Strengthening Openreach's strategic and operational independence

A response from the Federation of Communication Services.

The Federation of Communication Services represents companies who provide professional communications solutions to professional users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. In the context of this submission, FCS speaks for the 98% of Openreach's customer base (by volume) which accounts for 14% of Openreach's revenues. FCS members rely extensively upon the services of Openreach to deliver connectivity, either contracting directly or via wholesale providers like TalkTalk Business or BT Wholesale, who are themselves reliant upon the services of Openreach.

Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest national and international private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of nearly 400 businesses with a combined annual turnover in excess of £45 billion.

It is significant to note that as recently as 2012 – seven years after signing the Undertakings – BT and Openreach had no formal mechanisms to identify and address the specific needs of these business customers. Or even to distinguish between business lines and consumer lines. FCS was a key instigator of the approach to Stuart MacIntosh (Ofcom's then director of competition) which led to the creation, at Ofcom's insistence, of the Openreach Business Service Improvement Programme. It is further worth recording that the scope of this programme was limited to the copper network. It is only in the last six months, with the appointment of Clive Selley as Openreach CEO, that the issues of Ethernet provisioning have begun to be seriously addressed. Even so, FCS members still regularly report Ethernet lead times in excess of 12 months.

In the context of this proposal for comment, FCS members are fully aligned with Ofcom's commitment to ensure the nation enjoys ubiquitous and cost-effective access to business-grade broadband connectivity. Without high quality, affordable and ubiquitous connectivity – preferably available from a choice of more than one supplier -- it is impossible to deliver the hosted databases, value-added call-handling and recording functionality and cloud-based software solutions which empower business growth and efficiency in the present age.

We all want to see Openreach succeed as a flexible, customer-responsive strategic partner, upon which we can rely for prompt service and strategic investment in the nation's vital infrastructure assets. FCS believes this goal is frustrated not by lack of management expertise or even investment, but by a systemic cultural drag resulting from the legacy of nationalised monopoly privilege and the ongoing ownership by BT plc.

Summary of main concerns:

FCS believes Ofcom's approach amounts, in essence, to a 10-year review of the Undertakings. We are conscious Ofcom and BT are joint signatories to the Undertakings. Both signatories have spent 10 years attempting to make them work, and it is in the interest of neither party to pronounce them a failure. Nonetheless, FCS believes the market developments and technology convergence which have taken place since 2005 require something more fundamental than a revision of the status quo. We are not convinced Ofcom, as an interested party, has the necessary detachment to undertake such a first-principles revision. And BT, Ofcom's co-signatory, has clearly demonstrated an ongoing willingness to attempt to negotiate revisions favourable to its own commercial position.

For this reason, we repeat the suggestion we first made in 2015 that the converged communications market in general, and the Undertakings in particular, should be reviewed from first principles by the Competition & Markets Authority, under scrutiny of the House of Lords Select Committee on Communications.

1. FCS welcomes Ofcom's proposed strengthening of Openreach independence and corporate governance. But we are deeply concerned no alternative models appear to have been explored; BT Group as sole owner remains the only option under consideration. FCS feels this is a missed opportunity.

2. FCS would welcome an indication from Ofcom of the legal basis for the Regulator to take into account the state and organisation of a company's pension fund when determining the optimum output from regulatory intervention on behalf of business and consumer customers. Examples of other Ofcom interventions, perhaps in the television or mobile telephony sectors, where the impact on employers' pension schemes was a major consideration in deciding upon a course of action would help us understand Ofcom's position in this matter. FCS is happy to raise this as a separate FOI request if that is the most appropriate mechanism. We note merely that in 35 years representing the reseller community, FCS has no record of ever having been asked by Ofcom or its predecessors to estimate the likely impact of proposed regulatory interventions upon the ability of our members to service their pension obligations.

3. Questions about systemic cost risk and proportionality of interventions should be weighed in the light of BT's 10-year earnings as a result of the present regulatory compromise. There appears to be a presumption that BT should continue to enjoy a similar earnings profile going forward to that which it has enjoyed since 2005. This is at variance with experience in just about every other industrial market, whether or not prices are officially regulated.

4. FCS was a co-signatory to the Openreach Customer '10-point plan' referred to in Section 8. For the avoidance of doubt, FCS continues to regard full structural separation of Openreach from BT as the optimum strategic result for the industry. BT have enjoyed 10 years with the

"opportunity to make legal separation work", and by Ofcom's own criteria, BT have failed. The 10 point plan was proposed as a set of minimum criteria upon which to base discussions of a non-separated future for Openreach.

5. The Undertakings of 2005 involved the creation of a distinct Access Services division within Great Britain only. Northern Ireland was excluded. Openreach does not exist in Northern Ireland. And while BT complies fully in NI with the spirit and practice of equivalence at the technical level, the absence of an identifiable utility-level brand serves to feed consumer confusion and frustrate the attempts of resellers to differentiate themselves and their brands. FCS is deeply disappointed to see Ofcom's proposal contains no mention of reform to the status quo in Northern Ireland. We urge that whatever solution finally emerges be applied universally across the United Kingdom.

Detailed Responses:

in this and subsequent sections, FCS responds to specific paragraphs in the Ofcom document.

Section 1 -- Executive Summary

1.5 The reality is fully understood and accepted that in many parts of the country, Openreach is, and is likely to remain, the sole provider of connectivity. The important principle is that wholesale access to that connectivity needs to be freely available to any CP who wishes to deliver downstream services. It is not technically necessary or commercially desirable that these services need be provided exclusively by Openreach employees or Openreach infrastructure.

A requirement for a hand-over point at every fibre-enabled cabinet, and a price-controlled wholesale fibre backhaul product, would stimulate the market to connect distinct, distant or specialist downstream customers. If BT Group's retail/resale operations wish to participate in such programmes, they should have access to the same wholesale product at the same price.

1.12 Ofcom notes the Undertakings were entered into in the expectation of "The creation of Openreach as a 'functionally separate' part of BT Group, with a culture and management incentives designed to ensure that it serves all customers equally".

FCS does not take issue with the creation of appropriate management incentives, or the attempts which have been made under the aegis of the Equivalence of Access Board to ensure all Openreach customers are served equally. We are, however, unconvinced that any enduring cultural transformation has taken place.

Openreach is culturally still very much part of BT. FCS members report (and OTA Exec meetings monitor) cultural behaviours which are entirely characteristic of a monopolistic, former-stateowned systems-led corporate entity. Long industry experience of monopolies and mergers leads FCS to conclude that there will be no enduring cultural change to Openreach while it remains part of the BT Group.

1.14 FCS concurs with Ofcom's analysis of the detrimental effects of BT corporate control of Openreach. We would add that the inability to raise money in the market place on its own account inhibits Openreach from behaving like a conventional utility company. BT Group, as sole shareholder, does not demonstrate a corporate ethos consistent with the long-term, steady, predictable but unexceptional returns on investment that commercial investors like pension funds would seek when investing in a utility-type business.

1.16 Any new structure must endue Openreach with the corporate wherewithal to behave like a strategic infrastructure provider. This means fundamentally different investment/payback and risk/reward profiles to those enjoyed by other BT Group operations. It is far from clear such operational flexibility will be possible while BT Group remains the sole investor. Without it, any meaningful 'cultural' change within Openreach is deeply unlikely.

1.22 It is not necessary or desirable that BT should remain Openreach's sole shareholder. FCS has long argued that Openreach should be re-constituted not as a stand-alone subsidiary, but as an Industry Mutual organisation responsible to its customers. (See, for example, the governance model of Welsh Water). It is by no means impossible for such an organisation to contract with BT to return a consistent dividend every year, commensurate with the returns a utility company would expect to make after re-investing profits in network improvements.

1.23 BT has enjoyed 10 years of Undertakings to demonstrate it can make 'functional separation' work. Ofcom's analysis suggests very firmly that it has failed – despite the very significant investment of time and effort Ofcom itself has expended on the project. BT's own proposal (which para 1.32 notes it has already decided to implement, notwithstanding the final results of this current consultation) is not an indication that BT intends willingly to do any more than the absolute minimum.

Given that Ofcom, by its nature, employs fewer profit-focused professional career salespeople than BT, FCS suggests that rather than perpetually second-guessing BT's corporate spin-strategy, a far safer and more sustainable position for Ofcom would be to insist upon immediate structural separation. But with the caveat that BT has the chance to demonstrate – via market results, rather than threat of litigation -- that it is not necessary.

1.24 (iii) Is an obvious vulnerability. Maintaining BT Group ownership naturally confers upon BT Group the appointment of directors. An industry mutual governance model would remove this point of weakness without reducing BT's ability, as a stakeholder, to propose its own director/trustee.

(vi) The setting of a 'financial envelope' by the BT Group artificially constrains Openreach's ability to finance investment decisions by restricting it to a single investor, whose corporate requirements and time lines are not necessarily aligned with those of a utility-style operation. Openreach should be free to raise capital from multiple sources (which may include other industry stakeholders, as well as pension funds and similar vehicles).

(vii) Many of the people who currently undertake work for Openreach are not BT employees, but sub-contractors. Ofcom does not appear to have taken a view on these individuals' pension entitlements and arrangements, which seems inequitable. FCS is not convinced it is necessary for any engineers to be employed directly by Openreach. The provision and maintenance of infrastructure does not, of itself, require the direct employment of an engineering workforce, as Openreach's current extensive use of sub-contractors clearly demonstrates. Existing Openreach engineers could be TUPE'd across to the sub-contracting organisations in accordance with existing employment legislation and best practice. Market-responsive SLAs could then be set which marry directly with customer satisfaction, rather than remote, centrally-planned management processes. We explore this prospect further with a new proposal at the end of our response to Section 6 in this submission.

(viii) Given the nature of the privatisation of Post Office Telephones and the creation of BT, and the extent to which Openreach figures and assets are centrally reported, it is arguable that current 'ownership' of assets within the group represents little more than a box-ticking-of-convenience exercise. Any agreement between BT and Openreach on the basis of 'who is deemed to own what' carries the risk of Openreach falling prey to uncontrollable rents from a monopoly supplier. As noted elsewhere, FCS awaits clarification from Ofcom regarding the extent to which consideration of pension obligations is a proper concern of the regulator.

1.36 FCS agrees with Ofcom's conclusion.

1.39 (vi) As noted above, Openreach cannot operate both as best-in-class utility operator and cash-cow for the BT Group. Something has to give. It is not clear from the paper why allowing Openreach access to the capital markets would necessarily and inevitably incur costs for the BT Group that could not be anticipated and managed by appropriate corporate governance.

1.50 FCS is concerned Ofcom's metrics depend upon monitoring reports created by Ofcom, rather than the verdict of market forces. BT are past masters at producing compelling-looking graphs, flow-charts, infographics and animations. Yet Openreach customers feel no improvement on the ground. Ofcom's history of target-setting for Openreach, and of imposing appropriately punitive penalties for failure to deliver, gives FCS members little hope that strategic improvements will flow. We explore this in more detail in our response to Section 6.

Section 2: the introduction

2.3 The devil is always in the detail. FCS agrees a good long-term outcome would be to achieve full competition between three or more networks in, say, 40% of premises, with competition from at least two in 'many areas beyond that'. But how many is 'many'? Given that Openreach is likely to be the sole provider to many communities for the foreseeable future, the distinction needs to be firmly drawn between Openreach delivering connectivity/backhaul to a POP and BT delivering the retail service to consumers. To ensure consumer choice to consumers, Ofcom should set a realistic wholesale price for backhaul from fibre-enabled cabs and create conditions of equivalence where multiple potential providers can access that backhaul and deliver connectivity to consumers via their own infrastructure.

2.10 It is not necessary or desirable for BT to remain the owner of Openreach along the lines envisaged. FCS urges Ofcom to explore alternative corporate governance models – especially that of industry mutual organisation.

2.13. 'If successful, we believe our approach will deliver improvements…' Ofcom has made a useful start in identifying success criteria in Section 6. As a minimum, FCS urges that specific time/ measurement milestones should be set. Full structural separation should be set in train without delay -- but put on 'hold' in the event performance at these milestones meets or exceeds expectations.

Section 3 – the rationale

3.5 The Communications Act 2003 remains the effective legal reference in the UK at present. But the European Electronic Communications Framework and its successors are likely to become superseded in the medium-term by post-Brexit UK-authored legislation. Care should be exercised to avoid any risk of 'hard-wiring' present day legislative presumptions into future policy outcomes or create any 'grandfather rights' for the incumbent.

3.10 Despite 10 years of functional separation, FCS perceives no evidence of a fundamentally different corporate culture within Openreach to that experienced elsewhere within the BT Group. Mergers and acquisitions experts all concede cultural change within a business is the hardest thing to anticipate and the slowest thing to accomplish – or measure. Sliding a couple of non-executives on to a new Board will not accomplish the kind of cultural re-alignment which is necessary. Indeed, Ofcom's own comments in Section 5 and elsewhere about the Group Pension Scheme underline the depth of this cultural dependency. While Openreach remains a BT subsidiary, Openreach will continue to be culturally aligned with BT. Incentives for senior management and a new brand name will not change this ingrained cultural predisposition.

Any talk about Ofcom measuring progress of a 'legally separated' Openreach, therefore, needs to include some clear metrics for measuring progress of a distinctive corporate culture, focused both on the new *vires* of customer satisfaction and the existing position of BT-satisfaction.

This is one of the reasons FCS suggests a radically new approach to the engineering workforce, making a cultural virtue of Openreach's present reliance upon sub-contractors. We expand this thinking in our recommendation at the end of this response.

3.13 Ofcom expresses its concern that the model of functional separation has failed to sufficiently address BT's incentive and ability to use its vertically integrated structure to discriminate against competing communications providers in the market. FCS agrees. In the context of cultural issues, we would add that BT will inevitably be culturally and commercially disposed to use its vertically integrated structure to discriminate against competing communications providers in the market. Further, FCS suggests that Ofcom's experience of 10 years of Undertakings is largely that of mandating of a series of adjustments for Ofcom's failure to have anticipated the ways in which BT would use its vertically integrated structure to discriminate against competing communications providers in the market. Against that background, it seems perverse for Ofcom to expect to do better in the coming 10 years.

3.21 FCS would point out that the opposite is also true. Current Openreach network improvement priority areas include York, Bristol and Bath, where existing Openreach infrastructure which was previously regarded as fit for purpose has recently been overbuilt by alt-net fibre providers. From some angles, this looks much more like a responsive attempt to recover lost market share than a strategic investment of resources in the areas of greatest need.

3.25 Given the opacity of BT central resources within the company's overall reporting, FCS contends there has not hitherto been any real reason for TSO to apportion costs between various group subsidiaries. G.Fast is an international R&D initiative in which BT is listed as the UK stakeholder. BT at a corporate level regularly conflates its UK and international retail and wholesale operations with its utility-level operations. The Openreach brand is seldom even mentioned in such pronouncements.

FIGURE 3: The proposed corporate structure as outlined demonstrates how poorly, in practice, Openreach fits culturally with other BT Group businesses. Openreach, uniquely, is a utility-style business, sitting on infrastructure and playing in a long-term field. Even EE, which owns a mast-site infrastructure, maintains that infrastructure as a commercial necessity to underpin a business model which fundamentally relies upon short-term returns and resale margins.

Section 4 – the Ofcom proposal

4.7 FCS is concerned that Ofcom appears to have considered only two models: fully structurally separated, for which Ofcom perceives only costs and disproportionate corporate upheaval, or BT as sole shareholder. FCS believes there are alternative corporate structures which can be considered, which will yield the required cultural improvements, and which need not fully dis-aggregate Openreach from BT's corporate profitability expectations.

In particular, the model of Industry Mutual Organisation has not been explored. But it is by no means impossible to draw from the example and experience of organisations like Railtrack or Welsh Water a plausible corporate model which would deal with corporate governance by involving representative stakeholders as, effectively, corporate trustees. Such a model could include a regular and guaranteed minimum annual return to BT, in line with the kind of 10-20 year funding and investment benchmarks expected by other utility-level operations. Ofcom's expectations of 12-36 month operating plans (para 4.45 and elsewhere) is far closer to what one would expect from a resale business than a utility/ infrastructure business.

4.9 As noted above, FCS does not consider Ofcom has fully explored all the proportionate alternatives to the proposed response. Regrettably, we do not have a parallel universe to hand, in which Ofcom grasped the nettle in 2005 and forced a full structural separation model on BT. And in the absence of any compelling commercial incentive to undertake extensive 'what-if' modelling, we have no way of accurately measuring the opportunity cost to the industry and the wider UK economy of stifled ambition, frustrated inward investment opportunities or disadvantaged rural communities which have accrued as a result of that decision. It's a bit of a Brexit question. We won't know unless we try it. On balance, FCS believes the short-term down-side shocks to BT would be more than counter-balanced by the long-term up-side of a customer-responsive utility operation, for which BT is just one of a number of customers. It is, upon reflection, a matter of regret that Ofcom (and the industry) opted for a pragmatic fudge in 2005. There are far fewer compelling reasons to do so again in 2016. Not least among them, the experience of the last 11 years.

4.18 Having decided that it is appropriate for the BT Group to appoint a non-executive to the Openreach Board, it is not clear why it is necessary to rule out 'a current director or senior executive of any UK communication provider' from one of the other non-exec roles.

4.40 He who holds the purse strings has the power. While Openreach is prevented from seeking funding from any source other than the BT Group, Openreach will remain culturally bound to BT.

4.45*et seq.* FCS is particularly concerned that the envisaged strategic operational horizon is impossibly short for a business whose principle activity is to maintain and develop a strategic national infrastructure asset for the good of all customers. A properly independent Openreach should be planning over 10-20 year investment cycles. It should be raising money on the capital markets in the same way as other utility operations, and it should be delivering steady, predictable, long-term paybacks in the same way as other utility operations. The envisaged 36-month window reflects the kind of business planning more usually associated with higher-risk, higher-reward resale operations.

4.54*et seq.* Transparent decision-making by the BT Group Board will come as little consolation to the Openreach Board in the event of a failed application for strategic investment. Culturally, Openreach does not fit with the short-term resale-model presumptions common to all other BT Group businesses. As a long-term investment/return player, Openreach needs to be guaranteed access to long-term investment at utility-style interest rates and risk-reward profiles. There is nothing in this document to suggest the BT Group has the resources or the willingness to invest in Openreach on that kind of basis. It would be interesting to learn what attitude the BT Pension Scheme trustees would take to making such an investment, as the profile has much more in common with their own investment responsibilities than it does with other BT Group activities.

4.82 One of the cultural down-sides of BT Group membership is a shortage within Openreach of excellent and experienced individuals whose business skills were learned in non-Group organisations. Hence, for example, the astonishingly recent introductions of mole-ploughing and micro-trenching to the Ethernet provisioning improvement programme – techniques which have been used by non-BT businesses for over a decade. Forcing the inclusion of a new stratum of senior individuals into the business should therefore be a virtue: an opportunity to field-test Ofcom's metrics for measuring cultural change within Openreach. Observational custom and practice suggests it takes around 18 months for a free-thinking individual either to be subsumed into the BT corporate culture or to start seeking employment elsewhere.

4.92*et seq*. Northern Ireland received only a peripheral mention in the original Undertakings. Ofcom allowed BT to create a NI structure from 2005 whereby engineering and sales appear inseparable to the casual observer. No clear strategic justification was advanced for maintaining a different operating infrastructure in the Province. And no specific commitment was made to review it or learn its lessons. In particular, to explain why service in Northern Ireland should be so fundamentally better than elsewhere.

FCS is deeply concerned that Ofcom has failed to take this opportunity to align custom and practice in Northern Ireland with that of the rest of the UK. Not least, to require Openreach in Great Britain to meet or exceed the engineering provisioning and service levels enjoyed by CPs in Northern Ireland (4.94). If engineering in NI were brought under Openreach it would surely represent an excellent opportunity for GB engineering to learn from what works in NI.

The status quo of BT's Northern Ireland Networks clearly suits BT, but it is by no means clear that this is the optimal solution for the present and future needs of government, businesses and consumers in the Province. The lack of a distinct infrastructure brand serves to blur the distinction in customers' minds between BT rep whose quote they rejected and the CP from whom they are buying the service, and who is now arranging installation by … BT. The lack of a clear brand differential between BTNI reseller activities and BTNI utility activities means many companies in Northern Ireland view CPs as resellers of BT lines – and thus nothing more than middle men who can be 'cut out' by going direct to BT sales. The BTNI workforce culture could be described as a BT Retail culture: even senior BTNI Wholesale staff see no issue with defending the BT retail brand position in NI.

In addition, any profit margin from CP orders which result in BTNI engineering installs is fed back into BTNI which sits within BT Business division thereby making BT Business more profitable overall. No separate accounts are published by BTNI which has an annual turnover of over £400m and an estimated GP of over £100m.

The CEO for Ireland is in charge of both the NI and Southern Ireland business units, which must risk creating conflict of interest when planning network investment. The CEO for Ireland also controls BT Business sales and Wholesale sales in Northern Ireland with access to information such as CP install numbers. This, also, must risk a conflict of interest.

CPs' only guarantee against the above incentives and abilities for BTNI to use its vertically integrated structure to discriminate against competing communications providers in the market is the work of the Equivalence of Access Office. Ofcom's proposal envisages no future role for that office. Ofcom's proposal provides no legal certainty in terms of what BTNI will provide in the future. The statement "adopting similar principals insofar as it can" is worryingly vague.

4.95 Whilst FCS has the greatest respect for BTNI, we take serious issue with the assertion that it operates as some kind of philanthropic operation. BTNI is ultimately responsible to BT Group, not to the people and businesses of Northern Ireland. BTNI's embedded position with the Assembly, alongside portfolios such as inward investment, serves to maintain a position where BT is the supplier of default. This is not consistent with the provision of a customer-neutral infrastructure service.

Section 5 – the costs

5.2 FCS contends that 'rebranding' Openreach in 2005 was an act of corporate vanity, not a necessity. Plain white vans would have done just as well – in fact, better, as far as many CPs are concerned. Ditto the name: Access Services would have served the industry perfectly. The intention, after all, was to structurally separate the bit of BT which the consumer recognises from the bit which the consumer is not supposed to deal with at all. The deliberate inclusion of the BT Group logo as part of the branding serves to weaken, rather than strengthen, the impression that Openreach is a stand-alone operation.

5.6 FCS has to question the extent to which it is a proper role of a Regulator to second-guess the possible reaction of pension scheme trustees to a proposed regulatory intervention. Much of the reasoning in Section 5 is predicated on the possibility that a group of individuals whose terms of reference are solely to do with managing investment returns might take a negative view of the risks inherent in corporate restructuring. A subject upon which, by dint of their terms of reference, they are not particularly qualified to pronounce. FCS attaches, by way of interest, an analysts note from RBC Capital Markets suggesting divestment of Openreach would be in the BT Group's interest. (See Appendix A)

No doubt the EU Commission's decision not to allow Three's proposed merger of O2 to proceed has impacted upon the long-term investment/return prospects for those brands. But to the best of FCS's knowledge, the state of their respective pension pots was not a material consideration in a decision which was predicated on ensuring competition.

5.15 Sometimes in business, the market forces harsh change upon us. In genuinely competitive commercial markets (cement-making, for example; printing; dairy farming), enormous changes are regularly forced upon incumbent operators by vertical integration, technological innovation, disruptive new competition or Acts of God. In imperfect markets, such as those where a single national monopoly operator is privatised, it falls to the regulator to be a proxy for competition.

Competition in the real world takes no prisoners, and does not facilitate a gentle glide-path towards an eventual restructuring which guarantees shareholders a steady return and directors a steady salary in the interim. After 10 years of the Undertakings inadvertently serving to prop up a metastable monopoly at the utility level, it is time BT faced the realities of market forces. It is not the role of the regulator to provide a shock-absorbing layer between a poorly-performing provider and its customers.

Section 6 – the measures

FCS regards the discussion in Section 6 as largely academic. The only measure which has any worth is the extent to which Openreach customers are satisfied with its performance. Ofcom has received the very clearest evidence that after 10 years of Undertakings, Openreach customers are very far from satisfied. Ofcom has swallowed the seductive BT/Openreach reasoning that everything can be solved by changing or upgrading internal systems. Openreach customers will tell you (in fact, they have) that we have been trying different system fixes for 10 years flat, and service is still a million miles from where it needs to be.

Introducing new systems and new measurements will not have the desired effect. Because the problems are cultural, not operational. Openreach, in line with the BT Group culture, believes in universally-mandated operating systems which allow a high level of central control and reporting. These feed into attractively coloured graphs and statistics which can be reported on to regulator, shareholders and customers alike.

What customers actually need is the job done when they've been told it's going to be done. By this metric, Openreach is a spectacular failure. For this reason, FCS proposes an alternative approach to the issue.

FCS Proposal for Openreach Customers to contract directly with qualified engineers

Precise estimates vary, but around 40% of Openreach engineering calls in Great Britain (and BT-NIN engineering calls in Northern Ireland) are not undertaken by BT employees, but by sub-contractors. Like their BT engineer counterparts, these sub-contracted engineers undertake a wide variety of tasks of various levels of complexity.

BT's own custom and practice therefore confirms that the provision and maintenance of infrastructure does not, of itself, require the direct employment of an engineering workforce. Although it does, obviously, require that only suitably qualified and vetted individuals undertake the work.

What constitutes 'suitably vetted' in this context might well depend upon how these individuals are to be deployed. There is a level of security vetting and best practice that must be met and scrupulously adhered to before individuals can be allowed into an exchange. (Similar to that observed by Business Radio engineers on shared mast sites, to FCS1331:2015). There is an altogether different type of vetting and best practice associated with provisioning lines and fixing faults for households which might contain minors or vulnerable adults.

FCS therefore argues the market can be liberalised and customer experience enhanced by introducing contestability at the engineering level.

This would enable CPs to differentiate themselves in a far more granular and flexible level, and free up investment for local improvements to connectivity. Some CPs may wish to engage engineers to turn existing FTTC sub-loops into FTTP, for example. Some LLU CPs may wish to undertake their own civils and run their own infrastructure direct from the exchange.

The degree of coordination and licencing of individuals would not be significantly different from that already in place within the market. Existing sub-contractors could expand this element of their service, or new market entrants could provide bureau services, managing databases or deploying their own teams of preferred engineering specialists. The voice and data network is a national asset, and essential to the nation's security. Nobody suggests access should be available to anybody on a free-for-all basis. But beyond mandating appropriate levels of qualification, the market can be left to find its own level.

In time, this approach could develop into further quality/performance differentiators:

- At one extreme, the model currently seen in the care industry. Registered suppliers need to demonstrate they use appropriately trained individuals, and satisfy Local Authority duty of care requirements. But customers can choose from a variety of operators based on the package required, the quality of care required and the budget available to fund it. Or even simply on the basis that they particularly like the individual (or group of individuals) providing the service.

- At the other extreme, the model used in the OFGEM-regulated electricity market for the supply of electricity meters. Licenced Meter Operators must use appropriately trained individuals (failure to do so could result in fire or electrocution). And they are contracted to deliver services to meet SLAs set by their energy supplier customers. In this case, the SLAs are around timely installation and accuracy of readings. Precisely which model of meter is used or precisely which order the work is scheduled is a matter for the Meter Operator, not the customer.

It is by no means impossible, in this model, for CPs to retain their own engineering teams for front-line work, and to hand-off to Openreach or other speciality operators as required. For example, a CP engineer might be the customer's first recourse, undertaking a fault-diagnosis or equipment test, and handing off to Openreach at the point at which it becomes clear the fault is not with the equipment, but with the line. In this example, the initial third-party diagnosis should provide time saving for the Openreach engineer, as many of the pre-qualifying questions will already have been asked.

The conditions for qualifying and assessing engineers' competence to work at line/cab/exchange level are already present in the market. Regular updates and customer-specific training can easily be tied to CPD systems administered via the Institute of Telecommunications Professionals. As can customer-facing training courses and CRB checks. Models for aggregator agencies already exist in many market segments; the two mentioned above (care and metering) provide a large body of evidence against which best practice can be swiftly predicated. The Gas Safe Register is another example. Retail and industry supply chains also contain many aggregator/wholesaler/speciality sub-contractor models from which the industry can learn.

So there is no huge additional training or infrastructure cost for the industry to bear. And normal commercial market forces can be relied upon to dictate the speed and extent to which new aggregator organisations appear in the market place and bid to train or attract the best employees.

As pensions feature so large in this consultation, FCS proposes existing BT Group pension entitlements would be honoured up until the date of departure from BT Group employ, as is the case when any individual leaves an existing employer's scheme. CPs and sub-contractors would then compete for the best engineers based on those individuals' attitude to top-line pay, pension entitlement, health care or whatever other employee benefits those new employers wish to put on the table. This arrangement would also give the BT pension scheme trustees a greater and earlier degree of certainty about future liabilities.

FCS looks forward to discussing this alternative approach with Ofcom and Openreach management.

SUBMISSION ENDS