11 June 2025

nexfibre response to TAR consultation documents

Executive Summary

nexfibre welcomes the opportunity to provide this response to the draft Telecoms Access Review (TAR). Ofcom's decision in the TAR is essential for the future growth and development of connectivity in the United Kingdom. The market is at a critical juncture. While there has been significant deployment of fibre network since the WFMTR decision in 2021, supported by the Physical Infrastructure Access (PIA) regime, sustainable competition to Openreach has yet to become established.

The regulatory position must facilitate the continued investment in and growth of sustainable competition. We welcome the consistent approach proposed by Ofcom in the TAR - a stable regulatory framework is critical for network operators and investors alike. There are certain areas where Ofcom's approach can be further refined to better promote competition, drive growth, facilitate build and network penetration and ultimately deliver for UK consumers and businesses.

Network operators are increasingly focused on the take-up of services on their networks to drive return on investment. As acknowledged in the TAR, Openreach has the ability and incentive to engage in anti-competitive behaviour. It is critical that regulation of Openreach is effective in restraining anti-competitive, exclusionary pricing schemes or other commercial arrangements which prevent switching to rival networks. Failure to do so will undermine the long-term viability of rival networks and disincentivise investment in this market.

PIA has been a success story of Ofcom regulation. It is now a critical input for almost every network operator and PIA costs have become a material component of operating costs. Effective, long-term regulation of PIA is fundamental for network operators and investors. Ofcom should commit to regulation of this market beyond the period of the TAR.

We welcome Ofcom's indication that regulation of Openreach will be continued if appropriate after 2031. We also welcome the recognition that consolidation is likely to be a critical part of the next period of market development and will in many cases have a pro-competitive effect.

We outline our position on the following key areas below:

- **Geographic areas**
- **Exclusionary behaviour through pricing schemes and other commercial terms**
- **Long-term regulation of PIA**

Geographic areas
nexfibre strongly supports Ofcom's the finding that no part of the country has seen the development of sufficiently established competition to Openreach and that therefore no area yet fulfils the criteria to be considered Area 1. This finding provides the regulatory framework to facilitate further investment, encourage growth, network build and allows network operators to drive further take-up on their networks, which is critical for the long-term development of this market. Deregulation of Openreach through an incorrect finding of Area 1 would be premature and would fundamentally harm the progress being made by nascent competition. We welcome Ofcom's recognition that the existence of competing networks alone is not an indicator of sustainable competition, but that other factors including penetration should also be assessed.

Exclusionary behaviour through pricing schemes and other commercial terms
nexfibre welcomes the explicit recognition by Ofcom that Openreach has both the ability and incentive to engage in anti-competitive behaviour. We also welcome the greater engagement by Ofcom with different forms of pricing and other commercial terms which could have anti-competitive effect by excluding rivals from the market. There are a variety of behaviours which can damage competition and it is encouraging that Ofcom has identified a wider range of problematic arrangements than were identified in the WFTMR.

We agree with Ofcom's position that WLA pricing must be fair and reasonable, and we welcome Ofcom's acknowledgment that it may engage in margin squeeze analysis where appropriate. We are concerned, however, that Ofcom proposes to rely on the Fibre Cost Model (FCM) to prevent a margin squeeze. While the FCM is a useful starting point for analysis, a tailored margin squeeze test is more appropriate to guard against foreclosure of competition.

Assessing pricing schemes and other commercial terms is essential to ensure that they do not have an anti-competitive effect. The burden of proof for demonstrating this should fall on Openreach as the SMP operator. Based on the market's experience with the introduction of Equinox 2, it is key that all stakeholders have the opportunity to effectively engage in the process and that all relevant information is properly assessed. For this reason, we welcome the extension of the review period for geographic pricing and conditional terms. We propose that this extension of time should apply to all notified schemes and terms, to better allow for full and transparent review.

We also note that the period of the TAR will see progress in the copper switch-off process. This creates additional incentives for BT to engage in exclusionary migration schemes and strategies, driven by their desire to replicate their dominant copper market share in fibre. It is critical that Ofcom is alive to this risk and does not consent to exclusionary schemes due to claims from Openreach or other stakeholders that they are essential for the copper switch-off process.

Long-term regulation of PIA
PIA has become an indispensable part of the market, with the vast majority of network build carried out during the WFTMR period utilising PIA to some degree. Having built a network

using PIA, a network operator has created a long term reliance on the product; large scale steps to remove a network from the Openreach infrastructure would be uneconomic and implausible. As a result, PIA is an essential input for networks and PIA costs have become a critical component of operating costs. Therefore, certainty that PIA regulation will continue in the long-term is essential; and Ofcom should give more clarity regarding the position after 2031.

While Ofcom has made significant improvements in PIA regulation, certain issues remain. The lack of transparency in the RFS and cost model inputs creates real challenges for PIA users in assessing if pricing is on a fair share basis. This must be addressed to ensure confidence in the PIA product and prices and we outline the areas where this can achieved in this response. Without this transparency, PIA users are unable to validate that costs are fair and proportionate.

We have also outlined other areas where inputs to the model can be adjusted to better reflect how PIA is used. These are outlined in detail in our response and also in the report by SPC Network commissioned by the PIA Coalition and submitted separately.

About nexfibre

nexfibre is a key platform to unlock the growth opportunity presented by ultra-fast, future-proof, full-fibre broadband. We are building an XGS-PON network, passing over 2.2 million premises across the United Kingdom to-date. Our network is available on a wholesale basis, providing critical competition to Openreach.