

**Openreach's response to
Ofcom's Consultation:
"Promoting competition and
investment in fibre networks:
Telecoms Access Review"
Document 6**

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Introduction

This document forms part of Openreach's response to the Consultation, and covers responses to TAR Volume 6 and the Annexes.

The full structure of the Openreach response is:

Openreach TAR Response Document 1	Executive Summary and Overall view on Market Analysis and Remedies
Openreach TAR Response Document 2	Responses to questions in TAR Consultation Volume 2
Openreach TAR Response Document 3	Responses to questions in TAR Consultation Volume 3
Openreach TAR Response Document 4	Responses to questions in TAR Consultation Volume 4
Openreach TAR Response Document 5	Responses to questions in TAR Consultation Volume 5
Openreach TAR Response Document 6	Responses to questions in TAR Consultation Volume 6 and Annexes
Annex 1: NERA Report: Response to Ofcom's TAR	Supports points on Market Analysis and Remedies in documents 1 to 4
Annex 2: Network Technology Report	Supports points on Market Analysis in documents 1 and 2
Annex 3: Criteria for Geographic Deregulation in Wholesale Broadband (Assembly Research report)	Supports points on Market Analysis in documents 1 and 2

This document covers:

- A reference to the BT Group response for answers to questions set out by Ofcom in Volume 6, Regulatory Reporting.
- Our assessment of the legal framework Ofcom set out in Annex 5. Here we raise concerns that Ofcom has not correctly applied the legal framework in its assessment of each of market definition, SMP and remedies.
- Responses to Ofcom's questions in Annex 21, Impact Assessment.
- A query on the inconsistency in postcode sectors between WLA and LLA.
- A glossary of acronyms used throughout the report.

This response includes commercially sensitive information which is highly confidential to Openreach, publication of which would significantly harm Openreach's legitimate business interests. The document is considered confidential in its entirety and its contents should not be published or disclosed to any third party without Openreach's prior agreement. This response has been provided on the basis that it will only be used for the purpose of Openreach Telecoms Access Review 2026-31 and for no other purpose, unless otherwise agreed in writing by Openreach.

Openreach's response to Ofcom's Consultation: Promoting competition and investment in fibre networks: Telecoms Access Review: Document 6 – Responses to questions in TAR Volume 6 and Annexes

1. Regulatory Reporting

For responses to Questions 6.1 to 6.5 please refer to the response submitted by BT Group.

2. Response to legal framework in Annex 5

1. Annex 5 to the TAR Consultation sets out the legal framework that applies to Ofcom's market review. We note in particular the following relevant aspects of the framework:

Market definition

2. When defining a market:
 - i. Ofcom must carry out a forward-looking assessment of the market (section 79(1A) of the Communications Act 2003 (the **Act**)).
 - ii. Ofcom may have regard to certain recommendations or guidelines published by the European Commission, and guidelines published by BEREC (EECC **materials**) relating to market identification and analysis (section 79(2ZA) of the **Act**). This includes, for example, the European Commission Recommendation on relevant product and service markets 2020 (the **2020 EC Recommendation**).
 - iii. Ofcom must consider whether three criteria are met: whether high and non-transitory structural, legal or regulatory barriers to entry are present; whether there is a market structure that does not tend towards effective competition within an appropriate time period; and whether competition law alone is insufficient to address the identified market failure (sections 79(2A) and (2B) of the **Act**).
 - iv. Ofcom notes that it uses competition law methodologies for the purposes of market definition (with respect to product and geographic scope) but caveats that the markets identified may not necessarily be the same as those defined in an ex post competition law case, given the requirement to consider the market on a forward-looking basis, as well as the starting point excluding SMP regulation.¹ We would observe, however, these observations would not justify departure from the core principles of market definition.
 - v. The starting point of any analysis must be an assessment of the competitive conditions in the relevant retail market before looking to upstream conditions and assessment in the relevant wholesale market.

¹ TAR Annex 5, para 5.21 *et seq.*

- vi. According to established case-law, the relevant geographic market comprises an area in which the conditions of competition for the relevant products or services are sufficiently homogeneous, as distinguishable from neighbouring areas where prevailing conditions of competition are significantly different.² Geographic areas in which competition conditions are heterogeneous do not constitute a uniform market.
3. Defining the relevant market is a crucial first step – SMP can only be assessed properly once the appropriate market has been objectively defined.³ This exercise must be based on the approach to market definition taken by competition authorities. As Ofcom itself notes, the key consideration is to identify areas within which competitive conditions are sufficiently similar to enable them to be grouped together as one geographic market.⁴⁵
4. Given this, Openreach is concerned that Ofcom has not sufficiently established and evidenced the homogeneity of the competitive conditions in its proposed geographic market areas. On the contrary, in some of those proposed markets, it is clear (as has been demonstrated further in Openreach TAR response document 1) that the prevailing conditions of competition are "*significantly different*", and not sufficiently homogenous to treat as a single market. Area 2 as currently proposed groups areas with widely varying competitive conditions that could not reasonably be considered sufficiently similar to constitute a properly defined market. In defining Area 2 in this way, Ofcom has failed to identify objectively the relevant markets in which an SMP assessment can be properly conducted.
5. In addition, Ofcom focuses on the extent to which individual Altnets are material and sustainable competitors. The focus ought to be the sustainability of *competition*, not of individual competitors. That requires an assessment of the

² United Brands, op. cit., paragraph 44, Michelin, op. cit., paragraph 26, Case 247/86 Alsatel v Novasam EU:C:1988:469, paragraph 15; Tiercé Ladbroke v Commission, op. cit., paragraph 102.

³ "In assessing whether an undertaking has significant market power...defining the market is of fundamental importance as effective competition can only be assessed against this definition." European Commission, [Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services](#) (SMP Guidelines), para. 24.

⁴ TAR, Vol 2, para. 4.48.

⁵ See also the 2020 EC Recommendation, para. 35, which states that "*national regulatory authorities should identify geographic areas where the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different...*".

At para. 38, it is further noted that "*National regulatory authorities should assess competitive conditions in a forward-looking manner, by looking at structural and behavioural indicators, taking into account in particular, in line with Article 64(3) of the Code the importance of infrastructure-based competition. Such indicators can be, inter alia, the networks footprint, the number of competing networks, their respective market shares, trends in market shares, localized or uniform pricing behaviour, characteristics of demands and customer switching and churn*".

constraint that the Altnets currently provide and (on a forward-looking basis) the extent to which the infrastructure assets they have built will continue to provide a constraint, including by creating an opportunity for any consolidator to strengthen its competitive position.

6. This failure to establish the correct geographic market boundary is the primary failure from which Ofcom's proposed regulation flows, leading to over-regulation, which risks undermining incentives to invest and innovate, as Openreach's ability to deliver on its stated full-fibre ambition is put at risk, to the harm of end customers.

SMP

7. When assessing whether SMP exists:
 - i. A person has SMP if he enjoys a position which amounts to or is equivalent to dominance (as defined in competition law) of the market (section 78 of the Act); namely, that it occupies a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers, and ultimately consumers.
 - ii. Ofcom may have regard to EECC materials relating to market analysis or SMP (section 79(2BA) of the Act) – in this context, Ofcom states in Annex 5 that it has had regard to the SMP Guidelines.
 - iii. Importantly, market shares are useful initial indication of strength but they are to be interpreted in light of the relevant market conditions, in particular the dynamics of the market and the extent to which products are differentiated.
 - iv. It is clear that even an undertaking with a high market share may not be able to act to an appreciable extent independently of customers with sufficient bargaining strength.
 - v. The SMP Guidelines list a host of non-exhaustive criteria which can be used to determine the extent to which an undertaking may behave independently of its customers, competitors and suppliers, which Ofcom references in Annex 5 (e.g., barriers to entry and expansion, and countervailing buyer power). Importantly, the SMP Guidelines state that: *"if taken separately, the above criteria may not necessarily be determinative of a finding of SMP" as this "must be based on a combination of factors"*.⁶

⁶ SMP Guidelines, para 58.

8. Ofcom's analysis is thin as regards consideration of these variables and the competitive constraints on Openreach – while it says it has "*had regard*" to the SMP Guidelines, it is not clear to what extent such criteria have been assessed and weighted in light of current and future market conditions. A finding of SMP is the springboard from which Ofcom's proposed interventions flow; it is therefore critical that Ofcom's analysis is sure-footed. As we observe further in this submission, the WFTMR was a success-story in terms of opening up the infrastructure market to enable a flood of Altnets into the market and establishing network in the ground. Furthermore, in addition to VMO2/ nexfibre's stated wholesale ambitions, CityFibre is now supplying all major ISPs (including Sky).
9. It appears that Ofcom has worked backwards from an assumption of quasi-national SMP, without sufficient analysis of the current and future competitive constraints on Openreach, contrary to the framework within which it must operate (and, contrary to the evidence before it regarding the nature of competition in the market). Ofcom states that "*some of the analysis and evidence underling our SMP assessment may also underpin the assessment we have conducted for the purpose of defining WLA geographic markets*" because "*albeit with a different purpose, both the geographic market definition and the SMP assessment will need to examine competitive conditions*".⁷
10. While there is a clear interdependency in analysis, it is important that Ofcom approaches its statutory obligations sequentially and reasons them carefully. It is crucial that Ofcom approaches its market definition exercise and its assessment of SMP within those relevant markets objectively as a first, independent step (according to well-established competition law principles). To do otherwise results in goal-seeking – reverse-engineering the definition of the relevant markets to fit the remedies being imposed.

⁷ TAR Vol 2, para 4.162

Remedies

11. When imposing remedies:

- i. Ofcom must not impose a remedy unless it is satisfied that the remedy: is objectively justifiable; is non-discriminatory; is proportionate to what it is intended to achieve; and transparent (section 47(1) of the Act). As part of ensuring that an SMP condition meets this requirement, Ofcom considers whether it is based on the nature of the competition problem(s) it has identified in its market analysis.
- ii. Ofcom shall set such SMP Conditions authorised by section 87 of the Act as it considers appropriate (section 87(1) of the Act), always subject to Ofcom's duties and the relevant legal tests that must be met before these powers are exercised.
- iii. SMP Conditions may apply to: the provision of network access; the use of the network; and the availability of relevant facilities (section 87(3) of the Act).
- iv. Section 87 of the Act sets out other factors that Ofcom must take into account in setting SMP Conditions.

12. When imposing pricing remedies:

- i. Ofcom may only impose a price remedy where it appears to it from the market analysis carried out for the purpose of setting that condition that there is a relevant risk of adverse effects arising from price distortion (i.e. margin squeeze or excessive pricing) (sections 88(1)(a) and 88(3) of the Act).
- ii. The remedies must have the purpose of: promoting efficiency; promoting sustainable competition; conferring the greatest possible benefits on end customers; promoting the availability and use of new and enhanced networks (section 88(1)(b) of the Act).

13. It is also important to flag that the legal framework refers to the concept of "*sustainable competition*" in relation to the consideration of which remedies to impose (i.e., neither in relation to market definition – where Ofcom assesses whether the three criteria are met – nor in relation to the assessment of SMP).⁸ Further, the relevant test for pricing remedies concerns "*sustainable competition*" and not individual sustainable competitors. It is not the regulator's role to prop up

⁸ TAR Annex 5, para. A5.42.

the business plans of individual Altnets (as Ofcom itself notes) but to promote competition more generally. This is a theme that runs throughout the Consultation.

14. In this context, Ofcom must not impose a remedy unless a number of factors have been clearly demonstrated, including that any remedy is objectively justified and addresses a specific competition concern (there must be some degree of certainty that the intended benefit will materialise). Any remedy must also be proportionate and represent the least restrictive option available, not giving rise to a disproportionate risk of harm. It must also be transparent and not lead to undue discrimination. In addition, pricing remedies can only be set if a relevant risk of adverse effects arising from a price distortion has been shown. This methodical, evidence-based assessment needs to be undertaken for each proposed remedy. As is clear from our response to the Consultation, we are concerned that Ofcom has not consistently done this.

Ofcom's duties

15. Ofcom must have regard to its general duties in carrying out its functions. Its principal duty is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition (section 3(1) of the Act).
16. Other duties particularly relevant to Ofcom's market review analysis include:
 - i. the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (section 3(3) of the Act); and
 - ii. the desirability of promoting competition; and the desirability of encouraging investment and innovation in relevant markets (section 3(4) of the Act).
17. As noted above with regard to the legal framework, we are concerned that Ofcom has started with a flawed approach to market definition; this results in a set of regulatory interventions that cannot be consistent with these regulatory principles since they are inconsistent with the WFTMR, they are disproportionate, and they cannot be targeted where the geographic boundaries (as a result of a scant assessment of the competitive constraints faced by Openreach) are wrongly set.
18. We refer to these regulatory duties and the other various principles (e.g., proportionality and necessity) that Ofcom must abide by under the Act throughout

this submission. While we do not refer to specific legislation at every stage, Ofcom should read our references to the concepts set out in legislation as references to those concepts as they are used in that legislation.

3. Impact Assessments

Question A21.1: Do you agree with our assessment of the potential impacts on specific groups of persons? Please provide reasons for your response, with any supporting evidence

19. Openreach agrees that *"in the long term the transition from copper to FTTP services...is likely to have a positive impact on all consumers"*,⁹ and that exchange exit *"should provide the opportunity for both Openreach and other providers to move to a more cost efficient and sustainable network which should flow through to benefits for all UK consumers and citizens in the long term"*.¹⁰
20. However, we do not agree with the concerns that Ofcom has raised with respect to the short-term. Ofcom states that *"If MPF lines were ceased to facilitate exchange exit, consumers might lose access to the services provided over MPF lines. This might disproportionately affect people with disabilities and older people, as they are more likely to be slower to migrate to FTTC/FTTP services"*.¹¹
21. Openreach agrees that vulnerable end customers need to be protected, and has consistently and proactively taken steps to achieve this. For example, we avoided ceasing lines in our Salisbury and Mildenhall trials due to concerns about vulnerable end customers, and in the Deddington exchange exit trial we ceased non-vulnerable end customers in May 2025 but exempted vulnerable end customers. We have also developed the new "Prove Telecare" service to enable our engineers to safely migrate vulnerable end customers to fibre services. Other fibre providers, including CityFibre and VMO2, are also taking steps to protect vulnerable customers, and where appropriate Openreach will share learnings with other network providers about how best to connect and safeguard vulnerable customers.
22. Where we disagree with Ofcom is on the role of copper services such as MPF in "protecting" vulnerable end customers. FTTP is far more reliable than copper, with fault rates that are more than 60% lower than MPF fault rates. Copper is also vulnerable to theft, which can lead to multiple end customers – including vulnerable end customers – losing service for prolonged periods. Fibre, by contrast, has no appeal to criminal gangs.

⁹ TAR Annex 21, para A21.57

¹⁰ TAR Annex 21, para A21.64

¹¹ TAR Annex 12 para 21.66

23. Openreach proposes that the best way to protect vulnerable end customers is to migrate them onto reliable, modern FTTP services. The introduction of Prove Telecare – which will be available nationally, at scale, by the start of the TAR period in April 2026 – means that vulnerable end customers can be safely migrated to fibre, with an engineer checking after the migration that any telecare devices are properly connected and are working. This should eliminate the *"general risks that are associated with migrations"* that Ofcom cites,¹² and means that there is no need for *"ISPs to plan for and mitigate impacts on end-users, especially the most vulnerable ones, on an exchange-by-exchange basis"*.¹³ Indeed, the checks that our engineers will make during a Prove Telecare visit mean that the migration process will reduce risks for vulnerable customers. We believe Ofcom should be concerned about the general risks that are associated with remaining on copper, and should stop requiring Openreach to provide copper-based services such as MPF and SOTAP where suitable alternatives are available.
24. The suggestion in the consultation that vulnerable end customers should use copper services means that the people who are most dependent on telecommunications services will be served using the least reliable network. We propose that Ofcom should instead be especially keen to migrate vulnerable end customers onto modern, reliable fibre networks that can play a key role in connecting them with loved ones and protecting them in the event of an emergency.

Question A21.2: Do you agree with our assessment of the potential impacts on Welsh language? Please provide reasons for your response, with any supporting evidence.

25. Openreach agrees that it is important to consider the potential impact of Ofcom's review on the use of the Welsh language. In this respect, Openreach supports specific Welsh activities and encourages the use of the Welsh language where appropriate.
26. Openreach established its Wales Board in 2020, and this is attended by Clive Selley, CEO, and several senior managers responsible for building and maintaining the network across Wales. This ensures focus on issues that are important to those in

¹² TAR Annex 21, para A21.58

¹³ TAR Annex 21 para 21.62

Wales. The Wales Board also sponsors the availability of Welsh language lessons offered to Openreach people in Wales and allowing volunteering time to be used for Wales based people to learn during work hours. The objective is to encourage the use and practice of the Welsh Language. As part of Openreach's inclusivity and diversity agenda, attendees have the opportunity to become Welsh Word Champions and go on to partner with local schools and to be eligible for a nomination at the Eisteddfod for Welsh Learner of the Year.

27. Openreach's commitment to supporting Wales is also demonstrated by the fact that it holds regular briefing sessions with Members of the Senedd (the Welsh Parliament). These drop-in sessions include education around Openreach's digital upgrade of Wales including discussion on disruption minimisation through the use of world leading engineering innovation like mini exchanges in ultra rural areas and the use of drone technology. Similarly, Openreach supports the Royal Welsh Show as an exhibitor - this is Wales and Europe largest agricultural event giving the company yet another opportunity to interact with Welsh stakeholders and consumers.
28. Openreach also holds regular briefing sessions with Ofcom Wales and hosts hundreds of meetings with communities and Welsh Government, Welsh MPs and MSs, and Natural Resources Wales every year.
29. For news stories relating to Wales, we also provide our external media releases in both the English and Welsh Language, as per example extract below.

Figure 6.1: Welsh language media releases



Hwb gwerth £1 biliwn i economi Cymru wrth i fand eang tra-chyflym gyrraedd 1 miliwn safle

Lion Hotel, Treorci yn derbyn uwchraddiad ffeibr cyflawn

Mae **adroddiad newydd** gan arbenigwyr **Centre for Economics and Business Research (Cebr)** a **Stantec** wedi datgelu gallai gwaith Openreach wrth uwchraddio cartrefi a busnesau ar draws y wlad i fand eang ffeibr cyflawn roi hwb gwerth £1 biliwn i economi Cymru erbyn 2029.

Datgelwyd effaith economaidd band eang ffeibr cyflawn wrth gyhoeddi bod dros 1 miliwn cartref a busnes yn gallu cysylltu â rhwydwaith Cymreig digidol y cwmni erbyn hyn.

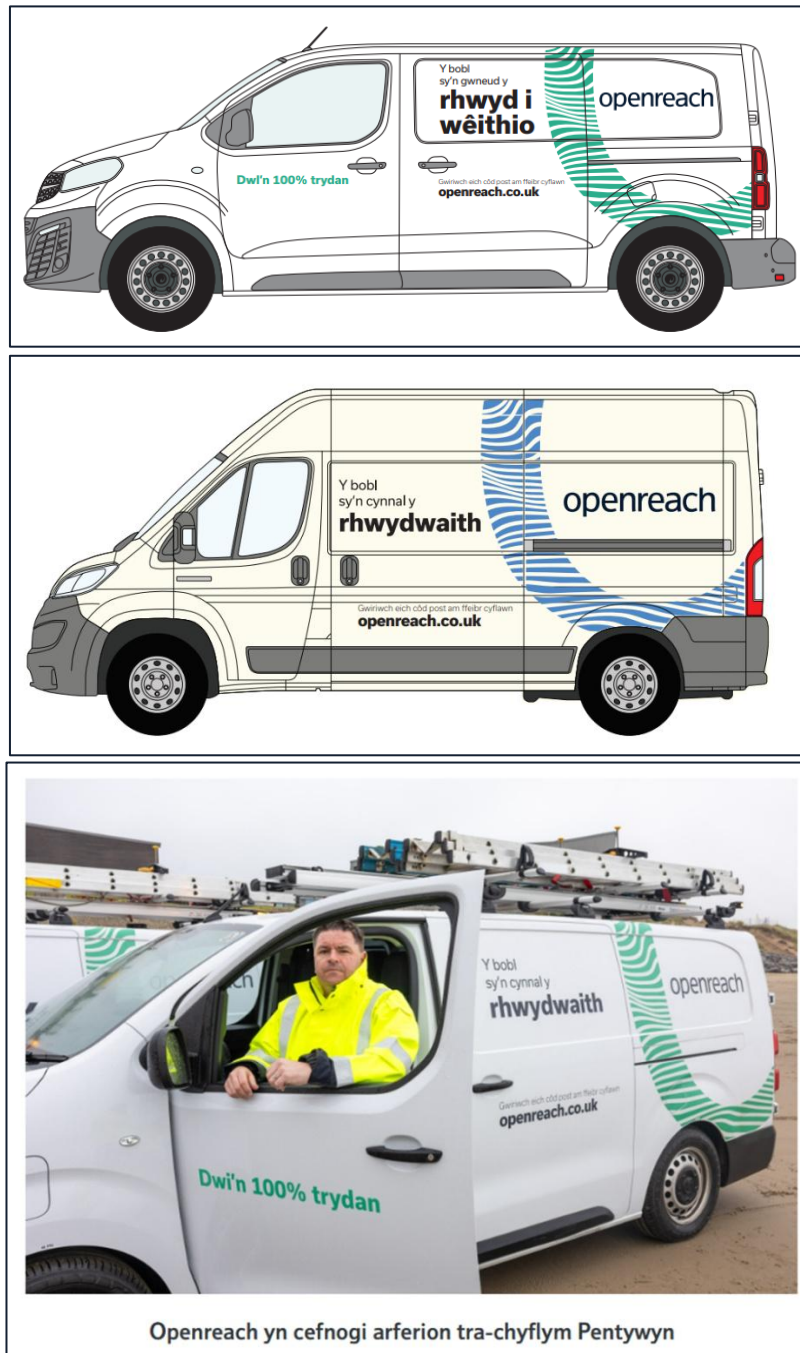
Comisiynwyd yr ymchwiliad gan Openreach er mwyn edrych ymlaen at 2029 a nodi sut bydd band eang ffeibr cyflawn yn symbylu economïau lleol, creu swyddi newydd, gwella cysylltedd cymdeithasol a chynnal tyfiant.

Mae Openreach wedi cyhoeddi mai'r **Lion Hotel** Treorci yw safle rhif 1 miliwn i dderbyn band eang ffeibr cyflawn.

Yn ogystal â gweithredu fel both cymunedol ac ennill llwyth o wobrau lleol a chenedlaethol, defnyddir y dafarn fel man cyfarfod ar gyfer grwpiau astudio, cydweithwyr a mwy. Esboniodd y perchennog Adrian Emmett fod y dafarn boblogaidd yn dilyn ei gynllun i ddatblygu'r busnes ar ôl derbyn band eang ffeibr cyflawn.

30. More examples from the Openreach website may be found here: [Articles tagged with 'Wales' | Openreach](#)
31. Openreach also has Welsh livery vans out in the field already and is investing in more this financial year.

Figure 6.2: Welsh language van livery



4. Schedule 2 WLA postcode sectors

32. Schedule 2 contains a list of postcode sectors and Ofcom's proposed geographic market classification for each of these. There appear to be a significant number of postcode sectors missing.
33. Schedule 2 provides classifications for 9,787 postcode sectors. This is 225 sectors fewer than for LLA (covering 10,012 postcode sectors listed in Schedule 3). We also note that in the WFTMR, the number of postcode sectors was aligned between WLA and LLA at 10,100.
34. Ofcom should review and clarify the classifications for the missing postcode sectors or provide an explanation of the discrepancy in postcode sector numbers.

5. Glossary

21CN	21 st Century Network
API	Application Programming Interface
AVE	Asset Volume Elasticities
AUP	Agreed Upon Procedures
CCA	Current Cost Accounting
CLA	Central London Area
CP	Communication Provider
CPI	Consumer Price Index
CVA	Cost Volume Elasticities
DFA	Dark Fibre Access
DFX	Dark Fibre Inter Exchange
EEO	Equally Efficient Operator
EIP	External Information Points
EOI	Equivalence of Inputs
ETCs	Early Termination Charges
FTTC	Fibre to the Cabinet
FTTP	Fibre to the Premises
GPON	Gigabit Passive Optical Network
HNR	High Network Reach
IEC	Inter exchange Connectivity
IRO	Internal Reference Offer
ISP	Internet Service Provider
KCI	Keeping Customer Informed
KPI	Key Performance Indicator
LLA	Leased Lines Access
MBORC	Matters Beyond Our Reasonable Control
MDU	Multi Dwelling Unit
MEA	Modern Equivalent Asset
MSN	Multi Service Network
MTP	Medium Term Plan
NA	Network Adjustment
NOI	Notice of Intent
NRM	Network Reach Model
NTE	Network Terminating Equipment
NUD	No Undue Discrimination

OH	Overhead
OHP	Openreach Handover Points
OMU	Openreach Monitoring Unit
PCO	Principal Core Operator
PI	Physical Infrastructure
PIA	Physical Infrastructure Access
POC	Proof of Concept
PON	Passive Optical Network
POP	Point of Presence
QoS	Quality of Service
REO	Reasonably Efficient Operator
RO	Reference Offer
RFS	Ready for Service
RFS	Regulatory Financial Statements
RPI	Retail Price Index
SDU	Single Dwelling Unit
SOR	Statement of Requirements
SLA	Service Level Agreement
SPO	Self Provide Order
TAR	Telecoms Access Review
TOD	Tour of Duty
UG	Underground
USO	Universal Service Obligation
UU	Unauthorised Use
VHB	Very High Bandwidth
VOA	Valuation Office Agency
WDM	Wavelength Division Multiplexing
WFTMR	Wholesale Fixed Telecoms Market Review
WLA	Wholesale Local Access
XGS-PON	10 Gigabit Symmetrical Passive Optical Network