



Department for  
Science, Innovation  
& Technology

Rt Hon Sir John Whittingdale OBE MP  
Minister for Data and Digital Infrastructure  
Department for Science, Innovation  
& Technology  
100 Parliament Street  
London SW1A 2BQ

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Mark Garnier MP  
[mark.garnier.mp@parliament.uk](mailto:mark.garnier.mp@parliament.uk)

Dear Mark,

I am writing to you following our conversation at my tearoom surgery on the 24<sup>th</sup> of October. Thank you for raising some important points with me. I have provided some more information below which may be of interest to you and your constituents.

You asked me whether OpenReach could use poles put up by Fibre Heroes as well as vice versa. Ofcom has imposed a specific requirement on Openreach to share its infrastructure with other operators. This was based on their finding that Openreach had significant market power in the passive infrastructure market. To remedy this, the creation of a Duct and Poles Access (DPA) remedy was mandated by Ofcom. This requires Openreach to share its ducts and poles with any other operators, subject to a regulated fee structure.

In response, Openreach created its Physical Infrastructure Access (PIA) product, which provides a streamlined process to facilitate other operators' use of its networks to meet this obligation. Ofcom, and the Office of the Telecommunications Adjudicator, monitor the effectiveness of Openreach's PIA product through engagement with Openreach and the alt-nets as part of the PIA Working Group.

Openreach are still able to use poles installed by other operators: existing regulations impose requirements for all operators to share apparatus with each other where practicable. This requirement is imposed by the Electronic Communications Code (Conditions and Restrictions) Regulations 2003.

The Access to Infrastructure Regulations enable sharing of information about access to physical infrastructure (e.g. ducts and poles) across utility, transport and communications sectors, including the exchange of information about existing infrastructure, and the right to access that infrastructure on fair and reasonable terms and conditions. The difference between Openreach using other operators infrastructure is that the DPA fee structure does not apply.

The Product Security and Telecommunications Infrastructure Act 2022 has also introduced new measures to make it easier for operators to upgrade and share the use of existing underground ducts and telegraph poles, reducing the need for future installations.

You also asked about what happens if Virgin Media 02 (VMO2) bought an existing alt-net and could that alt-net be used only to supply Virgin retail products as VMO2 do with their network. If Virgin Media were to purchase a smaller 'alt net' they would be free to solely provide Virgin's broadband services, if they complied with competition regulations and guidelines.



However, VMO2 would likely be bound by existing contracts between the alt net and the ISPs that use its network, which may prevent VMO2 from excluding other ISPs from the network (at least in the short term). In practice, it is possible that Nexfibre - an operator part owned by Virgin Media's owners - would be the purchasing entity. Nexfibre typically uses multiple ISPs on its network.

It would be for Ofcom to decide whether a takeover of an alt-net by VM02 posed competition concerns for consumers and take action if appropriate.

With best wishes,

*Yours ever*

*John*

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