

# Response to Ofcom's Telecoms Access Review 2026 –31 Consultation – 12<sup>th</sup> June 2025

---

## 1. Executive Summary

- 1.1. Community Fibre's response focuses on the appropriate regulation of the national PIA market in which BT Group retains a near-monopoly. We consider this to be the most significant market because it is the most upstream regulated market and consequently has an impact on all downstream markets (see Vol 3 para 4.39).
- 1.2. Community Fibre has supported the work carried out by INCA which covers a broader range of topics. We are supportive of the proposals put forward by INCA in their consultation response.
- 1.3. In this Executive Summary we set out the recommendations we make to Ofcom with regards its TAR 2026 – 2031 consultation. The body of the report provides further information and evidence behind each of these recommendations.
- 1.4. Our recommendations are as follows:
- 1.5. **Recommendation 1:** Ofcom should make it clear in the introduction to its TAR statement that it does not anticipate that competition will emerge in the PIA market and so regulation of that market is likely to still be required far beyond 2031.
- 1.6. **Recommendation 2:** Ofcom should set an ambition in its statement that the PIA service should be ready for Ofcom's preferred remedy of 'Equivalence of Inputs' (EOI) by the time of its 2031 review.

- 1.7. **Recommendation 3:** As part of its market review statement Ofcom should commission the OTA to facilitate a cross industry working group that can map out the 'To Be' processes that could be used for a future PIA EOI remedy.
- 1.8. **Recommendation 4:** Ofcom should review the lessons it learnt from its 'remedy journey' in the WLA market and ensure those lessons are applied to the PIA market. Ofcom should consider whether legal separation of the near monopoly PIA function from BT Openreach is required in the future.
- 1.9. **Recommendation 5:** Ofcom should re-evaluate the proportion of single-bore duct that is being "paid-for" more than once by a PIA competitor and reduce the unit price share for single-bore duct accordingly.
- 1.10. **Recommendation 6:** Ofcom should fully audit and scrutinise the input data that BT Openreach provides into the PIA pricing model to ensure that it does not contain double counting or other errors such as the one discussed in this response.
- 1.11. **Recommendation 7:** Ofcom should mandate that BT Openreach charges its own downstream services the same price for their use of PIA services as it charges its competitors, albeit dis-applying the "fair share" percentage discount for units of PIA that are not currently shared.
- 1.12. **Recommendation 8:** Require BT Openreach to report its PIA function as a separate Business Unit within its RFS to further improve transparency that it is operating with no undue discrimination.
- 1.13. **Recommendation 9:** Ofcom should monitor the evolution in the market for supplying Physical Infrastructure to properties that do not currently have it and work with Government on methods to incentivise investment from the whole market, not just BT Openreach, into installing this missing Physical Infrastructure.
- 1.14. **Recommendation 10:** Ofcom to provide a direction to BT Openreach, based on existing SMP remedies, that it should provide the same PIA contract term to its internal downstream customers and its third-party PIA customers.
- 1.15. **Recommendation 11:** Ofcom should review, and where necessary update, its metering and billing direction to include BT Openreach's PIA billing to third party operators.
- 1.16. **Recommendation 12:** Ofcom should test each of BT Openreach's FTTP price points for a margin squeeze between the costs of a reasonably efficient operator and the PIA costs.
- 1.17. **Recommendation 13:** Ofcom should not entertain informal discussions with BT Openreach about proposed changes to its commercial terms within markets where it has SMP. BT Openreach should present these proposals to industry at

the same time as formally notifying Ofcom. Then to ensure sufficient time for Ofcom and industry to consider those proposals, consult on them, and then for Ofcom to publish its decision a reasonable notification period should be 180 days (incorporating the time within which informal discussions would have previously taken place).

## **2. Introduction**

- 2.1. Community Fibre started to build its full fibre network in London in 2013. That network has now grown so that it is available to a third of properties in London (>1.3m properties).
- 2.2. Through our acquisition of Box Broadband we also serve properties across Surrey and Sussex, now under the Community Fibre brand.
- 2.3. Community Fibre is a significant customer of BT Openreach's PIA service renting over 11,000km of duct and 50,000 poles and paying over £0.6m per month in PIA rental charges to BT Openreach.
- 2.4. Our commitment to great value, excellent customer service and fast symmetrical broadband speeds has enabled us to win over 375k residential and business customers, with thousands of new customers joining our network each month.
- 2.5. We are one of the first Altnets to achieve EBITDA profitability.
- 2.6. We also make our network available to retail ISPs on a wholesale basis and we expect to see significant growth in our wholesale customer base in 2025/6.
- 2.7. In Section 3 of this report, we provide our response on the future of PIA regulation and our thoughts on preparatory actions that should be taken before 2031 to ensure the proper future regulation of the PIA near monopoly.
- 2.8. In Section 4 we respond to Ofcom's proposed PIA market definition and SMP finding.
- 2.9. In Section 5 we respond to Ofcom's proposals on PIA price control remedies
- 2.10. In Section 6 we respond to Ofcom's proposals on PIA non-pricing remedies
- 2.11. Finally in section 7 we respond to the risk of a margin squeeze on PIA from inappropriate pricing in the WLA market.

## **3. The Future of PIA**

- 3.1. The replacement of copper networks with new full fibre networks has presented a once in a life-time opportunity to introduce infrastructure competition into the

UK telecommunications market. A single opportunity to remove the significant market power, and associated regulation, that has characterised the market since privatisation over 40 years ago.

- 3.2. The CCTV roll out in the 1980s and 1990s showed how disruptive to communities, and capital destructive, the installation of competing physical infrastructure can be. The lesson learned was to make use of the existing physical infrastructure already installed wherever possible.
- 3.3. In that light physical infrastructure becomes the most upstream market that will remain a natural monopoly in the long-term. Strong remedies are required to ensure all market competitors have fair and equal access to this foundational market input.
- 3.4. In Vol 3 para 1.31 Ofcom states:  
“Our general regulatory approach continues to be to apply remedies as far upstream as possible to ensure that as much of the value chain as possible is open to competition. Mandating access to Openreach’s physical infrastructure has been transformational in enabling investment and deployment of fibre networks across the UK, as it reduces the cost and increases the speed of network rollout by competitors”
- 3.5. Community Fibre fully supports Ofcom’s regulatory approach to apply remedies as far upstream as possible.
- 3.6. The infrastructure investment and competition that has emerged since a useable version of PIA arrived in 2019 is testament to that regulatory approach. Ofcom recognizes this in Vol 3 para 5.18:  
“significant network deployment has occurred since the first introduction of the current PIA remedy in 2019”
- 3.7. Ofcom acknowledges that infrastructure investment and competition has exceeded its 2021 expectations in Vol 1 para 1.5:  
“Since 2021, we have seen significant build by Openreach and a wide range of other companies, putting the UK on course to deliver wide availability of gigabit-capable networks. Our regulatory framework has underpinned investment in full fibre of £3-6bn a year, and investment is still ongoing. Since May

2021, the number of premises with access to full fibre has increased from 6.9m premises (24%) to 20.7m (69%) in July 2024, while coverage of gigabit-capable networks has increased from 11.6m premises (40%) to 25m premises (83%). This level of build exceeds what we expected in 2021, giving even more consumers and businesses access to high quality gigabit-capable networks at increasingly attractive prices, allowing them to benefit from new and innovative services that play an important role in supporting economic growth.”

- 3.8. Ofcom acknowledges that the national PIA market is likely to remain a near monopoly market well beyond 2031. In Vol 2 para 3.58 Ofcom states:  
“Therefore we consider that the [PIA] market we have proposed will not, in the absence of regulation, tend towards effective competition.”
- 3.9. However, Community Fibre notes that the PIA remedies proposed by Ofcom are not intended to move the PIA market towards effective competition. Instead, they are intended to restrict BT Group’s ability to exploit its near monopoly position in the PIA market in a way that is detrimental to its downstream infrastructure competitors who have little choice but to be BT Openreach PIA customers.
- 3.10. There remains a competition question as to whether it is appropriate for the largest PIA user (BT Group) to retain ownership and control of this most upstream near monopoly, national, PIA market. This question has seemingly not been addressed within the TAR consultation. The PIA services have become such an essential input into all downstream competition we think Ofcom, and if not the CMA, should consider the appropriateness of this market being controlled by BT Group.
- 3.11. In Vol 3 para 4.51 Ofcom states:  
“Of the various forms of non-discrimination obligation, we consider EOI to be the most effective.”
- 3.12. The in Vol 3 para 4.52 Ofcom states:  
“While our strong preference is for EOI”
- 3.13. Community Fibre notes that Ofcom previously found that EOI was insufficient to prevent BT Group favouring its own downstream customers in the WLA market

and eventually imposed legal separation of BT Openreach along with the voluntary commitments.

- 3.14. In Vol 3 para 4.53 Ofcom leaves the possibility of EOI open in the future:  
“This gives us the option of imposing an EOI obligation in the future, while avoiding unnecessary disruption and cost.”
- 3.15. In Vol 3 paras 4.60 and 4.61 Ofcom provides its justification as to why it is not appropriate to impose an EOI remedy on BT Openreach now:  
“To implement full EOI today would therefore require extensive re-engineering with the associated disruption and cost”  
“(impacting on availability of key services at an important time for network rollout, including connecting customers to the new networks that have been built)”
- 3.16. Community Fibre agrees that imposing EOI on BT Openreach with only 12-months’ notice might cause unnecessary disruption to the physical infrastructure services at an important build phase.
- 3.17. Ofcom’s current market review process only produces a consultation document 12 months prior to the new set of remedies being introduced. This means that if future reviews are run to the same process this “disruptive” short notice period will always remain as a reason not to impose EOI at each future market review.
- 3.18. By 2031 it will have been 12 years since the current form of PIA was introduced. A period in which BT Openreach has been working under an obligation to make upgraded PIA systems, services and process available to its competitors on an EOI basis (unless there were justifiable reasons not to).
- 3.19. Also by 2031 it is likely that much of the full-fibre build will be complete and so the regulatory focus will shift onto the ongoing operation and optimisation of the shared PIA infrastructure. Indeed, Ofcom states in Vol 3 para 1.15:  
“By the end of 2031, network deployment plans suggest gigabit-capable coverage will potentially reach 98% of premises, and full-fibre coverage potentially reaching 97%”
- 3.20. As BT Openreach continuously develops its PIA systems, processes and services it seems logical to conclude that at some point in the future they will all be available to its competitors on an EOI basis.
- 3.21. Given the rate of technological change it would seem reasonable that all systems, processes and services would have been updated during a period of

over ten years since the current version of the PIA service was made available in 2019.

3.22. In Vol 1 of its consultation document Ofcom included a section entitled 'Our Approach beyond 2031' and at Vol 1 para 2.59 Ofcom states:

"[Sustainable competition] will put us on a path to even greater deregulation in the future, allowing competition to replace regulation permanently."

3.23. It is important to investors, that have risked capital on long-term (20+ years) business models based on the use of PIA, that they have the reassurance that Ofcom will continue to mandate access to BT Openreach physical infrastructure on a level playing field whilst BT Openreach retains its significant market power (SMP) in this market, and that there are no signs that this SMP will diminish for the foreseeable future and well beyond 2031. It would help investor confidence if Ofcom could be more transparent about the criteria that would need to be met for PIA regulation to be reduced rather than enhanced to EOI.

3.24. In Vol 2 para 3.50 Ofcom states:

"We do not foresee any developments in the availability of alternative physical infrastructure that would change this conclusion. We recognise that providers may build some new telecoms physical infrastructure during the review period. However, we do not expect this to be of sufficient scale that it would lead to appreciably different competitive conditions in those areas where it occurs."

3.25. In Vol 2 para 3.51 Ofcom goes on to say:

"Moreover, the choice of which telecoms physical infrastructure to use to deploy a network in a given area is likely to be a one-off permanent decision – once a network is rolled out using a given telecoms physical infrastructure and connected to premises, large business or mobile sites, there are very high barriers to switching that network into a different physical infrastructure."

3.26. **Recommendation 1:** Ofcom should make it clear in the introduction to its TAR Statement that it does not anticipate that competition will emerge in the PIA



market and so regulation of that market is likely to still be required far beyond 2031.

3.27. In Vol 1 para 2.59 Ofcom states:

**“By 2031, our strategy will have allowed a window of ten years for network rollout to occur and competition to develop.”**

3.28. Payback on a new network typically takes at least 7 to 8 years and in 2031 a significant proportion of newly installed networks will still be younger than that. So we anticipate SMP will still exist in most markets in 2031. SMP will be enduring in the PIA market which will remain a near-monopoly.

3.29. **Recommendation 2:** Ofcom should set an ambition in its statement that the PIA service should be ready for Ofcom’s preferred remedy of EOI by the time of its 2031 review.

3.30. One of the barriers preventing an earlier move to a PIA EOI remedy is the lack of transparency and agreement on the services, process and systems that could be used equally by BT Group competitors and downstream companies within the BT Group.

3.31. One solution to this barrier would be to instigate a cross industry working group to map out the ‘To Be’ PIA processes that industry would use under a future PIA remedy.

3.32. This work would help to increase transparency on where process discrepancies currently exist, identify required data-flows and the systems (and APIs) that would support these and help to identify the measures and KPIs that industry can use to measure the efficiency and equality of the service.

3.33. The Office of the Telecommunications Adjudicator (OTA) has previously demonstrated its capability in convening industry stakeholders and facilitating cross industry process mapping exercises.

3.34. **Recommendation 3:** As part of its market review statement Ofcom should commission the OTA to facilitate a cross industry working group that can map out the ‘To Be’ processes that could be used for a future PIA EOI remedy.

3.35. In Vol 3 para 5.10 Ofcom states:

**“our provisional view is that BT’s SMP in the physical infrastructure market is entrenched and enduring, leading to a significant competitive imbalance between BT and alternative telecoms providers.”**



- 3.36. Establishing the appropriate long-term remedy for the PIA near-monopoly market has similarities to Ofcom's previous work on the interface between the wholesale access market and the retail broadband market earlier in this century.
- 3.37. Even after Ofcom had applied an EOI remedy in the wholesale access market Ofcom subsequently found that BT Group were able to use many subtle techniques to favour their own downstream companies over competitors.
- 3.38. Ultimately Ofcom concluded that it had to go beyond EOI and insist that BT Group legally separated BT Openreach into a separate entity along with a series of voluntary commitments that continue to be monitored by Ofcom.
- 3.39. **Recommendation 4:** Ofcom should review the lessons it learnt from its 'remedy journey' in the WLA market and ensure those lessons are applied to the PIA market. Ofcom should consider whether legal separation of the near monopoly PIA function from BT Openreach is required in the future.

## 4. The PIA Market Definition and SMP Finding

- 4.1. In Vol 2 para 3.49 Ofcom concludes:
- "that competitive constraints on BT in supplying access to its physical infrastructure are limited in all areas (even where alternative physical infrastructure is available), and so competitive conditions are likely to be similar, such that we should provisionally define a national market."
- 4.2. In Vol 2, para 3.38 Ofcom notes:
- "we consider access seekers are likely to seek to minimise the number of alternative infrastructures used to deploy their network, due to the costs and uncertainty associated with combining multiple infrastructures. These include the cost and time of undertaking civil works to break in and out of different infrastructures, and the duplication of maintenance costs associated with multiple infrastructures"
- 4.3. We confirm that there are significant cost efficiencies in using a single duct and pole network. As well as the extra costs identified by Ofcom in using alternative physical infrastructure there are also the costs associated with managing the additional supplier relationships. Community Fibre has investigated using

alternative utility physical infrastructure in the past and found it to be uneconomic to proceed for these additional cost reasons.

- 4.4. For this reason and in response to Ofcom's consultation question 2.4 we do agree with Ofcom's provisional finding of its PIA Market definition and that BT Openreach has SMP within that market as defined.
- 4.5. At Vol 2 para 3.37 Ofcom notes:  
"We propose that a ubiquitous infrastructure is likely to have material advantages over non-ubiquitous infrastructure for access seekers, wherever and however they seek to deploy. By ubiquitous, we mean an infrastructure which provides the ability to connect to any premises or site within a given geographic area, rather than an infrastructure which provides national coverage (although an infrastructure which provides national coverage will also be ubiquitous)."
- 4.6. Ofcom's definition of ubiquitous recognises that BT Openreach's physical infrastructure network extends to most, but not all, properties in the UK. We assume that many of the properties that do not have a useable BT Openreach Physical Infrastructure lead-in will be in the 23%<sup>1</sup> of UK properties that do not yet have a fibre-optic connection. We expect a close correlation between 'hard to reach' properties and a lack of useable BT Openreach Physical Infrastructure at a property.
- 4.7. The current PIA remedies do not mandate BT Openreach to provide Physical Infrastructure to those properties although universal service obligations might cover some of them.
- 4.8. We agree that there is no need to oblige BT Openreach to provide Physical Infrastructure to those properties that currently sit outside of the market as alternative solutions emerge, for example:
- > BDUK Project Gigabit has procured the installation of Physical Infrastructure across many regions from multiple different operators.
  - > Cooperative Network Infrastructure (cni.coop) have been developing supply relationships that enable owners of physical infrastructure to more easily share their assets.
  - > BT Openreach will extend its own Physical Infrastructure to some of these

---

<sup>1</sup> Based on ThinkBroadband data on 4<sup>th</sup> June 2025

properties where it is commercially viable or it can obtain sufficient subsidy to do so.

- 4.9. **Recommendation 9:** Ofcom should monitor the evolution in the market for supplying Physical Infrastructure to properties that do not currently have it and work with Government on methods to incentivise investment from the whole market, not just BT Openreach, into installing this missing Physical Infrastructure.

## 5. The PIA Pricing Remedy

- 5.1. We support the analysis and recommendations made in INCA's response to the TAR consultation. Through shared effort and financial contributions from members INCA can commission specialist accounting resource that can review the PIA pricing methodology in detail. It would be inefficient for Community Fibre to duplicate that analysis.
- 5.2. Nevertheless, we do make the following additional observations and recommendations.
- 5.3. At vol 3 para 4.13 Ofcom states:  
"We consider that for each relevant fixed telecoms market there is a risk that Openreach might fix or maintain some or all of its prices for network access at an excessively high level, or impose a price squeeze."
- 5.4. At vol 3 para 5.9 Ofcom states:  
"absent regulation Openreach would have the incentive and ability to favour BT's downstream businesses over competing telecoms providers in the relevant downstream markets, distorting competition in these markets"
- 5.5. It is important to note that the regulation does not remove BT Openreach's incentive to favour BT's downstream businesses and so BT Openreach are likely to test the limits of the regulations in this regards.
- 5.6. By means of a recent example at vol 2 para 2.8 Ofcom states:  
"These providers had ordered 185,000 km of duct (compared to a total of 496,000 km in Openreach's network), and over 111,000 km had already been used. . . . They had ordered approximately 1.3m attachments to poles across Openreach's

4.1m poles, of which 830,000 attachments had already been used.”

- 5.7. These figures are also used in vol 3, fig 5.1
- 5.8. BT Openreach have subsequently conceded that these figures include double counting where more than one competitor has made use of the same duct or pole. This double counting has inflated the duct used figure by 79% and the poles used figure by 27%.
- 5.9. At vol 4 para 4.53 Ofcom states:  
“[Ofcom’s] analysis suggests that c. 24% of single bore spine duct will have more than one altnet accessing that duct using PIA. Therefore, it would be appropriate for 24% of single bore spine duct to have a fair share of 33% (or in the very rare circumstances 25%) with the remaining single bore spine duct having a 50% fair share.”
- 5.10. Ofcom’s analysis fails to recognise that there are also scenarios where the same Altnet competitor may have purchased more than one 25mm sub-duct within a single-bore duct to serve different property clusters further down the route. Unfortunately, due to the lack of detail in BT Openreach’s PIA billing data it is not currently possible for Community Fibre to identify exactly how many single-bore ducts we are being charged for multiple sub-ducts. Our estimate across our entire PIA duct estate (60% single bore, 15% 2-bore, 25% 3+ bore) is that we have more than one sub-duct in around a third of the duct routes we use and there are many instances where we have more than one sub-duct in a single bore duct. We continue to analyse our PIA data to see if we can find a way to establish how many single-bore ducts have more than one Community Fibre sub-duct within them. We will share this data with Ofcom if and when it becomes available.
- 5.11. Whilst we welcome Ofcom’s recognition of the multi-use issue within its single bore sharing calculation, there is a stark difference between Ofcom’s estimate of 24% multi use and the 79% multi use indicated in BT Openreach’s latest figures. Although it might be possible to explain some of this from multi-use in multi-bore ducts it still indicates that Ofcom’s estimate of multi-use in single bore ducts is low. Combined with the additional multi-use described in the para above the multi-use of single bore duct should be higher and hence the unit cost share should be lower.

- 5.12. **Recommendation 5:** Ofcom should re-evaluate the proportion of single-bore duct that is being “paid-for” more than once by a PIA competitor and reduce the unit price share for single-bore duct accordingly.
- 5.13. Applying the correct price for PIA is critical in meeting Ofcom’s objective of encouraging investment into infrastructure competition. Community Fibre accepts that BT Openreach should be able to recover its fair costs, including a fair return, for providing the PIA service. The over recovery of those costs is a significant risk to those investing into competing infrastructure. Not only do they pay extra for their PIA services, which is an unavoidable input into their own business model. They also face BT Group using its excess profits from PIA to subsidise services in other markets making them harder to compete against.
- 5.14. At vol 3 para 5.11 Ofcom states:  
“It is important that there is an effective remedy in place to sustain this network competition and support it in becoming established, as well as facilitating further competitive network deployment.”
- 5.15. Community Fibre continues to have a concern that BT Openreach will provide Ofcom with input data designed to inflate the regulated PIA prices to over recover its fair costs.
- 5.16. **Recommendation 6:** Ofcom should fully audit and scrutinise the input data that BT Openreach provides into the PIA pricing model to ensure that it does not contain double counting or other errors such as the one discussed in this response.
- 5.17. One way to reduce the incentive on BT Openreach to unreasonably inflate PIA prices would be if downstream services within BT Group, including other parts of BT Openreach, paid for PIA services using the same pricing basis as its competitors.
- 5.18. In Vol 4 para 4.3 Ofcom explains:  
“The way we set PIA rental charges means they are not intended to be paid by Openreach in relation to its own use of the physical infrastructure. This is because the charges are set assuming they will apply to infrastructure that is being shared, i.e. used by third parties as well as Openreach. A large part of Openreach’s own use of its physical infrastructure occurs where there are no third parties using the infrastructure, so

there are no revenues from third parties paying rental charges. Therefore, if Openreach were to pay the PIA rental charges we set, it would not recover its costs where infrastructure is not shared.”

5.19. The seemingly straightforward solution to the problem described by Ofcom is to disapply the “fair share” unit price discount to the PIA units that BT Openreach is not sharing. If BT Openreach’s prices are truly cost-based and the fair-share percentages are correct then the internal cost of the PIA service for downstream services would be the same (ie cost based).

5.20. Such an approach would further incentivise BT Openreach to maximise the sharing of its physical infrastructure to drive down the cost to its own downstream services.

5.21. Ofcom already states that using internal transfer charges that are consistent with the charges faced by competitors is a way that it interprets the no undue discrimination obligation in relation to Ancillary Services and so the same logic should apply to other PIA services. In Annex 11 para A11.44 it states:

“To ensure that other telecoms providers are not at a disadvantage to Openreach with respect to network adjustment charges above the financial limit, we propose to continue to interpret the no undue discrimination obligation to mean that Openreach should charge itself internal transfer charges for network adjustments which are consistent with the charges faced by competing telecoms providers using PIA (to the extent that a different approach cannot be justified).”

5.22. **Recommendation 7:** Ofcom should mandate that BT Openreach charges its own downstream services the same price for their use of PIA services as it charges its competitors, albeit dis-applying the “fair share” percentage discount for units of PIA that are not currently shared.

5.23. Community Fibre welcomes Ofcom’s proposals to make BT Openreach’s reporting of its own internal PIA cost allocation more transparent. At vol 6 para 4.74 states:

“We therefore propose that BT publishes an appendix which provides a breakdown by Openreach SMP market of:

- the attribution of PI costs (as currently summarised in the

performance summary by market schedule); and

- internal PI volumes (as currently reported in the PI market level schedule). The proposed format of the schedule is shown below, with illustrative totals taken from the 2023/24 RFS.”

- 5.24. However, the adoption of transparent charging for PIA at the regulated price (see recommendation 7 above) would mean that the BT Openreach PIA function could be reported as a separate Business Unit within the RFS. This would increase transparency even further, align with Ofcom’s separate market definition for PIA and facilitate the move towards Ofcom’s preferred regulatory approach of EOI later.
- 5.25. **Recommendation 8:** Require BT Openreach to report its PIA function as a separate Business Unit within its RFS to further improve transparency that it is operating with no undue discrimination.

## 6. The PIA Non-Pricing Remedies

- 6.1. As discussed above we accept that it would be too disruptive for Ofcom to impose a full EOI remedy upon BT Openreach in the PIA market to start in April 2026 even though EOI remains Ofcom’s preferred remedy and should be prepared for in 2031.
- 6.2. Ofcom’s proposed compromise for the 2026 – 2031 review period is to impose a “No Undue Discrimination” remedy upon BT Openreach to prevent it from exploiting its Significant Market Power in the national PIA market.
- 6.3. In Vol 3 para 5.2 Ofcom confirms the criticality of a successful PIA remedy in meeting its objectives:
- “We consider PIA to be our primary remedy for promoting network competition and investment in WLA and LLA networks. Mandating access to Openreach’s physical infrastructure has been transformational in enabling investment and deployment of fibre networks across the UK, as it reduces the cost and increases the speed of network rollout by competitors. An effective PIA remedy is critical as it secures the access to Openreach’s physical infrastructure for existing altnet deployment, future expansion and connecting customers to networks.”



- 6.4. We agree and would add that re-use of existing Physical Infrastructure is better for the environment and less disruptive for the communities we serve.
- 6.5. In Vol 3 para 5.4 Ofcom explains the purpose of the proposed PIA remedies:  
“Our proposed regulation should ensure that other network providers have access to PIA services on terms that provide a level playing field with Openreach’s own use.”
- 6.6. In Vol 3 para 4.71 Ofcom states:  
“In relation to where Openreach supplies PIA to BT downstream, we consider our proposed NUD condition would require Openreach to supply PIA to BT downstream divisions on an equivalent basis to how third parties use PIA.”
- 6.7. In Vol 3 para 4.64 Ofcom states:  
“This means that any difference must not put PIA users at a disadvantage, particularly in terms of extra cost, time or uncertainty, compared to the processes Openreach follows internally.”
- 6.8. Currently BT downstream businesses can submit bid proposals for the supply of services on the basis that they have the indefinite and ongoing right to make use of BT Openreach’s PIA services. Third party users of BT Openreach’s PIA services are only able to obtain a maximum five-year commitment from BT Openreach to make its PIA service available. This prevents third party PIA customers from bidding for some work that mandate the continuous supply of services beyond five years.
- 6.9. In Vol 3 para 5.60 Ofcom states:  
“We understand that Openreach is considering offering a minimum contract length of longer than five years. We consider that this would be beneficial in cases where potential end-users of altnets place weight on the minimum contract length as an indicator of long-term security of supply. We note that we would not expect Openreach to set different PIA rental charges where this is offered.”
- 6.10. The current situation puts PIA users at a disadvantage in terms of extra uncertainty compared to BT Openreach’s internal upstream customers. Where this type of discrimination is identified we would expect Ofcom to make a

direction to BT Openreach to resolve the discrimination rather than wait for BT Openreach to propose something. We also note that the PIA pricing remedies proposed by Ofcom are price-caps that BT Openreach must not price above. It will be BT Openreach's own commercial decision on whether to charge less to factor in their benefits of having a longer commitment term, as long as the charges remain fair and reasonable.

- 6.11. **Recommendation 10:** Ofcom to provide a direction to BT Openreach, based on existing SMP remedies, that it should provide the same PIA contract term to its internal downstream customers and its third-party PIA customers.
- 6.12. One key difference between the PIA service BT Group consumes internally and the service provided to third parties is that BT Openreach bills for the services provided to third parties.
- 6.13. The quality of the PIA billing data provided by BT Openreach is poor. It is not provided in a format that is easily ingestible by standard data analytic tools and seemingly there is no method for reconciling PIA billing data back to the individual assets that give rise to a particular charge.
- 6.14. This creates an audit issue for BT Openreach's PIA customers and makes it difficult to identify duplicate, or indeed, missing charges. The issue is further exacerbated by the fact that BT Openreach can raise additional 'unauthorised use' charges against their PIA customer for assets that are missing from the bill, even though the PIA customer has no ways of verifying that from the provided billing data.
- 6.15. The poor quality of the billing data consumes significant additional administrative resource within BT Openreach's PIA customers in deciphering the billing data and carrying out arduous manual checks on its veracity. Administrative resource that BT Openreach does not have to expend in its own use of the PIA service.
- 6.16. Ofcom has a long history of campaigning for transparent and accurate billing data particularly in the consumer market where it has incorporated its metering and billing direction into the General Conditions of Entitlement. We think PIA billing should be held to the same standards as other billing systems within the industry.
- 6.17. **Recommendation 11:** Ofcom should review, and where necessary update, its metering and billing direction to include BT Openreach's PIA billing to third party operators.
- 6.18. In Vol 3 para 4.70 Ofcom states:

**"We encourage Openreach to continue to make use of the**

industry forum to share details of any developments under consideration in advance, and gather industry feedback, so it can better consider impacts on the level playing field.”

6.19. Community Fibre engage with the industry forum to highlight areas where there is an imbalance between PIA consumption by BT Openreach when compared to third party providers. Recent examples have included differences in the evidence required to support damage claims, lack of transparency and updates on BT Openreach’s A1024 process for reporting damaged equipment and the appropriateness of BT Openreach charging ‘penalty’ fees for missing asset orders. Penalty fees are not cost orientated and so would enable BT Openreach to over-recover its costs.

6.20. In Vol 3 para 5.42 Ofcom states:

“We propose to maintain the specific requirements for the publication of a Reference Offer in relation to PIA. As part of our proposed general remedies, we also propose that Openreach is required to publish an “Internal Reference Offer” (IRO) detailing any differences, including in regard to processes and IT systems, between Openreach’s own use of its physical infrastructure for the deployment and operation of full-fibre networks, compared to the equivalent processes and systems for PIA.”

6.21. There is sufficient time prior to the next review in 2031 to close the gaps identified in the IRO.

6.22. As per our Recommendation 3 we think an industry forum, facilitate by the OTA, should design “To Be” processes that will enable Ofcom to move PIA to its preferred remedy of EOI from 2031 onwards. Given that most build will be complete by 2031 the work should prioritise the PIA services that are used for the ongoing operation of the network.

6.23. By adopting one of the standard process mapping methodologies the work will not only define the “equivalent” process that can be used by all parties, it will also identify the data flows, APIs and systems required to support that process and identify where KPI measures should be taken (normally at organisational handover points) in order to measure the efficiency of the process.

6.24. In Vol 3 para 4.74 Ofcom acknowledges:

“These KPIs continue to be discussed at an industry level and

we expect there to be some ongoing development as to the exact KPIs/metrics reported.”

6.25. Adopting our process mapping proposal will help to progress these KPI discussions.

6.26. If Ofcom is supportive of the recommendation, and willing to commission the OTA, then there is no reason why the process mapping exercise could not start prior to April 2026.

## 7. The PIA Margin Squeeze

7.1. In Vol 3 para 1.27 Ofcom states:

“we [Ofcom] expect take-up to be a key driver for altnets to secure continued investment, complete any further build, sustain ongoing network operations and potentially consolidate, with a view to ultimately establish themselves as material and sustainable competitors to BT. Therefore, in proposing remedies, we need to be mindful of the impact on competition between networks to increase take-up (as well as the impact on network rollout). In particular, we consider it important that regulation should address BT’s SMP in a way which maintains a reasonable opportunity for altnets to compete and increase take-up during this review period.”

7.2. We agree with Ofcom’s expectations, and we question whether price caps on BT Openreach in WLA Area 2 are still necessary.

7.3. If BT Openreach were to impose a small but significant non-transitory price increase across the whole of WLA Area 2 (our assumption is that restrictions on geographic, volume and other commercial terms offers would remain) then this would provide an incentive for BT Openreach ISP customers to switch to using a cheaper alternative access network. Where no alternative network existed then the BT Openreach wholesale price rise would provide an incentive for an alternative network to build and make their access services available for BT Openreach’s retail ISPs to consider.

7.4. In Vol 3 para 4.24 Ofcom acknowledges:

“there is still a risk of a price squeeze between PIA prices and

FTTP prices even where PIA prices are charge controlled at cost”

- 7.5. In Vol 3 para 4.28 Ofcom further clarifies its WLA pricing requirement:  
“We interpret this requirement for fair and reasonable charges to mean Openreach should not set prices that leave an insufficient margin between its weighted average FTTP price and PIA prices”
- 7.6. In Vol 3 foot note 118 Ofcom further clarifies:  
“While we would assess any dispute on the relevant facts, our starting point for assessing a dispute is that a sufficient margin should be based on the costs of a reasonably efficient operator.”
- 7.7. We are concerned by Ofcom’s proposal to only use BT Openreach’s weighted average FTTP price in its comparison test for a margin squeeze between WLA pricing and PIA pricing. The weighted average could easily be skewed by a low use but very high outlier priced FTTP service. Or a high-volume price point could be significantly discounted by increasing the price of other high volume price points whilst maintaining the same weighted average.
- 7.8. **Recommendation 12:** Ofcom should test each of BT Openreach’s FTTP price points for a margin squeeze between the costs of a reasonably efficient operator and the PIA costs.
- 7.9. We are aware that INCA have analysed the Fibre Cost Model in detail and Community Fibre has supported that work. In their response they make several proposals to improve and correct the Fibre Cost Model. These would have the impact of increasing the costs of a reasonably efficient operator and hence the wholesale price they would need to charge. We support those proposals from INCA.
- 7.10. At Vol 3 para 4.45 Ofcom states:  
“In the WLA and LLA Area 2 markets, our proposed NUD condition retains a provision which expressly states that different prices in different geographic areas for certain rental charges may be deemed to constitute undue discrimination in breach of the prohibition. We propose to extend this provision so that it also applies where different prices are charged in

different areas in respect of certain connection charges. In the WLA Area 2 market, we are proposing a similar NUD condition where Openreach makes a retail offer to consumers, which is intended to incentivise them to buy broadband services provided over Openreach's network, and the nature of the offer varies according to the location of the consumer or is only available to consumers within certain areas covered by Openreach's network."

- 7.11. Community Fibre agrees with Ofcom that BT Openreach has incentives to undermine new entrants in ways that harm competition in the long term. We welcome the prohibition of geographic discounts to connection charges as well as the prohibition of retail offers to consumers by BT Openreach.
- 7.12. At Vol 3 para 4.141 Ofcom states:  
"we are proposing to extend the notification period [for other commercial terms] from 90 days to 120 days"
- 7.13. Community Fibre welcomes this extension to the notification period. Proposals from BT Openreach can be complex to analyse and to review their impact, as was evidenced by their Equinox and Equinox 2 proposals. We would suggest that 180 days notification might be more appropriate to give Ofcom proper time to evaluate the proposal, publish an industry consultation document and then reflect on the consultation responses and publish its decision.
- 7.14. At Vol 3 para 9.44 Ofcom states:  
"Openreach can discuss the proposed consent request with us on an informal basis. This is not a requirement but may be helpful i.e. so we can share any initial concerns with Openreach, and it could allow us to conduct initial analysis ahead of formal notification which could aid overall expediency of the process."
- 7.15. We are concerned by the perceived, or actual, lack of transparency such informal discussions might introduce to the process.
- 7.16. When Community Fibre has sought guidance from Ofcom in the past on how it should interpret various regulations the response from Ofcom is normally that we should take our own independent legal advice on how the regulations should be interpreted.

- 7.17. Whilst the response is frustrating, we understand the principle that Ofcom, as a transparent and independent regulator, must not be seen to fetter its decision-making powers, by providing legal guidance.
- 7.18. This same principle should apply to new commercial terms proposed by BT Openreach. An informal chat with Ofcom prior to Ofcom consulting with other industry participants is inappropriate. BT Openreach should notify industry of proposed commercial terms at the same time as it formally notifies Ofcom of those terms and prior to any other discussions with Ofcom.
- 7.19. **Recommendation 13:** Ofcom should not entertain informal discussions with BT Openreach about proposed changes to its commercial terms within markets where it has SMP. BT Openreach should present these proposals to industry at the same time as formally notifying Ofcom. Then to ensure sufficient time for Ofcom and industry to consider those proposals, consult on them, and then for Ofcom to publish its decision a reasonable notification period should be 180 days (incorporating the time within which informal discussions would have previously taken place).