against each other based on price and scale rather than network overlap – in fact, as shown above, the evidence suggests they do not consider overlapping networks as directly competing for premises in overlap areas. Moreover, the CMA also cites evidence in the IR that three third parties, including **[REDACTED]**, referred to the broader market definition used by Ofcom in its Telecoms Access Review ("**TAR**"), specifically the wider "Area 2 classification", in submissions to the CMA, which again suggests that retail ISPs' views – consistent with their practice in negotiations – do not align with the CMA's chosen geographic market of the Parties' network footprints.[254]

(256) Finally, the IR misrepresents the Parties' submission on the reasons why non-overlapping networks are considered as alternatives for ISPs. While the CMA acknowledges that *"indirect demand-side substitution on the basis outlined by the Parties is plausible, in the short term"*, it considers that there is insufficient evidence that this will *"continue to be the case as the market develops"*.[255]

(257) The CMA reaches this conclusion by considering such substitution as arising from the short-term resource constraints that prevent ISPs from negotiating with additional providers at the same time.[256] However, this misrepresents the Parties' submission referenced in the IR.[257] The Parties submitted that the primary reason ISPs consider non-overlapping networks as substitutes is the considerable upfront and ongoing integration and operation costs faced by ISPs using multiple networks.[258] These costs are structural and do not disappear once the negotiations are completed. The CMA therefore cannot dismiss indirect demand-side substitution as merely a short-term

[250]IR, paragraphs 4.17 and 4.18.

[251] Annex_IRR_011.

[252] **[REDACTED]**, section 2, page 6.

[253] Annex_IRR_012.

[254] IR, paragraph 6.53, footnote 497.

[255] IR, paragraph 6.42.

[256] IR, paragraph 6.34.

[257] IR, footnote 475.

[258] **[REDACTED]**, section 2, page 5.

phenomenon without assessing whether these costs will continue to cause ISPs to treat non-overlapping networks as alternatives.

4.6 The IR provides no direct evidence that ISPs focus on the extent of overlap as a key parameter for competition

(258) The IR claims that the evidence shows operators' competitive focus is where networks physically overlap, rather than on competition across non-overlapping footprints. Beyond misinterpretation of the Parties' submissions as shown in Section 4.5 above, the CMA supports this claim in its assessment of demand-side substitution only by reference to third-party responses to the CMA's questionnaires.[259] However, as set out below, these responses fail to provide sufficient direct evidence for the claims.

(259) First, based on the information presented in the IR, it appears that none of the questionnaires sent to third-party suppliers (network operators) and customers (ISPs) directly ask about the importance of network overlap relative to other parameters of competition. Although respondents were asked to rank specific competitive parameters based on their importance, network overlap was not among them.[260] While 'network location' was included as one of these parameters, this is clearly not coterminous with network overlap: it may encompass other factors unrelated to overlap, such as the regional distribution of premises, the demographic characteristics of potential end-consumers and the commercial attractiveness of particular areas.

(260) Second, even on their own terms, the third-party responses to these questionnaires do not unambiguously support the CMA's claims on demand-side substitution. While certain operators mention (lack of) overlap as a basis of their ranking of current and potential competitors,[261] this fact does not in itself support that overlap is a key parameter of competition. In fact, the wider questionnaire evidence points in a different direction: suppliers and customers unequivocally ranked price and network scale as the two most important parameters of competition, while all other parameters (including network location) were ranked as less important; furthermore, overlap between network providers was not mentioned as an additional relevant parameter of competition by any network provider or ISP. Notably, "network location" is also ranked below price and network scale by ISPs and network providers. Crucially, only one of the eight supplier responses ranked network location among the five most important parameters of competition. The IR does not reconcile this evidence with its conclusion (reached based on the same operators' responses) that overlapping networks are *"the focus of competition"*.[262]

(261) Further, **[REDACTED]** acknowledges that there are national elements to competition, as ISPs consider scale besides the ability to provide connections to specific local areas.[263] Despite this, the CMA does not explain how it assessed the importance of these elements and instead concludes that the market should not be extended beyond

[259] IR, paragraphs 6.38-6.43.

[260] IR, footnote 83: the eight competitive parameters were network scale; price; network location; speed and reliability of the technology available; service level; network density; integration costs; and minimum volume commitments.

[261] IR, paragraph 6.40.

[262] IR, paragraph 6.40.

[263] IR, footnote 477.

overlapping networks. This ignores the CMA's own evidence that scale is one of the most important parameters of competition, whilst location is less important for ISPs.[264]

(262) Third, the IR itself recognises that "*the outcomes of a merger investigation can have a direct financial or strategic impact on market participants*"[265] and that the CMA must therefore have regard to "*the interest a party has in the outcome*".[266] These commercial interests (particularly for **[REDACTED]**, which is the first respondent that the CMA cites noting that it does not rank providers that do not overlap with its network) will necessarily influence the objectivity of the questionnaire responses and should be reflected in the weight assigned to them. The IR does not explain how it applied this caution in respect of the responses on which its conclusion on demand-side substitution relies.

(263) For these reasons, the third-party responses do not provide a sufficient basis for the CMA's conclusion that competition is focused on overlapping networks. The CMA should place limited weight on those responses, particularly in absence of further evidence directly addressing the relative importance of overlap and clear evidence from ISPs that non-overlapping networks are competitive constraints.

(264) Despite failing to provide direct evidence that ISPs treat overlap as relevant to demand-side substitution in its assessment of the geographic market definition (as summarised above), the IR asserts in its assessment of the market structure that network overlaps are important in indicating closeness of competition in this market due to the direct competition they facilitate.[267] However, this assessment also fails to provide direct evidence.

(265) *First*, the IR states that multiple ISPs use both Openreach and alternative wholesale providers such as CityFibre and Community Fibre, and in doing so, they seek to use alternative wholesale providers where they are available due to their discounts to Openreach.[268] However, it is unclear how this can be seen as evidence for direct competition in overlap areas, given the CMA's dismissal of Openreach exerting sufficient competitive constraint (as set out in Section 4.7 below). If anything, this supports the point that two non-overlapping providers (such as CityFibre and Community Fibre) compete for Openreach's wholesale volumes – thereby exerting competitive constraint on each other.

(266) *Second*, the IR states that views from ISPs reflect that there is competition between overlapping network providers.[269] However, these views also lack any direct evidence for competition in overlap areas. Furthermore, these submissions were made by ISPs with certain commercial interests that may influence the objectivity of their submissions (as explained in paragraph (262) above).

4.7 Inconsistent treatment of the competitive constraint from Openreach

(267) In its assessment of the competitive effects of the Transaction, the CMA considers the constraint from Openreach to be insufficient to mitigate the competitive effects due to

[264] IR, figure 4.2.

[265] IR, paragraph 6.195.

[266] IR, paragraph 5.13.

[267] IR, paragraph 6.73.

[268] IR, paragraph 6.72(a).

[269] IR, paragraph 6.72(b).

Ofcom regulation. In particular, the CMA claims that Ofcom regulation limits Openreach's "*ability to compete effectively on price and other factors*" against altnets, including the Parties.[270]

(268) The Parties strongly disagree that Openreach places a weaker constraint than CityFibre/Substantial. This would be an irrational conclusion for the reasons explained in Section 5.4 below. However, even if this argument were accepted, the IR cannot consider Openreach regulation in the context of competitive constraints and then disregard it in its assessment of geographic market definition.[271] The IR concludes that Openreach's "*national scale*" and "*overlap with the Merged Entity*" make it an important competitive constraint,[272] but downplays the strength of that constraint on the grounds that Ofcom's SMP regulation limits Openreach's ability to compete effectively on price (including to offer geographic pricing).[273] It is inconsistent to refer to limits on Openreach's ability to introduce geographic variation into its pricing in the competitive assessment but then disregard those same limits when defining the geographic market. The IR therefore follows an inconsistent approach when it does not address Openreach's national scale and primarily national pricing at all in the context of demand-side substitution in geographic markets.

(269) The importance of Openreach's national scale is reflected in the third-party evidence the CMA recognises elsewhere in the IR. All current wholesale competitors that responded to the CMA's questionnaire rated Openreach's overall offering as very strong (referring to Openreach's incumbency, scale and "market dominance"), rating its network scale and price as very strong.[274] All retail ISP customers rated Openreach's network scale as "*very strong*."[275] This shows that national scale (and not local footprint overlap) is the key parameter driving competitive outcomes in this market.

(270) As the Parties submitted, WLA contracts are negotiated on a footprint-wide basis, with competitive parameters benchmarked against a national operator.[276] Given that ISPs are national buyers, Openreach's national scale, economies of scale and incumbency advantages should have been taken into account in the assessment of geographic markets as ISPs can credibly switch to its ubiquitous network.

(271) The Parties explained in their submissions that the constraint from Openreach is such that the appropriate geographic frame of reference must be national.[277] The ubiquitous nature of Openreach's FTTP network means that all altnets, irrespective of where they are located, must compete with Openreach to attract ISP volumes away from the Openreach network.[278] As Openreach sets its own competitive parameters on a largely national basis, this provides strong evidence that the appropriate geographic market is national.[279]

[270] IR, paragraph 6.162.

[271] IR, paragraph 6.47.

[272] IR, paragraph 6.162.

[273] IR, paragraph 6.162.

[274] IR, paragraph 6.161.

[275] IR, paragraph 6.159, footnote 700.

[276] The Parties' response to the Areas of focus, paragraphs 16 and 113-114.

[277] The Parties' response to the Areas of focus, paragraphs 16 and 113-114.

[278] The Parties' response to the Areas of focus, paragraph 118.

[279] The Parties' response to the Areas of focus, paragraph 118.

4.8 Evidence from other markets further supports demand-side substitution across non-overlapping networks

(272) In light of the above, the Parties consider that, while direct competition may occur where networks overlap, this reflects nationally set competitive parameters based on price and scale, not competition driven by overlap itself. Such competition would arise regardless of the networks' relative geographic footprints. Accordingly, the evidence is supportive of the Parties' views that indirect competition between non-overlapping wholesalers is an important constraint. Instead, the CMA's view appears to be based primarily on how it considers competition is likely to develop within the market. But this view is at odds with evidence from more mature comparator markets, as presented below.

(273) The Parties agree that fibre wholesaling in the UK remains at a relatively early stage. The IR observes that *"until recently, Openreach was a regulated monopolist in the supply of wholesale fixed broadband"* and records Ofcom's conclusion that competition *"has not yet developed to the point where Openreach no longer has SMP [Significant Market Power] in the relevant broadband market"*.[280] The CMA nevertheless accepts that the indirect demand-side substitution identified by the Parties is *"plausible, in the short term"*, but rejects a wider geographic market because it considers there to be insufficient evidence that this will *"continue to be the case as the market develops"*.[281] In a market that is still developing, however, the absence of extensive current evidence does not provide a sound basis for assuming that this competitive mechanism will disappear. A forward-looking assessment should also consider evidence from analogous markets in which competitive dynamics are more established.

(274) As set out below, such evidence from VMO2's operations suggests that competitive dynamics in analogous markets are primarily driven by price and scale, and network overlap plays a limited role in the closeness of competition. Evidence of negotiated outcomes in mobile backhaul and in fixed broadband backhaul in the UK, both mature wholesale markets, provides no support for the CMA's view that competition is stronger between overlapping network providers.

(275) In relation to mobile backhaul services, VMO2 can provide insights on the nature of competition both as a supplier and a customer: in particular, it (i) acts as a service provider to third-party MNOs, and (ii) also procures such services from third parties where self-supply is not possible. VMO2's experience in this market, on both sides, confirms that contracts are negotiated under uniform terms, and that the geographic location of other networks within the relevant areas does not play a role in these agreements, beyond scale.

(276) As a service provider, VMO2 supplies dark-fibre mobile backhaul access links to **[REDACTED]** under long-term finance leases typically exceeding **[REDACTED]** years. VMO2's proposition is based on **[REDACTED]**, with the agreed price reflecting **[REDACTED]** In these negotiations, VMO2 competes for the service provision with rivals such as **[REDACTED]**. However, in VMO2's experience, the negotiations are primarily driven by network scale and price rather than the availability of alternative options in particular local areas.

[280] IR, paragraphs 4.7 and 6.149.

[281] IR, paragraph 6.42.

(277) As a purchaser, VMO2 procures mobile backhaul access **[REDACTED]**. VMO2 has selected **[REDACTED]** due to the scale of their network, and the associated simplicity of integrating with a single provider thus avoiding the high costs of integration and operation associated with using multiple networks. Even where benchmarking is discussed within this contract, there are no references to terms or pricing being adjusted on a non-uniform basis across the agreed provisions.

(278) In relation to the market for the provision of fixed broadband backhaul, **[REDACTED]**, VMO2 applies a **[REDACTED]** pricing strategy **[REDACTED]**. Similarly to the provision of fixed broadband, **[REDACTED]**.[282] In the ordinary course of business, for specific tenders or sales opportunities, VMO2 will have regard to the **[REDACTED]** However, even where an agreement covers multiple connections, these principal commercial terms are applied uniformly across the customer's network. **[REDACTED]**[283]

(279) **[REDACTED]**

(280) The Parties recognise that geographic market definition must reflect the particular characteristics of each market, and do not suggest that the geographic boundaries identified in other markets can be transposed mechanically to fibre wholesaling. Nevertheless, the above evidence is relevant to the CMA's assessment as the same structural features – such as sophisticated national customers, significant integration and onboarding costs, footprint-wide negotiations and customers' reliance on a limited number of suppliers – are present in these markets. The CMA should therefore explain why the differences between those markets and fibre wholesaling render that evidence inapplicable, rather than relying solely on the limited evidence generated by the market in its current stage of development.

4.9 The CMA relies on speculative views of how wholesale competition may develop

(281) The CMA's market definition appears to be based on Ofcom's hypothetical vision for how it would like wholesale competition to develop, including local pricing.[284] The CMA's forward-looking assessment must be grounded in sufficiently robust evidence, rather than unsupported assumptions about the hypothetical future, market conditions, unless there is a sufficient evidence basis to warrant an alternative approach.

(282) Without robust evidence warranting a departure, the current regulatory framework which restricts Openreach's ability to introduce discriminatory geographically targeted discounts should be given due weight in the CMA's assessment of the relevant geographic market. The potential existence of geographic pricing at some future point, depending on the evolution in competition in the market, does not provide sufficiently robust evidence to enable the CMA to depart from the well-established national market definition which is supported by precedent.[285] This is particularly the case given that the BT/TalkTalk Transaction is likely to further entrench Openreach's dominant position.

(283) Indeed, the CMA's provisional conclusion is that evidence provided by the Parties and third-parties shows that most competitive parameters are set at the network footprint

[282] **[REDACTED]**

[283] **[REDACTED]**

[284] IR, paragraph 6.51.

[285] Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investments S.à r.l.

level.[286] As explained by the Parties in previous submissions, this was found to be a supporting factor in defining national markets in precedent, most notably in *Cellnex/CK Hutchison*.[287] In particular, when the CMA considered the appropriate geographic frame of reference for its review of the *Cellnex/CK Hutchison* transaction, the CMA found that the core competitive dynamic between WIPs and MNOs took place at a national level through long-term framework agreements covering each supplier's entire UK portfolio.[288]

4.10 Conclusion

(284) The CMA's provisional conclusion on geographic market definition is flawed and does not accurately reflect the evidence and commercial reality of the market. The CMA should amend its provisional view, by:

(i) attributing the appropriate weight to other parameters of competition, in particular, price and scale, as these are not determined by the extent of network overlap but are the key drivers of wholesale competition;

(ii) addressing third-party ISP and the Parties' evidence that show that non-overlapping networks are considered competitors and placing limited weight on self-interested third-party operator respondents;

(iii) reconsidering the impact of Openreach's national scale and incumbency on the geographic market; and

(iv) considering how comparable markets and cases may be similar to the fibre wholesaling market in the UK.

(285) If the available evidence were reviewed consistently and appropriately, the CMA should conclude that the relevant geographic market is national.

[286] IR, paragraphs 6.49 and 6.52.

[287] Parties' submission, '**[REDACTED]** 5 June 2026, page 5.

[288] Anticipated acquisition by Cellnex UK Limited of the passive infrastructure assets of CK Hutchison Networks Europe Investments S.à r.l.

5 Theory of Harm: horizontal effects in wholesale fixed broadband

(286) The IR's provisional finding of an SLC depends almost entirely on the CityFibre Counterfactual, namely that, absent the Transaction, CityFibre would have acquired Substantial. That nexfibre acquiring Substantial's assets instead of CityFibre would result in an SLC is therefore on the basis that:[289]

(i) First, the supply of wholesale fixed broadband is concentrated and the Transaction increases that concentration by reducing the share of the total nexfibre and VMO2 network where there is overlap with CityFibre and Openreach (from c. 32% to c. 18%);

(ii) Second, CityFibre is considered by the CMA to be a "*vigorous*" wholesale competitor, which would maintain or even improve Substantial's price offering. Thus, the CMA concludes that the Transaction would lead to a direct worsening in the terms on which ISPs could access the Substantial footprint; and

(iii) Third, Openreach would continue to impose an important constraint, but does not replicate the competitive role played by Substantial (given Openreach's offer is restricted by regulation).

(287) The CMA's SLC depending so strongly on its newly specified counterfactual means that there has been little opportunity for the Parties to engage on the substance of the CMA's concerns previously throughout the merger inquiry process. The CMA itself notes that the Parties' submissions "*were made in the context of Substantial remaining a standalone competitor*" and "*do not primarily address the counterfactual that we are considering."*[290]

(288) Whilst the Parties disagree with the CMA's provisional views on the counterfactual, even taken at face value, the CMA's theory of harm rests on a series of critical errors:

(i) First, the CMA's counterfactual of three overlapping scaled network providers within the nexfibre and VMO2 footprint is simply not viable and nor has the CMA sought to evidence that it is sustainable.

(ii) Second, the CMA has not demonstrated to the requisite legal standard that the decrease in network overlap from the Transaction that it posits gives rise to an SLC. Critically, the CMA has no evidence that increased overlap within the nexfibre footprint would increase the constraint from CityFibre materially from current levels. In reality, **[REDACTED]**.

(iii) Third, the CMA's finding of harm is essentially that ISPs would pay lower prices if CityFibre, rather than nexfibre and VMO2, ran the Substantial network. This is what the CMA's description of CityFibre as a more "*vigorous*" competitor amounts to. Not only does it represent an approach of "picking winners" rather than a conventional competition theory of harm but,

[289] In addition, the CMA's market definition also plays a role by considering only the importance of overlapping networks. We explain this assessment is flawed above in the market definition section. However, this reasoning also impacts the competitive assessment as it completely disregards (although the CMA promises to consider as out of market constraints) the role of non-overlapping areas.

[290] IR, paragraph 6.65.

it also depends entirely and critically on the assumption that CityFibre's current terms would persist in the counterfactual. The CMA has not tested that assumption by reference to CityFibre's business plan (including taking into account the additional financing commitments CityFibre would need to take on if, as in the CMA's proposed counterfactual, it were to acquire Substantial, and whether such commitments would allow CityFibre's current wholesale pricing to survive). This is despite **[REDACTED]**, as set out in further detail in Section 5.3.1.

(iv) Fourth, the CMA fundamentally mischaracterises the crucial competitive constraint of incumbent Openreach. It concludes that the strength of constraint from Openreach is weakened as a result of regulation, but the very purpose of that regulation is to protect and promote competition. The internal documentary evidence and third-party feedback to the CMA do not support this conclusion.

(289) Further, the CMA must account for the impact of the anticipated BT/TalkTalk Transaction which, if it proceeds as widely anticipated, will further entrench Openreach's dominant position and materially reduce the contestable wholesale volumes available to altnets (reducing still further the viability of sustainable three player local markets).

(290) The IR's provisional SLC is not substantiated to the requisite legal standard. It rests on limited economic evidence and an inconsistent approach to the assessment and weighting of evidence. The CMA recognises that internal documents are of limited probative value, while relying on the unsubstantiated views of a third party complainant, CityFibre (which has a clear vested interest in the outcome of the investigation where the CMA has identified a counterfactual in which it would acquire Substantial instead of nexfibre) and self-interested ISPs (such as VodafoneThree and Sky, who are long-term customers of CityFibre). It rests on critical and unsubstantiated assumptions such as the fact that three player local networks are sustainable.

5.1 The CMA's counterfactual of three overlapping scaled wholesale providers within the nexfibre and VMO2 footprint is not viable

(291) The IR provisionally concludes that the Transaction would substantially weaken competition compared to a counterfactual in which CityFibre/Substantial would place increased competitive pressure on nexfibre and VMO2 due to greater network overlap.[291] This conclusion is based on the premise that, in the counterfactual, CityFibre/Substantial, nexfibre and VMO2 and Openreach would compete directly in a larger number of local areas and this would lead to better wholesale terms for ISP customers overall.[292]

(292) The CMA's counterfactual relies critically on there being effective and sustainable competition between three overlapping wholesalers in a greater proportion of the nexfibre and VMO2 footprint than would exist under the Transaction.[293] In doing so, the CMA does not grapple with the economic realities of fixed telecoms markets: namely where the unit economics are driven by substantial upfront and sunk investment and by returns that depend heavily on the penetration a wholesaler can achieve on its network,

[291] IR, paragraph 6.200.

[292] IR, paragraph 6.142.

[293] IR, paragraph 6.78.

against a wholesale demand base in each local area that is inherently finite (limited by the premises in the area and of the number of ISPs willing to supply them).

(293) Whether the division of this finite demand across overlapping networks can nevertheless support sustainable penetration for each wholesaler depends on a range of factors including the wholesalers themselves, the terms offered, the broader market structure, and the characteristics of the area itself – and a three-operator outcome will simply not be viable in all areas. In this context, it is notable that the CMA has conducted no proper economic analysis to assess whether the three-operator counterfactual it outlines is viable, and in particular on the terms that it considers CityFibre would offer to ISPs in these areas.

(294) The Parties' evidence shows clearly that the CMA's SLC finding is not a viable one in this regard.

(295) **nexfibre and VMO2 [REDACTED]:** In the first instance, the CMA has ignored clear evidence from nexfibre and VMO2 that **[REDACTED]**[294] This reflects the Parties' view **[REDACTED]**

(296) The fact that **[REDACTED]** in the counterfactual also reflects the slow pace at which competitive dynamics evolve in the wholesale market. Wholesale competition differs fundamentally from retail competition in this regard as the long-term nature of the contracts agreed between wholesale providers and retail ISPs (typically a minimum of 10 years), mean that prices are stable for long periods and do not adjust to small developments.[295] This contrasts with the retail market which is highly dynamic with retail ISPs bringing out new pricing structures and promotions on a weekly basis. This depends on the predictable nature of the wholesale market that gives retail ISPs the certainty they need to tailor their retail propositions around the wholesale price.

(297) In any case, as a result, **[REDACTED]**, would not be able to effectively do so based on the Parties' view that **[REDACTED]**. **[REDACTED].**

(298) **The CMA's counterfactual does not address how the Parties would finance effective wholesale competition:** the CMA's counterfactual does not consider how the Parties would raise the necessary finance to be effective wholesale competitors in a scenario where there are three scaled competitors in local areas. To be effective wholesale competitors, the Parties must be capable of connecting customers to their network, which requires significant capital expenditure. It is not the case that once a premise is RFS that the costs of providing that home with a service are largely sunk. The cost of connecting that property to an operator's network is generally as high as the cost of passing the street with fibre in the first place. In the case of VMO2, the capex requirements are more pronounced still, as it would be incurring the capex of upgrading millions of homes to RFS in the CMA counterfactual (**[REDACTED]**), as well as capex to connect consumers in those homes. Both customer connection and HFC upgrade will require significant amounts of further capex investment: a fact that the CMA's counterfactual does not acknowledge, let alone consider how such investment would be financed.

[294] IR, paragraph 6.112.

[295] For example, (i) nexfibre has a **[REDACTED]** year contract with VMO2; (ii) nexfibre is negotiating a **[REDACTED]** year contract with **[REDACTED]** and (iii) Openreach published a 10-year Equinox contract.

(299) The Parties submit that this funding **[REDACTED]**. This is because a scenario where **[REDACTED]**.

(300) **Internal documents confirm that overlap between three players [REDACTED]** In the case of the existing nexfibre and VMO2 footprint that would be overbuilt by CityFibre and Openreach, even under the assumption there would be local competition (which is not the case), it is highly unlikely that there would be effective three-way competition in local areas. **[REDACTED]** For example, nexfibre's internal board documents identify **[REDACTED]**.[296] **[REDACTED]**.[297] The same document notes that **[REDACTED]**.[298] **[REDACTED].**[299]

(301) **VMO2 would [REDACTED] under its Fibre Up Programme:** As outlined in detail in Section3.2, VMO2 **[REDACTED].** Leaving this aside, economic incentives dictate that it would **[REDACTED]** Specifically, VMO2 would be more likely to **[REDACTED]** as shown in Annex_IRR_009.[300] The extensive upfront investment required to upgrade would **[REDACTED]**.

(302) Likewise, public documents demonstrate that CityFibre is similarly not minded to overbuild nexfibre and VMO2: it previously told Ofcom that it "*will not overbuild. It is critical that CityFibre achieve first mover advantage*",[301] while its 2024 accounts noted that there is "*higher take up opportunity in areas of lower infrastructure competition*".[302]

(303) The evidence therefore shows that competition between three scaled overlapping operators is unlikely to be sustainable.

(304) **Market developments since February 2026, including the BT/TalkTalk Transaction, would worsen competitive conditions in the wholesale market in the counterfactual:** Furthermore, the Parties note that VMO2's Fibre Up analysis referred to above was developed before the Transaction announcement (i.e., before February 2026), and market developments have only worsened the case for investment since. As such, the analysis does not capture market developments since February 2026 and is likely to overstate the achievable penetration. In particular, as explained further below, if the BT/TalkTalk Transaction receives regulatory approval, as currently looks likely, it would contract the addressable retail market for WLA providers by c.21% (leaving only two remaining potential Tier 1 ISP customers).[303] **[REDACTED].** The CMA must take this into account in its assessment of the counterfactual, including in any assessment of the viability of three-way network overlap.

(305) **A counterfactual where CityFibre focused on competing with Openreach outside the Parties' footprint would be more sustainable and pro-competitive:** It is also unclear why an outcome where CityFibre increases the level of three-player network overlap within the Parties' footprint would be preferred to one in which CityFibre introduces scaled wholesale competition to areas outside of that footprint (which is the implication of the IR's analysis of alternative consolidation options). Focusing

[296] **[REDACTED]**

[297] **[REDACTED]**

[298] **[REDACTED]**

[299] **[REDACTED]**', 12 June 2026, section 6.2.

[300] Annex_IRR_009.

[301] CityFibre Limited v Office of Communications [2022] CAT 33.

[302] CityFibre Infrastructure Holdings Limited, Consolidated Annual Report and Financial Statements for the year ended 31 December 2024 (Companies House, company no. 08772997), page 41.

[303] Annex_IRR_003, Appendices (*Contestable Market Calculation*).

CityFibre's resources for consolidation outside of the Parties' footprint (consistent with altnets' prevailing strategy in areas with fewer players) would be more sustainable and could provide greater consumer gains. It could also increase the strength of constraint by CityFibre on nexfibre and VMO2 through the impact on CityFibre's overall scale, as both the Parties and CityFibre could have the necessary scale to constrain each other, a fact that the CMA has not considered. At face value, the CityFibre Counterfactual raises the following points.

(306) *First,* the conclusion that there would be effective and sustainable competition between the three wholesalers in these areas ignores the commercial realities explained above. CityFibre entering an area where Openreach and nexfibre and VMO2 are present is likely unsustainable and will potentially lead to only one or two effective players developing in these areas (most likely Openreach given its leading position).

(307) *Second,* CityFibre's resources would in principle produce higher returns in areas with only one scaled player (i.e., Openreach and a target non-scaled altnet for acquisition). CityFibre would be able to increase its scale (which would improve its offering across the entire network as discussed above) with less uncertainty over its financials.

(308) *Third,* there would be greater long-term benefits to consumers from wider coverage of areas where two scaled players are present. Intuitively, an area where one WLA supplier competes with Openreach provides a large benefit to ISPs, as these providers discount materially compared to Openreach's price. With an additional WLA supplier, the incremental benefit is likely an order of magnitude lower. While WLA suppliers would compete for the most attractive offer relative to Openreach, they would be limited in their capacity to do so.[304] This is consistent with Ofcom's stated policy goal of creating scaled sustainable wholesale competition to Openreach, including by encouraging investment. Indeed, Ofcom's TAR creates a framework for deregulation in areas where there are two established networks, not three – it does not consider that a given area must have three wholesale players in order to deregulate that area.

(309) Taking all of this into account, the SLC that the CMA posits based on the CityFibre Counterfactual is highly irrational from a commercial and regulatory standpoint. The CMA provides no explanation to reconcile these points with its conclusions.

5.2 Even accepting the IR's flawed counterfactual and market definition, the IR does not demonstrate that increased network concentration gives rise to a SLC

5.2.1 The CMA's assessment does not account for the importance of scaled and sustainable competition in telecoms markets

(310) The CMA fails to properly account for the existence of scale economies in telecoms; the scale of effective competition should be the focus of any competitive assessment in these markets (rather than merely the number of competitors). Telecoms is a classic example of a market characterised by scale economies, with sizeable upfront capex requirements and unit economics that demand a minimum penetration across the network for wholesalers, and high integration costs for ISPs. Ofcom itself has noted this, writing that "*everything else being equal, a network with larger scale is likely to be a more efficient and more effective competitor (e.g. due to economies of scale, greater brand recognition). Moreover, they may be better positioned to win demand from (large)*

[304] This is also likely unsustainable and the reason for the limited areas where there are three or more WLA suppliers, including Openreach.

ISPs, some of which may be less willing to integrate with smaller networks".[305] Viable wholesale competition therefore requires a provider to have a scaled network that is sufficiently large to offer an economically viable proposition to ISPs. Indeed, Ofcom told the CMA that the mere presence of competing networks is not sufficient to "*deliver material and sustainable competition in the long term*".[306]

(311) The CMA's framing of the Transaction as leading to a problematic decrease in the number of areas with three competitors treats the sheer headcount of wholesalers as a proxy for competitive intensity – but this overplays the relevance of number at the expense of the crucial question of whether those competitors are scaled. But the CMA itself concedes elsewhere that scale is critical, as it finds that the altnet "*tail*" does not pose sufficient competitive constraint to offset its putative SLC because these providers are too small.[307] Simply put, the CMA cannot acknowledge the importance of scale in order to dismiss the remaining competitive constraints on the Parties post-Transaction, while simultaneously disregarding it when assessing how the Transaction will affect competition more widely.

(312) Rather, the right question is whether, post-Transaction, there will be scaled wholesale competition to Openreach. The Transaction creates a scaled alternative, which is pro-competitive as compared to the properly assessed counterfactual. The CMA's counterfactual envisages a steady state in which Openreach, the combined CityFibre/Substantial and nexfibre and VMO2 each operate as effective wholesalers across their footprints, yet this three-competitor picture which assumes CityFibre would be in a financial position to acquire Substantial and VMO2 would upgrade its HFC network is unrealistic in a sector marked by severe financial pressures that are well documented by third-party commentary and acknowledged by the CMA itself.[308] It is surprising that the CMA concedes the altnet sector faces these challenges, which severely limit the prospect of a multitude of wholesale players arising – and yet still centres its assessment of ideal competition around the absolute number of wholesale providers.

(313) In fact, the CMA implicitly finds that it would be better to sell Substantial to a player with a stronger existing wholesale presence (CityFibre) than an emerging competitor (nexfibre) – this is illogical. nexfibre and VMO2 need a scaled FTTP network to garner ISP interest, and indeed the CMA found that ISPs prioritise networks with large scale so as to spread the high upfront costs of integrating with a non-Openreach provider.[309] Acquiring Substantial would allow nexfibre and VMO2 to become a credible scaled player nationally, therefore creating an additional strong competitor in the wholesale market. This is clearly reflected in third party feedback to the CMA:

(i) The CMA recognises that a "*majority*" of network operators were "*broadly positive about the Transaction" with "several identifying potential pro-competitive benefits*", indeed "*principally through consolidation creating a larger, more sustainable wholesale competitor to Openreach*".[310]

[305] TAR Volume 2, paragraph 4.110.

[306] IR, paragraph 6.192.

[307] IR, paragraphs 6.180-6.181.

[308] See IR, paragraph 48.

[309] For example, the CMA concludes that "*(all else equal) ISPs prefer networks with larger scale due to the upfront costs of integrating with a new provider*". See IR, paragraph 4.18.

[310] IR, paragraph 6.196(a)(i).

(ii) As one altnet has submitted to the CMA, the pertinent question for the CMA is "*how might another scale provider emerge in the wholesale market*".[311] In that altnet's view, "*the most likely route*" is the Transaction, which will provide "*the resources to invest in a fully capable platform fit for the major ISPs"*.[312]

(iii) A further altnet has submitted to the CMA that the Transaction "*has the potential to support a stronger and more sustainable alternative fibre platform, which may contribute positively to the long-term competitive structure of the market and the continued development of infrastructure-based competition in the UK*".[313]

(314) Finally, the CMA treats the relevance of scale inconsistently as between the Parties and CityFibre. The CMA argues that increased scale will not improve the competitiveness of the Parties' wholesale offering, finding for example that network density is not a central factor in the attractiveness of a wholesale offering to ISPs (which the Parties refute strongly).[314] But by contrast, it treats the increased scale of the combined CityFibre/Substantial in the counterfactual as corroborating evidence that CityFibre ownership of Substantial would be more competitive.[315] In short, scale is treated as relevant only when it benefits CityFibre's position in the counterfactual, and is disregarded when it speaks to the Parties' claims.

5.2.2 There is no evidence that overlap is a key parameter of competition, therefore it is wrong to conclude that a reduction in overlap leads to SLC

(315) The CMA reasons that an SLC arises on the basis that: (i) network overlap facilitates direct competition between network operators; (ii) the strength of that competition increases with the extent of overlap, and (iii) the Transaction would therefore weaken the constraint imposed by CityFibre on nexfibre and VMO2 by reducing the network overlap from c.32% to c.14-17% (depending on current or future network overlap) relative to the IR's provisional counterfactual where Substantial is owned by CityFibre.[316]

(316) The IR, however, fails to substantiate with evidence whether network overlap is a key facet of competition (see Section 4.4), or explain the mechanism through which this putative decrease in overlap between nexfibre and VMO2 and CityFibre would lead to an SLC. The CMA provides no evidence that the proportion in which two network providers overlap materially affects the price or other competitive terms offered by these network providers. In fact, evidence cited in the IR suggests the opposite.

(317) *First*, the IR's own evidence establishes that CityFibre is already a strong competitor that *"would remain a strong wholesale option for ISPs"* even following the Transaction.[317] The CMA cites evidence that CityFibre offers competitive prices and commercial terms, has established relationships with major ISPs, and is used by ISPs as a benchmark when assessing nexfibre and VMO2's offer.[318] This is despite

[311] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

[312] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

[313] Hyperoptic response to the Areas of focus, 17 July 2026, section 'Concluding Observations'.

[314] IR, paragraph 7.31.

[315] IR, paragraphs 6.115 and 6.169.

[316] IR, paragraph 6.198.

[317] IR, paragraph 6.175.

[318] IR, paragraphs 6.94–6.100, 6.112(b) and 6.125–6.128.

CityFibre's current overlap with nexfibre and VMO2 (c. 19% of nexfibre and VMO2's current FTTP footprint[319]) being similar to the Transaction scenario (c. 14%-17% depending on current or future network overlap). This suggests CityFibre is a strong competitor and would remain so under the Transaction scenario. It is unclear why any increase in overlap would materially strengthen CityFibre's existing constraint – or, conversely, why any decrease in overlap relative to the CMA's provisional counterfactual would materially weaken the constraint exerted by CityFibre. In particular, overlap is not cited as a key wholesale parameter of competition in third-party feedback the CMA obtained.[320]

(318) *Second*, this is also reflected in the CMA's analysis of nexfibre and VMO2's internal documents which recognises that CityFibre is currently a competitor.[321]

(319) *Third*, and relatedly, the IR does not adequately account for CityFibre's ability to further increase its scale following the Transaction, which the IR's own evidence emphasises as the most important competitive parameter (alongside price).[322] The CMA itself recognises that CityFibre is likely to have opportunities to acquire other altnets and such consolidation could strengthen the competitive constraint it exerts over time.[323] If CityFibre is a credible acquirer of altnets, as the CMA considers, then it seems reasonable to expect it would be able to achieve scale under the Transaction scenario. Therefore, the competitive constraint from CityFibre would not be lower under the Transaction than the CMA's counterfactual, assuming as the CMA does that CityFibre has sustainable finances.

5.3 The CMA's contention that competitive harm arises from CityFibre being a more "*vigorous*" competitor is flawed

(320) As an initial point, the CMA's assertion that CityFibre is a more "*vigorous*" competitor amounts to a finding that ISPs would obtain lower prices and better terms if CityFibre, rather than nexfibre and VMO2, operated the Substantial network. That finding depends entirely on CityFibre's current prices and terms being sustainable and persisting in the counterfactual (despite the evidence that **[REDACTED])**.

(321) Despite this being a fundamental plank in the CMA's argument, the IR contains no analysis of whether CityFibre's pricing is sustainable. As set out below, the Parties submit that the evidence clearly demonstrates that **[REDACTED]** and that it is incorrect for the CMA to claim that CityFibre's wholesale offering is more competitive than that of nexfibre and VMO2 on this basis. **[REDACTED].**

(322) Indeed, the CMA's approach to CityFibre's hypothetical ownership of Substantial is flawed in that it disregards the central importance of sustainable competition in this market. The Parties have provided extensive evidence of the severe financial pressures facing the sector, which have resulted in large-scale redundancies, reduction in build programmes, hand-backs of government subsidised Project Gigabit contracts and the failure/restructuring of a number of altnets. This Transaction creates sustainable competition in the market; feedback to the CMA shows such sustainable competition is important to independent third parties, including ISPs, altnets and their investors. As

[319] IR, table C.1.

[320] IR, figure 4.2.

[321] IR, paragraph 6.112.

[322] IR, figure 4.2.

[323] IR, paragraphs 6.169-6.171.

explained below, the Parties strongly believe that this will create vigorous competition in the market.

(323) More generally, the assertion that CityFibre is a more "*vigorous*" competitor is not a conventional competition theory of harm in any recognisable sense. The CMA's contention appears to be that it prefers the acquisition by one provider over another: which is not the proper role of a competition authority and amounts to "picking winners". If CityFibre were able to use the assets more efficiently then CityFibre should have been able to secure the financing required for an acquisition of Substantial based on the sustainability of their business model.

5.3.1 The CMA's provisional SLC finding depends on CityFibre's current pricing, [REDACTED]

(324) A critical part of the IR's provisional conclusion that the Transaction weakens wholesale competition is that CityFibre is a vigorous competitor with attractive pricing currently, such that the Transaction directly worsens terms for ISPs within the Substantial footprint.[324] In particular, the IR notes that the Transaction would be worse for ISPs because access would be "*on the basis of nexfibre and VMO2's terms post-Transaction rather than on CityFibre's terms*".[325] The conclusion that the Transaction would result in an SLC is therefore based in part on the presumption that CityFibre will continue to provide WLA based on CityFibre's current wholesale terms.[326]

(325) The IR does not provide any evidence that CityFibre's current offer would remain in its provisional counterfactual (on the contrary, the Parties consider that there is ample evidence to suggest **[REDACTED].** There is no indication that the IR relied on an assessment of CityFibre's internal documents (such as their business model, expectations for future pricing, or cost and margins data) which would be expected given its importance to the provisional conclusions.[327]

(326) We believe that the CMA should assess the Parties' submissions on this point by reference to **[REDACTED].**

(327) The IR briefly considers the **[REDACTED].**[328] **[REDACTED].**

(328) In fact, the IR itself notes that in the counterfactual, **[REDACTED]**.[329] **[REDACTED].**

(329) In the absence of any assessment by the CMA of **[REDACTED]** there are two further sources of evidence **[REDACTED]** These two sources of evidence are set out below.

(330) *First*, as detailed below, **[REDACTED].**

(331) Ofcom has recently rejected Openreach's proposal to discount connection costs by £9.50 per incremental new customers to the network on the basis that it is unfair and unreasonable.[330] Compared to the average Equinox 2 price of £19.72, this proposal

[324] IR, paragraphs 6.95 and 6.143(b).

[325] IR, paragraph 6.201.

[326] IR, paragraph 6.104.

[327] FMN, paragraph 38.

[328] IR, paragraph 6.104.

[329] IR, paragraph 6.173.

[330] Openreach's proposed commercial offers, 5.3 – 5.4; 5.7. For completeness, we note that the £9.50 rebate was a time-constrained offer depending on volume performance.

represented a c. 48% discount.[331] According to Ofcom, altnets would not be able to match these discounts and be able to recover their costs. This is a view that CityFibre explicitly approved of, stating that the offers "*would create a barrier to the use of altnets, which altnets would be unable to overcome without pricing at a loss*".[332] **[REDACTED].**[333]

(332) Ofcom also estimates that a reasonably efficient operator ("**REO**") would have costs ranging between £14.42 and £22.17.[334] It is important to note that the lower bound reflects the conditions of a new operator with low costs, with rollout to the lowest-cost 5 million premises in WLA Area 2 and a take up rate of 40% within the first 5 years of rollout.[335] This range is therefore based on assumptions that even CityFibre argued were conditional on "*unusually favourable circumstances*".[336] **[REDACTED].**[337] **[REDACTED].**

(333) *Second*, as shown in **[REDACTED]**,[338] nexfibre's own model suggests this level of pricing is **[REDACTED]**, with its internal modelling finding that a **[REDACTED]** discount **[REDACTED]** would **[REDACTED]** because of the shortfall in revenue and EBITDA caused by more elevated discounts.[339] nexfibre's modelling indicates that a **[REDACTED]**scenario may be **[REDACTED]** point of view but is not generating an adequate return for the level of risk in the business plan.[340] nexfibre previously submitted an analysis which was a simplified version of its post-Transaction business plan, showing that **[REDACTED]**The IR dismisses this evidence on the basis that it was prepared for the purposes of a supporting submission and the assumptions are not evidenced or consistent with the actual market structure.[341] The Parties do not agree with the IR's conclusion and note again that **[REDACTED].**

(334) nexfibre modelled how various hypothetical discount levels would impact revenue, EBITDA, leverage and investor returns. Both the **[REDACTED]** and **[REDACTED]** discount scenarios delay nexfibre's path to free cash flow to equity and slows the deleveraging profile considerably, compared to the base case **[REDACTED]** discount scenario. The **[REDACTED]** scenario is unlikely to be acceptable for investors given the limited headroom against nexfibre's debt covenants and two-year delay to free cash flow break-even, leaving little room for operational or market changes (such as a change in reference Openreach pricing). Comparatively, the **[REDACTED]** scenario is not economically sustainable or financeable at all, with leverage remaining above existing covenant requirements. Moreover, on an exit horizon, the **[REDACTED]**

[331] The average Equinox 2 price of £19.72 was estimated by calculating the average of Equinox 2 rental prices (varying between £16.58 and £23.28 as of February 2026 depending on speed tier), weighted by the UK market-wide speed tier mix as of January 2026 as per FDM data, see '*monthly_sector_update_february_2026*', page 6.

[332] CityFibre's Response to Ofcom's consultation on Openreach's proposed FTTP and Ethernet offers, paragraph 2.9.

[333] IR, paragraph 6.96.

[334] Openreach's proposed commercial offers, paragraph 5.113.

[335] Openreach's proposed commercial offers, paragraphs 3.24 and 3.27.

[336] Openreach's proposed commercial offers, paragraph 3.22; Telecoms Access Review 2026/32 - Annex 11, paragraph A11.83.

[337] IR, paragraph 6.96. Compared to the average Equinox 2 price of £19.72, CityFibre's discount of [**[REDACTED]**]% for connections on new RFS premises implies a price of c.£**[REDACTED]**. Even CityFibre's typical discount **[REDACTED]**% discount to Tier 1 ISPs implies prices between c. £**[REDACTED]**.

[338] Annex_IRR_013.

[339] Annex_IRR_013..

[340] Annex_IRR_013.

[341] IR, paragraph 6.104, footnote 583.

scenario does not generate any return and is value destructive on new money for equity investors.[342]

(335) Finally, given that network scale and prices are, to some extent, a trade-off in the negotiations with ISPs, CityFibre's acquisition of Substantial would materially affect CityFibre's scale, almost doubling CityFibre's pre-merger footprint. This would improve CityFibre's bargaining position and alleviate ISPs' pressure on demanding large discounts against Openreach's pricing.

5.3.2 It is incorrect for the CMA to claim that CityFibre's wholesale offering is more competitive than that of nexfibre and VMO2

(336) The jointly marketed nexfibre and VMO2 wholesale product reflects prices and terms that are financially sustainable in the long run. nexfibre's post-Transaction wholesale business plan is predicated on **[REDACTED]**.

(337) Indeed, contrary to CityFibre's assertions, nexfibre and VMO2's **[REDACTED]** even though nexfibre and VMO2 lack the unrivalled scale benefits that Openreach enjoys. That is to say, nexfibre and VMO2's offering is more **[REDACTED]** than the incumbent Openreach, while sustainable enough to be a viable long-term competitor. **[REDACTED]** nexfibre and VMO2's offering should therefore be measured against Openreach as the dominant incumbent, rather than CityFibre.

(338) The CMA provisionally finds that "*evidence indicates that in negotiations and agreements with ISPs, CityFibre has aimed to exceed Openreach's service levels, while nexfibre and VMO2 has (to date) sought to match Openreach's service levels".*[343] That characterisation is incorrect. While nexfibre and VMO2 do not have visibility over CityFibre's wholesale terms, the **[REDACTED]** agreed with **[REDACTED]** in fact exceed Openreach's. Moreover, as the CMA itself recognises, nexfibre and VMO2 do not currently have any third-party ISP customers, **[REDACTED]** are the best available proxy for the attractiveness and competitiveness of their wholesale offer.

(339) **Figure 1: [REDACTED]**[344]

[REDACTED]

(340) By way of illustration, with regard to **[REDACTED]** Openreach's **[REDACTED]** Under nexfibre and VMO2's terms, **[REDACTED]**

(341) With respect to the **[REDACTED]** have **[REDACTED]**.

(342) Not only are nexfibre and VMO2's respective contractual terms **[REDACTED]**. Moreover, in **[REDACTED]**, nexfibre and VMO2 have each **[REDACTED]**, than those imposed on Openreach as a regulated entity. **[REDACTED]**. For example**[REDACTED]**.[345]

(343) This evidences nexfibre and VMO2's ongoing commitment to offering competitive, attractive terms to retail ISP customers. The Parties therefore strongly disagree with any implication that nexfibre would not be a vigorous wholesale competitor post-Transaction.

[342] For completeness, nexfibre notes that **[REDACTED]**.

[343] IR, paragraph 6.97.

[344] Annex_IRR_014.

[345] **[REDACTED]**

5.4 The IR's provisional analysis of competitive constraints is flawed and critically underplays Openreach's dominance

5.4.1 It is irrational that the IR downplays the competitive importance of Openreach

(344) Openreach has unrivalled dominance, significant and enduring cost advantages and a ubiquitous network; it is the driving force of competition in the wholesale market. It is therefore bizarre that the CMA's competitive assessment disregards this.

(345) Openreach has been found by Ofcom to enjoy SMP, with an unassailable market share of c. 61% and c.92% of the addressable wholesale market (when self-supply is excluded).[346] It also enjoys a unique position as the only network operator with a national footprint, meaning that ISPs must purchase at least some wholesale services from Openreach to serve their customers – it is an unavoidable trading partner. Indeed, its ubiquitous network and benchmark pricing is the structural reason why altnets struggle to secure wholesale deals. **[REDACTED].**

(346) The CMA has also not engaged with evidence that the Parties submitted in relation to the way in which Openreach is entrenching its competitive position. Openreach is engaging in a strategy to cement its market dominance through a combination of rapid FTTP roll-out, pricing policies that squeeze emerging competition and a drive to place Optical Network Units ("**ONUs**") into customers' homes to leverage the structural advantage for the first installer and raise barriers to switching (e.g. there would be a longer and more costly activation process were a customer to switch due to a new ONU installation being required). [347] The corollary is that the longer it takes for a scaled competitor to Openreach to emerge, the harder it will be to establish genuine competition.

5.4.2 It is misconceived for the IR to provisionally conclude that Openreach's competitive constraint is constrained by regulation

(347) The IR argues that Openreach cannot "*freely compete on key metrics such as price and service*" on account of it being a "*regulated entity*".[348] This is an exceptionally strange and incorrect way to characterise the situation. It abstracts away from the very reason why Openreach is regulated. Openreach is the ubiquitous fully scaled provider and benefits from unique coverage and costs advantages that leave it with a fundamental competitive advantage over rivals that there would be no competition at all unless it was regulated. Even with regulation, its ubiquity and scale mean that it sets the benchmark for the rest of the market. Openreach sets price and service standards from which every alternative wholesale provider, including CityFibre and nexfibre and VMO2, must discount in order to attract ISP volumes: it is a price-setter, not a price-taker.

(348) The IR adopts a frankly perverse line of reasoning here. Ofcom regulates Openreach precisely because it is the dominant incumbent and enjoys a near-monopoly position. Ofcom's regulation is intended to ensure other market participants can enter and compete in the market. It is intended to constrain Openreach precisely because of its market power and competitive strength – it is not indicative of Openreach's inability to

[346] TAR Volume 1, paragraph 2.109.

[347] For example, where a BT/Openreach ONU is already present in a home, VMO2 estimates that approximately **[REDACTED]**% of ISP second installs will choose Openreach in order to benefit from a quick-start activation, without the need for a new installation visit – see **[REDACTED]** See also **[REDACTED]**.

[348] IR, paragraph 38.

compete in a market in which – as the CMA recognises – it is a supplier to "*all major ISPs*".[349]

(349) Indeed, Openreach's latest commercial proposals demonstrate a considerable ability to compete and set prices in the market. Although Ofcom rejected Openreach's Incremental New to Openreach Customer Offer ("**NTO**"),[350] all other offers were approved, despite notable pushback from VMO2 and altnets. In fact, since the introduction of the Equinox framework in 2021, Ofcom has permitted all of Openreach's proposed offers save one which involved below-cost pricing; this cannot be considered to be a stringent constraint on Openreach. These latest accepted offers include:

(i) The Geographic NTO, which allows Openreach to offer a £50 connection rebate for winning customers in VMO2 areas, conditional on FTTP customer volumes. Although targeted at VMO2 areas, many altnets have presence in the area and are therefore also significantly impacted by the offer. Fibrus, Gigaclear and Hyperoptic explicitly disagreed with Ofcom's decision to accept the proposal, stating that the offer "*creates the same forms of pricing, financeability and retail pressure identified [in relation to the NTO]".*[351]

(ii) The Frontbook ARPU Share Offer and Box Swap Offer, which limits the average amount an ISP pays for new and upgraded high-speed connections to £19.32. This offer is highly competitive, with INCA asserting that it would *"result in price levels below the REO cost low point and it should not be allowed to continue"*.[352][353]

(350) In addition, the CMA is inconsistent in its treatment of regulation in market definition versus in its competitive assessment: the CMA says that the competitive constraint posed by Openreach post-Transaction would be "*moderated*" by the fact it is regulated by Ofcom. [354] This misses the point: as at paragraph (348) above, Openreach is regulated by Ofcom because it has SMP. The sheer fact that the SMP regime exists and is imposed on Openreach is a symptom of its unassailable dominance. The CMA cannot therefore point to the fact of Openreach being regulated as evidence that it would not pose a sufficient competitive constraint to offset any putative effects on competition post-Transaction (and indeed, the CMA cites evidence of Openreach competing in its analysis of market definition, noting that ISPs continue to demand wholesale broadband over its copper network). [355]

5.4.3 The IR's provisional conclusions with respect to Openreach are incompatible with the evidence

(351) The IR itself cites evidence from third party responses to its market test that Openreach is a very strong constraint:

[349] IR, paragraph 4.14.

[350] This offer consisted of offering a £9.50 rebate to ISPs based on customer volumes. See Openreach's proposed commercial offers.

[351] Ofcom consultation on Openreach's proposed commercial offers, Joint report by Fibrus, Gigaclear and Hyperoptic, page 5.

[352] INCA's response to Ofcom's consultation on Openreach Special Offers, page 1.

[353] Ofcom estimates the reasonable efficient operator (REO) low cost to be £14.42.

[354] See, for example, IR paragraph 6.194.

[355] IR, paragraph 6.29.

(i) ISP feedback demonstrates that ISPs consider Openreach to be a "*strong or very strong*" competitor, pointing to its national scale.[356]

(ii) Likewise, the CMA found that all competing wholesale providers consider Openreach to be a "*very strong*" competitor, on the grounds of its incumbency, scale, and market dominance.[357] This accords with Ofcom's finding that Openreach enjoys SMP in all areas of the United Kingdom (excluding Hull).

(iii) Scale was ranked as one of two most important parameters of wholesale competition, with all respondents to the CMA's survey ranking it in the top five most important factors and – "*all else equal*" – ISPs preferring networks with larger networks due to the upfront costs of integration.[358] This unmistakeably points to Openreach as the most competitive provider, being as it is the only wholesale provider with coverage across nearly the entirety of the UK and a network that dwarfs those of other providers.

(352) Third-party feedback does not support the fact that Openreach's competitive strength is neutered by the effect of regulation: it shows that both ISPs and altnets regard Openreach as a very strong competitor.

(353) The CMA appears to have provisionally placed weight on Openreach's position that it is constrained by regulation. However, Openreach's submissions should be seen against the backdrop of, and consistent with, Openreach's overall position vis-à-vis Ofcom in the latest TAR: namely, that Openreach has a clear incentive to push for greater de-regulation and to emphasise the constraints of regulation on its ability to compete. The CMA should take into account Openreach's clear self-interest in assessing the weight that should be placed on this view.

(354) While the CMA notes that some evidence suggests that Openreach is less competitive on pricing and flexibility,[359] this is the opposite of what the record shows: Openreach is a price-setter that can freely set standards for the rest of the market. Its Equinox 1 and Equinox 2 pricing each established the benchmark against which every wholesale provider is required to discount, as the CMA itself expressly acknowledges in the IR, where it notes that Openreach's Equinox 2 prices have become a "*significant reference point against which competing providers benchmark their own offers*". [360]

(355) The Parties also strongly disagree with the contention that the internal documentary evidence is mixed. The Parties' internal documents track Openreach as the primary subject of their commercial intelligence and competitive planning, closely monitoring its overbuild and benchmarking their wholesale offering against it. They also show the aggressiveness of its pricing strategies.

(356) For instance, VMO2's internal documents also evidence its **[REDACTED]** pricing policies. **[REDACTED].**[361]

[356] IR, paragraph 6.158.

[357] IR, paragraph 6.161.

[358] IR, paragraphs 4.17 and 4.18.

[359] See, for example, IR, paragraphs 6.156 and 6.159.

[360] IR, paragraph 4.14.

[361] **[REDACTED]**

(357) In summary, the internal documentary evidence and third-party feedback received by the CMA clearly demonstrates that Openreach is a very strong competitor, and does not support the CMA's contention that the intensity of the competitive threat that it represents is constrained by regulation.

5.4.4 CMA must account for new evidence that Openreach's market dominance will be entrenched further following the BT/TalkTalk Transaction

(358) Openreach's dominance will only increase as it acquires TalkTalk (as is widely expected to be permitted), including its wholesale aggregator platform PXC by:

(i) Increasing the size of BT's captive retail business (with BT's retail share increasing nationally from c.32% to c.37%). This will materially weaken the current and potential competitive constraint on Openreach in the wholesale market;

(ii) Shrinking the contestable retail market for WLA providers materially by c.21%.[362] This will reduce the pool of scaled Tier 1 retail customers available to altnet WLA providers from three to two (Sky and VodafoneThree). Approximately 1.8 million of the 2.5 million broadband connections to be permanently transferred to BT's wholesale arm Openreach are copper lines which would otherwise have been contestable between other WLA providers for eventual copper-to-fibre upgrades. This will have an adverse impact on the business plans of altnets including nexfibre and CityFibre.

(iii) The absorption of PXC – the UK's principal independent, carrier-neutral wholesale aggregator – into BT's vertically integrated structure, reducing supplier choice for Tier 2 ISPs and B2B resellers, and conferring on BT both the ability and the incentive to foreclose rival WLA providers by steering PXC-aggregated retail traffic to Openreach.

(iv) The cumulative impact is to directly weaken the investment case for all existing and prospective fibre network deployment in the UK.

(359) Taken together, these factors will entrench Openreach's already dominant wholesale position and the CMA must update its analysis in the IR to reflect this. A materially strengthened Openreach, facing a shrinking contestable market and a weakened investment case for rivals, further undermines the credibility of the CityFibre Counterfactual, heightens the position of Openreach as a sufficient constraint, and reinforces that there is unlikely to be room for more than a limited number of scaled wholesale competitors to BT.

5.5 The IR's provisional assessment of nexfibre and VMO2's incentives to compete in wholesale is flawed and unevidenced

(360) The IR provisionally concludes that "*VMO2's vertically integrated business model may weaken nexfibre and VMO2's incentive to compete competitively in wholesale over time, relative to a combined CityFibre/Substantial in the counterfactual*". [363] Significantly, however, it notes that it has not identified any internal documentary evidence to support such a concern.

[362] Annex_IRR_003, Appendices (*Contestable Market Calculation*).
[363] IR, paragraph 6.146.

(361) Crucially, the IR does not appear to claim that the Transaction would weaken either of nexfibre or VMO2's incentives to wholesale competitively – it merely states that VMO2's incentives are weaker by virtue of it also having a retail arm.

(362) The IR claims instead that VMO2's weaker incentives to wholesale (relative to a wholesale-only provider) may be one of the reasons why nexfibre and VMO2 have offered in negotiations, and is expected to offer, less favourable wholesale terms than CityFibre.

(363) *First*, as explained in the Parties' submissions,[364] **[REDACTED]**. InfraVia's stringent governance rights mean that any incentive VMO2's shareholders may have to protect the retail business cannot be pursued through nexfibre in any circumstance and are ultimately irrelevant in this assessment. Although the IR acknowledges this,[365] it does not give appropriate weight to the significant legal rights and protections built into the nexfibre shareholder agreement that ensure nexfibre is a completely distinct entity from VMO2 with different economic incentives from VMO2 (and that any putative concerns over retail cannibalisation cannot erode this). The protections fundamentally safeguard nexfibre's incentives to wholesale, and these cannot be weakened. By way of example:[366]

(i) InfraVia's return on its circa £1 billion equity investment in nexfibre is tied directly to nexfibre's wholesale performance. Having no interest in VMO2, InfraVia holds shareholder protections befitting its investment, including **[REDACTED]**.

(ii) nexfibre's directors owe fiduciary duties to nexfibre – to act loyally and in good faith, prioritise the company's interests, avoid conflicts of interest, and exercise care, skill and diligence **[REDACTED].**

(iii) Under the SHA's related-party regime, **[REDACTED].**

(364) *Second*, nexfibre and VMO2's wholesale pricing is not driven by VMO2's retail considerations, as the IR posits. Instead, it is based on nexfibre's commercial realities and is a discount rate that can sustainably support competition. As previously explained to the CMA, nexfibre's **[REDACTED]** discount was determined by nexfibre's standalone finances and the Parties' scale post-Transaction.[367] Particularly, a scaled network exceeding 11 million premises does not need to discount more heavily to attract ISP volume; this should not be compared to CityFibre's network of c. 4.6 million premises as it requires deeper discounts.[368]

(365) *Third*, and without prejudice to the primary point that only nexfibre's wholesale incentives are relevant, the IR disregards the fact that VMO2 also has incentives to wholesale. The IR's conclusion that VMO2 will worsen wholesale terms disregards **[REDACTED]**. As explained, wholesale is an attractive avenue for VMO2 to improve network utilisation given **[REDACTED].**[369] The Parties' quantitative assessments of retail cannibalisation find any potential retail loss (c. £**[REDACTED]** per VMO2

[364] **[REDACTED]**

[365] IR, Appendix E, paragraph E.16.

[366] **[REDACTED]**, paragraph 121.

[367] **[REDACTED]**

[368] IR, table 4.1.

[369] The **[REDACTED]**

customer) will be recovered from wholesale gains (up to c. £**[REDACTED]** per wholesale customer).[370] We note that the CMA has done no modelling of its own to substantiate its conclusion.

(366) *Fourth*, the IR provisionally concludes that nexfibre and VMO2 are already exhibiting weak incentives to wholesale because its current offer is not as competitive as CityFibre's.[371] This is not a reasonable benchmark for the CMA to use given **[REDACTED]**. It ignores the comparison to the dominant operator in the market, Openreach – this is illogical given that Openreach's pricing is regulated by Ofcom and measured against a standard of being "fair and reasonable". Indeed, Ofcom reviewed Openreach's pricing very recently in its TAR 2026, and again in the context of the most recent Openreach offers. Measured against this, **[REDACTED]**.

(367) Finally, the IR selectively quotes and misinterprets internal documentary evidence.

(i) The CMA points to two versions of a document relating to early/mid-2026 **[REDACTED]**.[372] This amounts to cherry-picking quotations from the document, which is in the main supportive of nexfibre and VMO2's offering: it demonstrates that **[REDACTED]**. That **[REDACTED]** is to be expected in initial commercial negotiations, and does not evidence that nexfibre and VMO2 are not incentivised to offer a competitive wholesale product. The document also shows that **[REDACTED]**

(ii) Similarly, the IR points to a document relating to **[REDACTED]** negotiations with **[REDACTED]** to support its assertion that nexfibre and VMO2's wholesale proposition is not attractive to ISPs due to **[REDACTED]** – yet its analysis here also constitutes selective quoting, and misses that the document contains **[REDACTED]**.[373]

(iii) Lastly, the Parties note that the IR misinterprets nexfibre's business plan.[374] **[REDACTED]**.

[370] The **[REDACTED]**

[371] IR, Appendix E, paragraphs E.13 – E.15.

[372] IR, Appendix B, footnote 75.

[373] **[REDACTED]**.

[374] IR, Appendix E, paragraph E.20.

6 Countervailing Factors

6.1 IR's provisional dismissal of the Parties' efficiencies claims is based on a flawed counterfactual

(368) The IR's provisional dismissal of the Transaction efficiencies on the basis that they are not merger-specific rests on a fundamentally flawed view of the counterfactual for Substantial and VMO2. As explained in the Sections above, the Parties consider the evidence to be clear – in particular, in light of the new evidence provided in this Submission. The only reasonable conclusion on the most likely counterfactual that can be drawn from the evidence is that:

(i) CityFibre would have been unable to execute a transaction with Substantial and Substantial would remain an independent but constrained retail operator; and

(ii) VMO2 will not upgrade its HFC network to fibre on its balance sheet after 1 January 2027 (at the latest).

(369) When the Parties' efficiencies claims are considered against the appropriate counterfactual for Substantial and VMO2, the Parties submit that they must clearly be recognised as satisfying the CMA's relevant criteria.

6.2 The Transaction is fundamentally pro-competitive

(370) The CMA's view of the market does not sufficiently grapple with the stark economic, business and operational realities facing the UK fixed broadband sector. The Transaction represents the most certain and timely route to unlocking investment into UK fibre infrastructure, with nexfibre shareholder InfraVia alone investing c.£1 billion. It also offers the clearest path to establishing – for the first time – a wholesale challenger to Openreach that is both effective and financially viable. [375] Were the CMA to prohibit the Transaction, the consequences would extend well beyond the Parties and impede the sector-wide improvements urgently being called for by stakeholders: it would delay consolidation, chill investment and allow Openreach to further entrench its dominant market position (including through the *BT/TalkTalk* deal, should it be allowed to proceed).

(371) The Parties welcome that the IR recognises that the Transaction rationale, as reflected in the Parties' internal documents, is fundamentally a pro-competitive one: to transform the competitiveness of nexfibre in the wholesale market – through maximising wholesale business from third-party ISP customers – with the aim of delivering credible and sustainable wholesale competition to Openreach. [376] Indeed, the Transaction's primary drivers and benefits (the creation of scaled wholesale competition to Openreach, and the facilitation of cable to fibre upgrades) are one and the same.

(372) In their prior submissions to the CMA (which are not repeated here), the Parties have demonstrated that the Transaction gives rise to significant REEs. The magnitude of the REEs delivered by the Transaction is considerable. These REEs are as follows:

[375] See the **[REDACTED]**.

[376] IR, paragraphs 2.10-2.11.

(i) The creation of a more effective and financially sustainable wholesale challenger to the dominant player (Openreach) for the first time, delivering material cost savings for ISPs;

(ii) The enhanced wholesale platform of nexfibre (including via the jointly marketed proposition with VMO2) will unleash dynamic competitive pressure on BT/Openreach to continue to invest;

(iii) Accelerating the migration of VMO2's customers across circa 4.5 million premises from HFC to FTTP (via the incremental overlapping Netomnia premises and c.2.1 million premises upgraded from HFC to FTTP under **[REDACTED]**); and

(iv) The creation of sustainable wholesale competition will lead to discounted wholesale prices being passed to retail customers, increasing the intensity of retail competition.

(373) This Section 6 of the Parties' IR Response explains why the CMA's provisional views in respect of each of the REEs it assesses are flawed when properly considered against the appropriate counterfactual.

6.3 The creation of a scaled wholesale competitor to Openreach

(374) The CMA's main rebuttal of the Parties' primary efficiency (encompassing paragraphs (372)(i) to (iii) above) is that the CMA does not consider the increased scale delivered by the Transaction to be timely, likely or merger-specific. This Section explains that, updated to reflect the "most likely" counterfactual, this doubt falls away, and therefore the Transaction will bring significant benefits to UK retail and wholesale broadband customers.

6.3.1 The increase in scale delivered by the Transaction is merger specific when considered against the correct counterfactuals

(375) The IR's provisional rejection of this efficiency is predicated almost entirely on a spurious view of the counterfactual for VMO2 and Substantial.

(376) The CMA itself "*recognise*[s]" that the Transaction "*results in a direct short-term increase in nexfibre and VMO2's scale through adding an extra 2.4 million non-overlapping FTTP premises".*[377] This scaling effect is therefore uncontroversial, but the CMA has cast provisional doubt over it, labelling it a "*short-term*" impact and pointing to the unsubstantiated and incorrect assertion that VMO2 would anyway continue to upgrade its network to FTTP in the counterfactual.

(377) As explained in Section 2 on the Substantial Counterfactual, contrary to the CMA's unsubstantiated view that CityFibre would acquire Substantial, the "most likely" scenario absent the Transaction is that Substantial continues as a constrained retail-led operator, **[REDACTED]**. As such, the premises in the Substantial footprint would not have been available for wholesale in the counterfactual.

(378) As is clear from Section 3 on the VMO2 Counterfactual, VMO2 has now taken a decision to stop all HFC to fibre upgrade work on its balance sheet from no later than 1 January 2027, which will be announced on 3 November 2026. It follows that, contrary to

[377] IR, paragraph 7.17.

the conclusions in the IR, **[REDACTED]**. Section 3 also explains that, in any case, **[REDACTED]**.

(379) Based on the most likely counterfactuals, VMO2 and nexfibre would not have a wholesale presence in the 2.4 million non-overlapping Substantial areas. This renders the combination of the Parties' existing footprint merger-specific.

(380) Similarly, if the Transaction is allowed to proceed, **[REDACTED]** will add a further 2.1 million premises to nexfibre's combined footprint.

(381) Even without the additional scale delivered by any **[REDACTED]** which the Parties accept is not likely to eventuate following VMO2's recent decision, the Transaction would still bring material REEs through the combination of the nexfibre and Netomnia networks.

(382) In summary, when viewed against the correct counterfactuals, the Transaction clearly gives rise to merger-specific and timely scaling effect which generates significant REEs.

6.3.2 Increased network scale improves the Parties' ability to compete for ISP customers

(383) The CMA asserts that it does *"not consider that the Parties have provided evidence*" [378] to support their submissions "*that ISPs would be more likely to join the nexfibre and VMO2 network with the Transaction*" [379]and that the Parties have provided "*limited evidence*" that the Transaction materially increases the likelihood of ISPs agreeing a wholesale deal with nexfibre and VMO2.

(384) nexfibre – including through its jointly marketed proposition with VMO2 – currently lacks sufficient scale to be an effective competitor in the market for fixed wholesale broadband.[380] **[REDACTED]**.[381]

(385) The Parties have provided verifiable internal documentary evidence that scale is a prerequisite to securing wholesale deals with ISPs such as **[REDACTED]**.[382] **[REDACTED]**.[383] **[REDACTED].**[384]

(386) As to the IR's contention that **[REDACTED]** have concluded wholesale agreements with smaller players,[385] the Parties' understanding is that **[REDACTED]**. As explained in Section 5.3.1, the Parties also believe that the ability of CityFibre to **[REDACTED].**

(387) The importance of scale in securing wholesale contracts is consistent with the views that third parties have expressed, as set out at paragraphs (392) to (395).

(388) Finally, given VMO2's decision to stop fibre upgrade work on its balance sheet after this year, absent the Transaction the Parties will lack sufficient scale to attract **[REDACTED]** As such, without the Transaction, there is a clear risk that **[REDACTED]**.

[378] IR, paragraph 7.30.

[379] IR, paragraph 7.30.

[380] IR, paragraph 7.17.

[381] Parties' s.109 response (13 May 2026), paragraph 11; FMN, paragraph 605.

[382] IR, recital 43.

[383] Keystone further counterfactual analysis (28 August 2026), paragraph 24(a); and Substantial Pre-Notification RFI 3 Response, paragraph 16.2, page 13.

[384] FMN, paragraph 976.

[385] IR, paragraph 7.31.

6.4 Faster HFC to FTTP migration for VMO2 customers

(389) The Parties reject the contention that faster HFC to FTTP migration for VMO2 customers is not rivalry enhancing at the wholesale level. The effect of moving nexfibre and VMO2 consumers from HFC to FTTP is to increase product quality for those consumers, and means rival ISPs would need to offer better terms to attract these consumers. This would in turn lead ISPs to put pressure on wholesale suppliers to offer better terms.

(390) The CMA dismisses rivalry arising from improved quality, stating that these "*primarily appear to be RCBs, given that the benefits submitted by the Parties relate to increased speed and reliability for customers*" [386] (i.e. rivalry-constraining benefits ("**RCBs**")). However, this claim that rivalry cannot involve quality is inconsistent with its revised guidance on merger efficiencies in the *CMA Merger Assessment Guidelines*. In particular:

(i) the revised guidelines note that, "*rivals may respond to an increase in quality from the merger firms by lowering their prices*".[387]

(ii) the guidelines also note that, "*Rivalry creates incentives for firms to cut price, increase output, improve quality, enhance efficiency, or introduce new and better products*" [emphasis added].[388] This makes it clear that rivalry involves quality, and competition takes place according to price but also quality and other dimensions (such as product range and service).

(391) Therefore, the IR is wrong to dismiss the faster HFC to FTTP migration (via VMO2 customers in Substantial overlapping areas being moved onto FTTP) as merely an RCB that is irrelevant to enhancing rivalry at the wholesale level.

6.4.1 Third-party evidence supports the Parties' efficiency claims

(392) Finally, it is noted that the CMA itself cites a significant volume of third-party evidence which supports the mechanism of Parties' efficiencies claims. The IR and other third-party submissions cite feedback from network operators that:

(i) The CMA recognises that a "*majority*" were "*broadly positive about the Transaction*" with "*several identifying potential pro-competitive benefits"*, indeed *"principally through consolidation creating a larger, more sustainable wholesale competitor to Openreach*".[389] The only outlier (i.e., the third-party network expressing concerns) was CityFibre – who has its own self-serving reasons underpinning its stance.[390]

(ii) As one altnet has submitted to the CMA, the pertinent question for the CMA is "*how might another scale provider emerge in the wholesale market*".[391] In that altnet's view, "*the most likely route*" is the Transaction, which will provide "*the resources to invest in a fully capable platform fit for the major ISPs"*.[392]

[386] IR, paragraph 7.37.

[387] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 8.19.

[388] CMA, Merger Assessment Guidelines (CMA129, 3 September 2026), paragraph 2.2.

[389] IR, paragraph 6.196(a)(i).

[390] IR, paragraph 6.196(a)(i)-(iii).

[391] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

[392] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

They continue with saying that "*this transaction is the one that does most" to create an additional scale wholesale operator*" compared to other deals that may materialise over the coming years.[393] That altnet notes that "*large capital investment is needed on the part of retail ISP partners in network and systems integration* […] *to provide the high level of service required by customers in the mass retail-market in the provision and repair of circuits*" and a "*large network footprint is required to match the national marketing scale of the major ISPs*".[394]

(iii) A further altnet has submitted to the CMA that the Transaction "*has the potential to support a stronger and more sustainable alternative fibre platform, which may contribute positively to the long-term competitive structure of the market and the continued development of infrastructure-based competition in the UK*".[395]

(393) The IR cites feedback from an ISP, supportive of the Transaction, who considered that: "*consolidation was needed to create a stronger national competitor to Openreach*".[396]

(394) The IR cites feedback from altnet investors, acknowledging that multiple investors are "*broadly positive*" about the Transaction and judge that it *"supports the emergence of a larger and more sustainable competitor to Openreach*" and "*makes the sector healthier and more sustainable*".[397]

(395) The IR also cites feedback from third-party respondents to the CMA's questionnaire: all respondents ranked network scale within the top five most important parameters of wholesale competition, and network scale – together with price – was deemed the joint most important parameter ranked by ISP customers.[398]

6.5 Conclusion

(396) As explained above, the CMA's dismissal of the REEs and RCBs, which the Parties have demonstrated in previous submissions arise from the Transaction, is predicated on the CMA's flawed approach to its counterfactual analysis. When considered against the correct counterfactuals for VMO2 and Substantial, the Transaction brings significant benefits of scale. This scale will enable nexfibre and VMO2 to be a scaled, sustainable competitor to Openreach, and the dynamic competitive pressure on Openreach will lead to higher quality FTTP and discounted wholesale prices being passed to retail customers, increasing the intensity of retail competition. In its provisional decision to prohibit the Transaction, the CMA risks jeopardising these benefits which it recognises as a core driver of the Transaction rationale.

(397) The consequence for competition of a CMA prohibition decision is clear – the result would be to block the emergence of scaled, financially sustainable wholesale competition to Openreach for the first time in the UK, with no credible alternative in the wings given CityFibre's inability to fund a transaction. This would deny the UK broadband market the certainty of £3.5 billion of much-needed capital investment, and

[393] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

[394] Grain Connect response to the Areas of focus, 17 July 2026, section 'Wholesale fixed broadband services to ISPs'.

[395] Hyperoptic response to the Areas of focus, 17 July 2026, section 'Concluding Observations'.

[396] IR, paragraph 6.196(b)(iii).

[397] IR, paragraph 6.196(c).

[398] IR, paragraph 4.17 and figure 4.2.

chill still further investment in the sector. It will also prevent the significant benefits the deal will otherwise bring for UK retail and wholesale broadband customers. The only winner here would be Openreach, which would further entrench its dominant position already exacerbated by BT's acquisition of TalkTalk (and its wholesale arm PXC), at the expense of UK consumers.