



## BRIEFING PAPER

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# BT and Openreach

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## Summary

[Openreach](#) Ltd is a fixed-line telecoms infrastructure company. It is owned by BT Group plc. Openreach is responsible for installing and maintaining the UK's main telecoms network infrastructure used by many telecoms providers, including BT. Openreach does not sell phone, broadband or TV services directly to consumers. Instead, it works on behalf of service providers (such as Sky, TalkTalk and BT) to maintain the local access network that covers retail customers.

Openreach was established in 2006 as a business division of BT. Following a series of reviews by Ofcom, in 2017 Openreach underwent a process of reform to be incorporated as a separate company within the BT Group, rather than a business division. The change was required for competition reasons by Ofcom. [Ofcom was concerned](#) that the previous model of 'functional separation' employed by BT allowed BT to retain too much control of Openreach's decisions and did not allow for sufficient consultation with other industry stakeholders affected by Openreach's investment plans.

Ofcom announced it would require BT and Openreach to "legally separate" [in November 2016](#). In March 2017, BT agreed to Ofcom's requirements, making a series of commitments for reform. Those commitments included establishing Openreach as a distinct company with its own staff, management and strategy (although remaining wholly-owned by BT).

In October 2018, Ofcom [confirmed](#) that the formal requirements for separation had been completed. Ofcom however continues to monitor Openreach's strategic independence to ensure separation is operating in practice, for example, that Openreach board decisions are made independently without undue influence from BT and that Openreach is treating all customers equally. Should Ofcom not be satisfied that the new structure is delivering the necessary independence, a further option would be what Ofcom calls "structural separation", which would mean separating Openreach completely from the BT Group.

Ofcom established an [Openreach Monitoring Unit](#) in July 2017 to monitor the progress of Openreach's independence. In November 2018 Ofcom [reported](#) that it was "broadly satisfied" with the progress however "continued commitment from BT and Openreach is crucial".

Updates from Ofcom regarding compliance can be found on Ofcom's webpage: [Monitoring of compliance with the new governance arrangements relating to Openreach](#).

# 1. What is Openreach?

[Openreach Ltd](#) is a fixed-line telecoms infrastructure company. It is owned by BT Group plc.

[BT Group plc](#) comprises a number of different customer-facing organisational units, including BT Consumer (which sells fixed broadband and voice services to individuals), EE (a mobile network operator), and Global Services (BT's global business communications division).<sup>1</sup> Until 2018, Openreach and BT worked under what Ofcom called a 'functional separation' arrangement, in which Openreach was a business division of BT. The 'functional separation' of BT and Openreach took place after Ofcom's Telecoms Strategic Review in 2005.<sup>2</sup> At that time, [Ofcom accepted](#) a series of binding undertakings from BT ("the 2005 undertakings"), which involved the establishment of Openreach as a functionally separate unit, instead of referring BT to the Competition Commission, which could have recommended that the company was split up. This approach took the parts of BT's operations described as a 'natural monopoly' – including the access and backhaul infrastructure – and created a new business division (Openreach) in 2006, with separate management and incentive structures.

In 2018, Openreach was incorporated as a separate company within the BT Group, rather than a business division. This followed a series of reviews and recommendations from Ofcom, which are set out in Section 2 of this paper.

**Ofcom** is the UK telecommunications regulator. Ofcom's principal statutory duty is to further the interests of citizens and consumers, including (where appropriate) by promoting competition.<sup>3</sup> More information is available on Ofcom's webpage, [What is Ofcom?](#)

## What does Openreach do?

Openreach is responsible for installing and maintaining the UK's main telecoms network used by many communications providers, including BT's retail divisions. This means that Openreach does not sell phone, broadband or TV services direct to retail customers (such as individuals). Instead, it works on behalf of service providers (such as Sky, TalkTalk and BT) to maintain the local access network that covers retail customers. More information is available on Openreach's webpage [Openreach explained](#).

When an individual takes out a telephone, broadband or TV contract with a provider that uses the Openreach network (for example, Sky, Vodafone etc), the contract is with the retail provider, not Openreach. The consumer's retail provider is responsible for fixing any faults and engages with Openreach to fix the problem on the individual's behalf.<sup>4</sup>

Openreach is not the only telecoms infrastructure provider in the UK. For example, Virgin Media provides its own infrastructure (mostly cable broadband) and there are other smaller full-fibre infrastructure providers that are building new infrastructure.

For more information, see Section 2 of the Library briefing paper on [full-fibre networks in the UK](#).

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<sup>1</sup> For more information, see BT Group plc [Annual Report](#), 2018.

<sup>2</sup> Ofcom, [Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002](#), 22 September 2005.

<sup>3</sup> [Communications Act 2003](#) (as amended) Section 3(1).

<sup>4</sup> Ofcom, [Broadband and landline faults and problems](#), 15 October 2015, Accessed 11 January 2019.

## How do other providers access Openreach's network?

Ofcom sets rules that requires Openreach to allow communications providers (such as TalkTalk, Sky, Vodafone) to use its network to provide services to consumers.<sup>5</sup> This is called wholesale local access and is intended to deliver a competitive retail telecoms market to consumers when the underlying infrastructure is owned by one provider (Openreach). Openreach is required to treat all communications providers, including BT, equally.

Retail communications providers pay charges (called wholesale local access charges) to Openreach to use its network and Ofcom controls some of the prices that Openreach can charge. There are different ways that retail providers access the Openreach network depending on what service is provided to the consumer – for example, there are different technical methods for voice and broadband services compared to superfast fibre-to-the-cabinet broadband services.<sup>6</sup> Each technical method is regulated slightly differently with different price controls (if any).

Openreach is also required to meet quality of service standards (for example, by 2020/2021 Openreach should complete 88% of fault repairs within 1-2 working days of being notified) and pay compensation to broadband providers where it does not meet the service standards it has committed to provide.<sup>7</sup>

## 2. Separation of Openreach: a timeline

### 2015: Strategic Review of Digital Communications

In March 2015, [Ofcom announced](#) a Strategic Review of Digital Communications, which focused on five main areas, including the increased independence of Openreach from BT Group.<sup>8</sup> This was followed by a discussion document in July 2015 and the publication of Ofcom's [Initial conclusions from the Strategic Review of Digital Communications](#) in February 2016.<sup>9</sup>

In its initial conclusions, Ofcom set out concerns that BT Group's current model of functional separation failed to remove sufficiently BT's ability to discriminate against retail competitors, meaning that the risks to competition remained and continuing the *status quo* was not an option.<sup>10</sup>

For detailed information and an overview of Ofcom's strategy at that time, please see Ofcom's [Initial conclusions from the Strategic Review of Digital Communications](#) (page 60 onwards).

### July 2016: consultation on strengthening Openreach's independence

In July 2016, Ofcom set out its concern that as BT Group ran the national network (through Openreach) as well as its own retail business, BT had the incentive and ability to

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<sup>5</sup> Ofcom's most recent statement on wholesale regulation is its [Wholesale Local Access Market Review](#) statement, 28 March 2018.

<sup>6</sup> Ofcom's most recent statement on wholesale regulation is its [Wholesale Local Access Market Review](#) statement, 28 March 2018.

<sup>7</sup> Ofcom, [Statement: Quality of service for WLR, MPF and GEA](#), 31 March 2017.

<sup>8</sup> Ofcom, [Ofcom announces Strategic Review of Digital Communications](#), 12 March 2015.

<sup>9</sup> Ofcom, [Making communications work for everyone: Initial conclusions from the Strategic Review of Digital Communications](#), 25 February 2016.

<sup>10</sup> Ofcom, [Making communications work for everyone: Initial conclusions from the Strategic Review of Digital Communications](#), 25 February 2016.

favour its own retail business when making strategic decisions about new network investments by Openreach. This was accompanied by a consultation on [Strengthening Openreach's strategic and operational independence](#). The consultation was responded to by about 94,000 people (some 90,000 of which were identical responses generated by an online campaign).<sup>11</sup>

The [main concerns and calls for action](#) related to:

- Calling for action to improve the UK's telecoms infrastructure, including the full, structural separation of BT retail from Openreach;
- Concerns about slow broadband speeds;
- Concerns about the availability of full-fibre broadband;
- Concerns about the quality of service from major service providers.

[BT's voluntary proposals were published](#) alongside the July 2016 Ofcom Consultation.<sup>12</sup> All [non-confidential responses](#) to the consultation were also published.

### November 2016: formal notification to require legal separation of Openreach from BT

On 29 November 2016, [Ofcom announced](#) that it would proceed with a formal notification to require what Ofcom called the "legal separation" of Openreach from BT, because BT had "failed to offer voluntary proposals that address our [Ofcom's] competition concerns".<sup>13</sup> "Legal separation" meant establishing Openreach as a separate company, although still within the BT Group.

The competition concerns broadly related to creating a more independent Openreach which would work in the interests of all providers, without favouring BT. [Ofcom summarised its proposals](#) as follows:

Our current view is still that an effective and robust form of legal separation, with Openreach as a wholly-owned subsidiary of BT, is likely to achieve the greatest improvements for everyone in the shortest amount of time. Therefore, this is the approach with which we are minded to proceed.

Our model will include proposals to publicly scrutinise and monitor its effectiveness against several measures of success. The most direct will be whether Openreach Board decisions are taken independently, without undue influence from BT Group. If Ofcom's monitoring suggests that legal separation is not delivering sufficient benefits for the wider telecoms industry and its customers, we will return to the question of structural separation – fully breaking up the companies.<sup>14</sup>

Ofcom also considered that a more independent Openreach should be well placed to invest in full-fibre broadband. More information on the background to this announcement, including Ofcom's views and proposals are available in the [Ofcom press release](#) (29 November 2016).

A [PQ response](#) in December 2016 provided the following view from Government on this announcement:

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<sup>11</sup> Ofcom, [Strengthening Openreach's strategic and operational independence: Proposal for comment](#), 26 July 2016.

<sup>12</sup> BT, [Strengthening Openreach's independence: BT's Notification to Ofcom under section 89C of the Communications Act 2003 and Application to vary its Undertakings given to Ofcom pursuant to Section 154 of the Enterprise Act 2002](#), 18 July 2016.

<sup>13</sup> Ofcom, [Update on plans to reform Openreach](#), 29 November 2016.

<sup>14</sup> Ofcom, [Update on plans to reform Openreach](#), 29 November 2016.

Ofcom has now announced how it plans to implement its recommendations for the relationship between BT Group and Openreach. We are clear that a more independent Openreach is needed to benefit consumers and the UK's digital infrastructure. We welcome Ofcom's determination to tackle these issues, to give certainty to consumers, industry and investors in the UK's broadband infrastructure to improve service and the level of investment.<sup>15</sup>

## 2017: BT Group agrees to separation

In March 2017, BT Group agreed to the requirements set out by Ofcom in November 2016, making a series of commitments for reform.<sup>16</sup> Those commitments included establishing Openreach as distinct company, with its own articles of association, staff, management, strategy and branding.

In July 2017, following a consultation, Ofcom published a statement accepting that the commitments made by BT in March 2017 sufficiently addressed the competition concerns raised by Ofcom.<sup>17</sup> Ofcom stated that it would release BT from its 2005 undertakings (see Section 1 of this paper) once the conditions set out in March 2017 were completed.

## 2017-2018 Progress on separation

Ofcom established an [Openreach Monitoring Unit](#) in July 2017 to assess whether the legal separation is operating in practice.<sup>18</sup> The Monitoring Unit will focus on three areas:

- implementation of the new arrangements;
- compliance with the commitments and new rules; and
- whether the arrangements provide Openreach with the level of independence necessary for it to make its own strategic decisions, and whether it is treating all of its customers equally.<sup>19</sup>

The Openreach Monitoring Unit published its first report in June 2018, which found that, while progress towards legal separation had been broadly satisfactory, legal separation had not yet been fully finalised.<sup>20</sup> The report outlined changes undertaken by BT and Openreach so far, such as establishing an independent board, removing "BT" from branding, putting in place internal compliance procedures, and beginning to consult on investment decisions with external stakeholders. Outstanding reforms related to pensions arrangements and transferring staff, as well as ensuring the full strategic independence of Openreach.

The Government again expressed its support for the separation of BT and Openreach in its [Future Telecoms Infrastructure Review](#) (July 2018) and said that it would closely monitor the separation and consider additional measures if necessary:

The legal separation of Openreach from BT Group has the Government's backing, and is critical to deliver better connectivity for consumers throughout the UK. We recognise the important steps that have been taken by BT Group and Openreach to implement legal separation, including: setting up the Openreach Board, responsible for setting Openreach's strategy and overseeing its performance; and proper industry engagement on technology investment choices. The Government wants legal separation to be completed as soon as possible and for Openreach to address all the

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<sup>15</sup> [PQ 55518, 2 December 2016](#) [Openreach: Broadband]

<sup>16</sup> Ofcom, [BT agrees to legal separation of Openreach](#), 10 March 2017.

<sup>17</sup> Ofcom, [Delivering a more independent Openreach Statement on releasing the BT Undertakings pursuant to section 154 Enterprise Act 2002](#), 13 July 2017.

<sup>18</sup> Ofcom, [Measures to ensure Openreach delivers](#), 13 July 2017.

<sup>19</sup> Ofcom, [Openreach Monitoring Unit](#), 15 November 2018, accessed 11 January 2018.

<sup>20</sup> Ofcom, [Ofcom reports on more independent Openreach](#), 14 June 2018.

outstanding actions identified in Ofcom's first progress report, particularly the transfer of staff from BT to Openreach.

It is too early to determine whether legal separation will be sufficient to deliver positive changes on investment in full fibre infrastructure. The Government will closely monitor legal separation, including Ofcom's reports on the effectiveness of the new arrangements. The Government will consider all additional measures if BT Group fails to deliver its commitments and regulatory obligations, and if Openreach does not deliver on its purpose of investing in ways that respond to the needs of its downstream customers.<sup>21</sup>

Should Ofcom and the Government not be satisfied that the legal separation arrangement is delivering the expected outcomes in practice, a further measure could be what Ofcom calls "structural separation", which would see Openreach completely separated from the BT Group.<sup>22</sup>

### October 2018: BT released from 2005 undertakings

In October 2018 BT notified Ofcom that it had met the requirements for separation set out in March 2017.<sup>23</sup> Ofcom formally released BT from its 2005 undertakings on 31 October 2018.<sup>24</sup> This means that Ofcom considers that the new arrangements for separation had been fully implemented. However, Ofcom continues to monitor the strategic separation of BT and Openreach separation in practice.

### November 2018: Monitoring Compliance

Ofcom's Openreach Monitoring Unit published an [Interim Monitoring Update Report](#) in November 2018. It found that Ofcom was "broadly satisfied" with progress made but that "continued commitment from Openreach and BT is crucial to ensure the new arrangements are a success".

The report made the following observations regarding the strategic independence of Openreach from BT, which indicated that progress was cautiously positive:

**1.10 Strengthening independent decision making.** The OMU raised this as an area of concern in our June report. We continue to assess whether BT is allowing Openreach the necessary level of independence through its financial planning (and other interactions and strategic processes). To date, both BT and Openreach have engaged fully in this work and recognise that there is more to do. We welcome their intention to review processes and ensure transparency on how the two organisations are engaging with each other, and to continue to embed the Commitments across their day-to-day practices, behaviours and culture.

**1.11 Industry remains cautiously optimistic about the new arrangements.** Although some concerns have been raised about the speed of discussions around the new reference offer for Duct and Pole Access (DPA), in general, industry reports improvement in engagement from Openreach through areas such as customer consultations.

**1.12 Openreach has committed to investing in faster, better broadband networks.** While it is still early in the reform of Openreach, progress is being made with announcements of significant investment in full-fibre broadband by both Openreach and other companies. In addition, work is being carried out through industry working groups on the new reference offer for DPA due to be published by

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<sup>21</sup> DCMS, [Future Telecoms Infrastructure Review](#), 23 July 2018, page 9.

<sup>22</sup> Ofcom, [Strengthening Openreach's strategic and operational independence: Proposal for comments](#), 26 July 2018.

<sup>23</sup> BT, [Digital Communications Review: Release of the Undertakings](#), Letter dated 1 October 2018.

<sup>24</sup> Ofcom, [Notice of release of undertakings given by British Telecommunications plc pursuant to section 154 of the Enterprise Act 2002](#), 31 October 2018.

Openreach in April 2019. Ofcom continues to work with Government and industry to drive further investment in full fibre.<sup>25</sup>

A full compliance report is expected to be published in June 2019.

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<sup>25</sup> Ofcom, [Monitoring of compliance with the new governance arrangements relating to Openreach](#), 15 November 2018.

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