House of Commons

Committee of Public Accounts

The rural broadband programme

Twenty-fourth Report of Session 2013–14

Volume 1: Report, together with formal minutes and oral evidence

Written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/pac

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Committee of Public Accounts

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Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee is Adrian Jenner (Clerk), Claire Cozens (Committee Specialist), Sonia Draper (Senior Committee Assistant), Ian Blair and James McQuade (Committee Assistants) and Alex Paterson (Media Officer).

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Summary

All 26 contracts let so far by local authorities for rural broadband have gone to BT, and BT is also likely to win all 18 remaining contracts. The Department for Culture, Media and Sport's (the Department's) design of the rural broadband programme (the Programme) has therefore failed to deliver the intended competition for contracts, with the result that BT has strengthened its already strong position in the market. The Department accepted contract terms that were overly generous to BT and do not promote value for money, such as confidentiality clauses over bid costs and roll-out plans. The Department also failed to negotiate the full access it needed to BT's cost information to validate that bids from BT for local projects were reasonably priced; a key control over value for money on a programme where there is no competitive tension in individual procurements. Local authorities are contributing over £230 million more to the Programme than the Department assumed in its 2011 business case, and BT over £200 million less, yet BT will ultimately benefit from £1.2 billion of public funding. BT is preventing local authorities from providing proper information on the areas it will and will not cover with superfast broadband. Other providers are therefore constrained in their ability to build systems which ensure universal coverage. The Department forecasts that it will complete the Programme in March 2017, 22 months later than originally planned. BT appear to be taking further action to exploit their quasi-monopoly position and to limit access to both the wholesale and retail market to the detriment of the consumer.

Conclusions and recommendations

1. The Programme is designed to help get superfast broadband to areas, predominately rural, where commercial broadband infrastructure providers currently have no plans to invest. Under the Programme the Department provides grant funding to 44 bodies (local authorities or groups of authorities) to subsidise them to procure the superfast broadband services for their areas. The Department has developed a framework contract for local bodies to use and also offers them support in negotiating with the supplier to provide the infrastructure required to fill in the gaps in commercial coverage. The Department has allocated £490 million in grant funding to local authorities for the Programme until 2015 and is also seeking matched funding from local authorities and capital investment from the supplier, BT.

2. **The Department's procurement approach for the rural broadband programme failed to deliver meaningful competition for the letting of local contracts.** The Department appointed only two bidders – BT and Fujitsu - to the framework contract. By June 2013 all of the 26 contracts agreed by local bodies had gone to BT and, following Fujitsu's March 2013 announcement that it would not be bidding for any more local contracts, BT is likely to win the remaining 18. Witnesses from the broadband industry told us that the way the Department designed the Programme reduced competition. In addition to the current programme, the Department has allocated a further £250 million to increase coverage of superfast broadband in the 2015-19 spending period, but does not yet have a clear plan for reaching 100% superfast broadband coverage.

   Recommendation: ***The Department should not spend any of the further £250 million of public money until it has developed approaches to secure proper competition and value for money for improving superfast broadband after 2015.***

3. **The Department's assumptions in its 2011 business case about the respective capital contributions of the public and private sectors were wildly inaccurate.** BT is committing £207 million less (£356 million rather than £563 million) in capital funding than the Department anticipated in its business case, while local authorities on the other hand are contributing £236 million more (£730 million, rather than £494 million). Nevertheless, BT will still benefit from owning assets created from £1.2 billion of public funding once the Programme is complete.

   Recommendation: ***Before contracts are awarded for additional broadband coverage from 2015, using the additional £250 million, the Department should improve its modelling work and, when negotiating levels of private sector investment, the Department should push for contributions that take account of the long-term value of the assets to the supplier.***

4. **The lack of transparency over BT's costs is a serious risk to value for money, particularly as BT is the Department's single supplier.** The Department's reliance on self-certification by BT (that its prices are comparable with those in its commercial roll-out of superfast broadband) does not represent an adequate control.

The standard contract between BT and local authorities includes a clause that prevents the local authority from disclosing the costs involved to other local authorities who are negotiating contracts. This means that other local authorities' negotiating positions are weakened by a lack of comparable cost data against which to assess BT's bid. In addition, the Department does not know how much contingency BT includes in its bids, and estimates vary.

Recommendation: ***The Department should insist on a higher standard of cost transparency before contracting. Where contracts are not yet signed for the current Programme, the Department should secure BT's agreement to improve cost transparency, for example by omitting the non-disclosure agreement between local authorities.***

5. **The Department has not revisited its approach to implementation controls in the light of the limited competitive tension and transparency.** The importance of robust checks on actual costs is heightened by the lack of competitive tension in letting contracts and the limited transparency over bid details. Local bodies will have open-book accounting over actual costs once projects go live. But about 40% of the capital costs relate to labour and project management costs, which are hard to fully assure. BT's estimate for the number of premises that will take up the superfast broadband infrastructure will also require close monitoring.

Recommendation: ***The Department should set out how it has assured itself that local authorities will be adequately resourced and supported to carry out adequate checks on BT's costs and take-up rates during the project.***

6. **Overall, BT is supposed to deliver at least 90% coverage in rural areas but the Department did not secure sufficient transparency from BT about precisely where it intends to roll out superfast broadband within each area. Other suppliers are inhibited from developing complementary services so 100% coverage is secured in rural areas.** Details about speed and coverage are treated as commercially confidential in each local project. This has prevented other suppliers from developing proposals for schemes aimed at reaching the remaining 10% of premises that will be without superfast broadband. The Department welcomed BT's statement at our hearing that it has no objection to publishing this data for finalised contracts. But we are very concerned to hear that local authorities and community based organisations have since continued to encounter resistance from BT to publishing detailed roll-out plans.

Recommendation: ***The Department should, as a matter of urgency, publish BT's detailed roll-out plans so that other suppliers can get on with trying to reach the remaining 10% of the population that will still be without superfast broadband.***

7. **BT's competitors have legitimate concerns about the scope for them to compete effectively under the current regulatory regime.** Despite Ofcom introducing requirements for BT to allow wholesale competitors access to BT's physical infrastructure, the conditions attached have deterred any other providers from exploiting this access. There are also concerns that existing regulation has allowed BT to set its wholesale price too high, so alternative suppliers find the margin between

wholesale and retail prices is squeezed to the extent that they cannot operate profitably. Ofcom is reviewing the broadband market this year, which presents an ideal opportunity to reconsider whether the regulatory regime is doing enough to promote competition.

Recommendation: ***As part of its current review of the broadband market, Ofcom should explicitly address the impacts on competition of BT's wholesale pricing structure and of the terms and conditions attached to accessing BT's infrastructure.***

1 Competitive tension and funding

1. On the basis of a Report by the Comptroller and Auditor General,[1] we took evidence from the Department for Culture, Media and Sport (the Department) and Ofcom on the rural broadband programme (the Programme). We also took evidence from BT, UK Broadband, the Independent Networks Co-operative Association (INCA) and Talk Talk.

2. The Programme is designed to help get superfast broadband to largely rural areas. A programme supported by public subsidy is required because rural areas tend to be less commercially viable for suppliers. The Department estimates that 4.6 million premises will benefit from access to superfast broadband as a result of the Programme, taking total coverage to approximately 92% of UK premises. The Department predicts that roll-out will be completed in March 2017, 22 months later than originally planned.[2]

3. Under the Programme, the Department expects to give £490 million of its total £530 million Programme budget as grant funding to 44 local bodies (local authorities or groups of authorities) to procure superfast broadband services. The Department is also seeking matched funding from local authorities and capital investment from the supplier, BT. By June 2013, 26 of the 44 local bodies had signed contracts to procure superfast broadband through the Programme.[3]

4. The Department developed a national procurement framework, and held a competition for suppliers to be on that framework. The intention was that local bodies would use the framework to procure suppliers competitively. The Department did not mandate the framework's use and some local bodies are not using it.[4] The Department told us that the approach it adopted was lower cost and lower risk to the taxpayer than alternatives and that it had devised a range of safeguards to try and ensure value for money from the Programme. But there were clearly trade-offs that reduced potential competition.[5]

Competitive tension

5. One safeguard intended to ensure value for money was to promote competition between suppliers to deliver the rural broadband infrastructure. However, only three suppliers submitted final tenders for the national framework and only two—BT and Fujitsu— were appointed to the framework. In March 2013, Fujitsu announced it did not intend to submit any further bids for contracts, leaving BT the only active participant. By June 2013, 26 of the 44 local bodies had signed contracts with BT as their supplier. BT is also likely to win all 18 of the remaining contracts.[6] There is scant evidence of any satisfactory competition to enable prices to be driven down taking place.

1 C&AG's Report, *The rural broadband programme*, Session 2012-13, HC 535

2 Q 324; C&AG's Report, para 18

3 C&AG's Report, para 8, Figure 14

4 C&AG's Report, para 2.7

5 Qq 180-185

6 Qq 118, 247, 261-264, 280-285; C&AG's report, para 8

6. UK Broadband told us that the geographical area covered by each contract was too small to enable small companies to build a viable business, and that, because the contracts were not put out to tender at the same time, companies could not plan to bid for multiple contracts that could give them the scale required to make the operation viable. In addition, witnesses from the industry told us that the complicated procurement process, State aid restrictions over the technical requirements and regulatory access conditions all disadvantaged smaller providers. BT disputes some of these claims.[7]

7. UK Broadband also told us that the Department's target for how much of the UK should be covered by superfast broadband has had an impact on competition. In December 2010 the Department published "Britain's superfast broadband future" which stated that the European Commission's target of 100% access by 2020 was a challenging target but the right one.[8] UK Broadband stated that companies bidding for the North Yorkshire contract were required to submit a bid to reach 100% of the population. However, in May 2011, after modelling the coverage it could achieve within its available funds, the Department announced a target to provide superfast broadband coverage to 90% of premises by 2015.[9] UK Broadband told us that BT would be able to reach 90% of premises relatively cheaply by expanding its existing network, whereas aiming to reach 100% of premises would require innovative approaches to delivering superfast broadband, which would have helped other potential suppliers to produce competitive bids.[10]

8. The effect of designing a programme which only reaches 90% of the target area will make it more expensive at a later stage to cover the final 10%. It will also make it less commercially viable for anyone other than BT to bid, as no-one else will have existing infrastructure to bolt it on to, matters are made worse by the fact that BT is preventing local authorities from publishing plans showing which areas will not be covered which would enable other, often community based consumers from filling the gap and ensuring 100% coverage. The Department has a commitment to meet the EU objective of superfast coverage for all by 2020.[11] In the recent Spending Round covering the period 2015-2019, £250 million of additional funding was allocated to the Department to help it reach more premises. However, the Department does not yet have an estimate of how much it might cost to reach 100% coverage. Witnesses from the broadband industry told us that potential investment by competitors had been lost. For example, UK Broadband has spent none of the £150 million it had allocated for the Programme. Fujitsu had also stated an intention to invest £1.5 billion which has not been invested. In total, INCA estimated that the investment that had been foregone was at least £2.7 billion. The Department responded that its aim was to achieve the most possible with the given funding, not to lever the maximum amount of private investment.[12]

7 Qq 2-6, 11, 31, 35, 36, 99, 185; Ev w15

8 Qq 2, 3, 9, 298, 309, 310

9 Qq 103, 271-275, 296, 309

10 Qq 134-135, 204

11 Qq 135, 178, 298-99, 324

12 Qq 1, 11, 217, 233, 320-324; Ev w7

9. INCA told us it believed that the Secretary of State for Culture, Media and Sport was keen to engage on issues such as competition and transparency of information, but that officials had been less receptive. For example, in January 2013, ministers engaged with the sector over proposals to inject more competition into the Programme, but witnesses told us officials had not acted on the information they had submitted. The Department has agreed to investigate any such comments about its officials. [13]

Funding

10. In 2011 the Department's business case anticipated that suppliers would contribute £563 million to the capital cost of the rural broadband programme (36% of the total capital cost of £1,547 million), and local authorities and the Department would each contribute around £490 million (32%). Separately, in June 2012, BT told the House of Lords Select Committee on Communications it was willing to invest £1 billion of capital in the Programme.[14] However, the Department now projects that BT's capital contribution will total only £356 million. This is only 23% of the total capital cost of the Programme and £207 million less than the Department had anticipated in its business case.[15] At the end of the project, BT's balance sheet will benefit from some £1.2 billion of public funding.[16]

11. Local bodies are investing £236 million more than the £494 million originally planned at a time when many budgets are being severely reduced. The overall public sector contribution to capital costs has increased from 64% to 77% (from £984 million to £1,220 million), but for some contracts the public contribution will be as high as 89%. The public sector is putting in a higher proportion of funding than other countries have for their rural broadband coverage.[17] Witnesses told us that in Sweden rural broadband schemes have a much lower public contribution—about 25–33% although BT subsequently claimed the detail of the scheme in Sweden was different.[18]

12. The Department told us that the difference between early and current capital cost projections was partly due to inaccuracies of early modelling. The model was based on industry data and analysis from the wider broadband community so it is surprising that there is such a large difference between the modelling and the current projection of BT's share of capital costs. The Department stated that the difference was also because local authorities have chosen to put in more funding, sometimes choosing to seek more than 90% coverage. For example, in Cambridgeshire and Peterborough the local authority had put in £16 million, compared with the Department's and BT's £7 million contributions. The Department estimates that superfast broadband will be accessible to 92% of premises by the end of the project in Cambridgeshire and Peterborough.[19]

13 Qq 129, 131-134, 180, 182, 341-342

14 Qq 38 – 39, 258; BT evidence to House of Lords Select Committee on Communications for 1st Report of Session 2012–13 *Broadband for all—an alternative vision*, 12 July 2012

15 Qq 241, 253, 258

16 Qq 48, 49, 221, 236

17 Q 233

18 Q 220, Ev w24

19 Qq 233-245, 259- 260

2 Transparency

Costs

13. The Department's initial evaluation of BT's financial model gave it a score of only 7 out of 20 on cost transparency, below the minimum necessary to allow BT onto the framework contract and be able to bid for specific contracts. After BT provided further information, the Department awarded BT a score of 8 out of 20, the minimum acceptable score, even though information to "enable understanding of key cost drivers" was still limited and the relationship between cost drivers, unit input and output costs was not clear. The Department secured contractual assurance from BT that the costs within its bids would be consistent with its commercial superfast broadband roll-outs. However, BT did not grant the Department access to its books so it could check this consistency, and the Department went ahead despite the lack of access.[20] This is of particular concern in the context that BT is in practice the monopoly provider in this programme.

14. When negotiating contracts with BT local authorities should be able to benefit from comparisons with other local authorities to ensure they are getting fair treatment from BT. However, the standard contract with BT includes non-disclosure agreements which prevent local authorities from discussing their contractual arrangements with one another.[21] The Department told us that it has sought to provide each local body with some assurance that its bid is in line with others through bid comparison reports. The reports identified errors in BT bids, such as overcharging by £3 million in one bid. However, local authorities themselves cannot access this information to be better informed and thus be in a stronger negotiating position when discussing contract terms with BT.[22]

15. A comparison between the Great Britain and Northern Ireland programmes, both delivered by BT, indicates that the Northern Ireland contract was delivered much more cheaply and with less public sector funding than the British bids. BT gave a number of reasons why Northern Ireland costs were lower, including lower labour costs, cabinets without power meters being cheaper to install, and the topography of the networks.[23]

16. Specifically on the cost of installing the cabinets which link individual premises to the wider network, the NAO report showed the Northern Ireland cost to be 12% below the average BT bid in England. The range of cost estimates for these items makes it difficult to draw conclusions on the amount of contingency being included in BT's bids.[24] The CEO of BT Openreach had stated in December 2012 that each cabinet costs £100,000, whereas, at our hearing, BT told us the approximate average cost for a cabinet in the publicly subsidised programme was £29,000. BT told us that the amount of contingency it builds into individual bids under the Programme varies, but it is typically between 5%

20 Qq 65, 100, 108-111, 114, 125, 182, 187, 282-285

21 Qq 67, 77, 287

22 Qq 124–125, 291-293

23 Qq 50-54

24 C&AG's report, para 3.15 and Figure 13

and 8% of the total cost. Other sources of estimates for the cost of cabinets suggest much higher levels of contingency in current Programme bids. The Department does not have strong assurance that the level of contingency included in BT's bids is reasonable.[25]

17. As well as the costs of building the infrastructure, the take-up rate and retail prices are an integral part of whether value for money will be achieved.[26] Under the contracts, BT bears the risk of take-up of superfast broadband being less than it anticipated. BT told us that it uses a 20% take-up assumption for both its commercial programme and its publicly subsidised one. However, 20% is a lower take-up rate than that achieved in Northern Ireland and elsewhere. If BT's take-up assumption has been conservative, monitoring this take-up and recovering any excess profits will be important to the value for money of the project. The Department and BT could not tell us what premium the Department has paid for transferring the risk of low take-up to BT.[27]

18. The limited competition and lack of transparent costing make it even more important that the Department and local authorities have good controls over the actual costs of the Programme during implementation. The Department has not, however, compensated for these limitations through strengthening processes to control costs. The Department told us that the range of safeguards it designed from the outset are sufficient to assure value for money.[28]

19. BT told us it will grant the Department full access to invoices supporting the capital costs it incurs on the Programme. However, the project in Cornwall alone has generated 18,000 separate invoices, and the NAO report highlights the need to ensure that local authorities have sufficient resource and capability to deal with such a large quantity of invoice information from BT. BT estimates that about 40% of capital costs will relate to labour and project management, which will be harder to assure than capital costs. BT told us that it will support its invoices for labour with timesheets to improve transparency.[29]

Roll-out plans

20. BT's detailed plans for roll-out of superfast broadband are part of the contract agreed between BT and local authorities. The contract includes a clause that the details about when and where BT will be installing superfast broadband remain confidential between the parties.[30] Consequently, other suppliers have insufficient information to enable them to develop plans for other projects to reach the 10% of premises which will not be covered by the current programme. Even the Rural Community Broadband Fund, part funded by the Department and focussed on small community projects, has been stalled by the lack of disclosure of BT's plans, as the projects cannot prove that they do not overlap with the existing Programme.[31]

25 Qq 56-63; C&AG's report, para 13

26 Q 28

27 Qq 119-121, 231

28 Qq 280, 281, 285

29 Qq 66, 112-115 – 119, 123, 144

30 Qq 11, 21, 182

31 Qq 5, 11, 75

21. We were concerned about the commercial confidentiality clauses potentially giving BT the ability to disrupt other suppliers' broadband projects. Witnesses from the industry cited examples where other suppliers had abandoned plans to provide superfast broadband when BT had subsequently stated its intention to include the area in its future roll-out. Witnesses also told us that suppliers' plans were stalled while waiting for BT to confirm that it did not intend to cover that area. They also reported instances such as BT saying that roll-out to an area would be delayed if local authorities supported alternative infrastructure providers. BT subsequently told us that such delays would be the result of dealing with the necessary changes to its contracts in the area concerned, to accommodate the other scheme.[32]

22. A small minority of counties such as Northamptonshire have chosen to publish information about where it expects BT to deliver superfast broadband. BT told us that in other areas, once the contracts are finalised, potential suppliers could ask local authorities whether specific areas are included in BT's plans or not. BT told us that it was a matter for local authorities whether they released the information or not. INCA told us that, contrary to a European Union directive, local authorities would not release the information on the grounds of commercial confidentiality, even in response to freedom of information requests.[33]

23. The Department has access to all contracts, but it is not a contract signatory. BT stated that there is no commercial impediment to the information being made public once the contract was signed, which the Department regarded as a significant step forward. The Department said it was sympathetic to releasing the information but was not in a position to make a firm commitment on this without first consulting ministers.[34] However we have been concerned to hear that since BT's assurances to us, it has still been refusing local authorities the permission to release detailed roll-out plans.

32 Qq 11, 13, 19, 20, 70-75; Ev w14

33 Qq 23, 67-81, 146, 331-332

34 Qq 82, 84-89, 145, 327- 340

3 The role of the regulator

24. Ofcom is the independent regulator and competition authority for the UK communications industries. It last reviewed the wholesale broadband market in 2010 and is reviewing the market again this year.[35] We heard concerns from the witnesses representing the UK broadband industry about the scope for effective competition in the broadband market, and put these concerns to Ofcom.[36]

25. TalkTalk has lodged a Competition Act complaint with Ofcom due to its concern that the margin between BT Openreach's wholesale price and BT's retail price is so squeezed that other suppliers cannot sell the product profitably at the same price, thus restricting competition.[37] Ofcom told us that, when it reviewed the market in 2010, it had decided not to set a wholesale price; in part because it did not want to reduce incentives to invest in upgrading the UK's network. At that time, Ofcom also concluded that superfast broadband was not a separate economic market to existing broadband services, and expected prices for superfast broadband to be constrained by existing prices for lower speed services. Ofcom told us that, three years on, the premium being charged for superfast services had proved to be relatively modest. Ofcom also told us that it had recently issued the consultation for its current review of the market, which specifically sought views from the industry on whether Ofcom should be doing more on the issue of 'margin squeeze' between wholesale and retail prices.[38]

26. INCA told us that there should be much greater access for others to BT's infrastructure. It said that the conditions attached to others using the existing ducts in the ground and telegraph poles were too restrictive— for example, not being able to use them for business-grade services, or to run mobile phone masts, and having short notice periods for termination. Ofcom told us that it had introduced a requirement for BT to provide access to its physical infrastructure.[39] However, the NAO reported that, while Ofcom had indeed introduced this requirement—to allow competitors to deploy their own broadband wholesale infrastructure using BT's ducts and poles - in fact no provider had gone beyond trials and actually deployed any new network assets using this access.[40] Ofcom also told us it was aware of BT competitors' concerns about restrictions on being able to access BT infrastructure, and that Ofcom had invited them to submit evidence and analysis to support these concerns. However, Ofcom said that so far it had not received enough information or evidence to enable it to consider a change to the regulations.[41]

27. In support of there being effective competition in the UK broadband retail market, Ofcom told us that the regulatory framework had helped produce one of the most

35 Q 346; C&AG's Report, paras 1.15-1.17

36 Qq 11, 24-25

37 Qq 24-25, 348

38 Qq 346-348; C&AG's Report, para 1.15

39 Qq 11, 351-354

40 C&AG's Report, para 1.17

41 Q 355

competitive broadband markets in Europe—reflected in availability, price and the incumbent (BT) operator's relatively low share of the market (30%). Ofcom said that the way it had applied regulation had made it possible for companies like TalkTalk and Sky to build businesses based on the incumbent's infrastructure and become major players in the provision of broadband. Ofcom reported that the majority of customers taking up superfast broadband services are on the Virgin network, not the BT network.[42] Ofcom also said that it considered the regulatory regime to be doing well in protecting consumers, with strong evidence that prices in the UK compared favourably with other leading markets in Europe.[43]

42 Qq 32, 345-349

43 Qq 358-359

Formal Minutes

Wednesday 11 September

Members present:

Mrs Margaret Hodge, in the Chair

Mr Richard Bacon
Stephen Barclay
Guto Bebb
Jackie Doyle-Price
Chris Heaton-Harris
Meg Hillier
Mr Stewart Jackson
Fiona Mactaggart
Nick Smith
Ian Swales
Justin Tomlinson

Draft Report (*The rural broadband programme*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 27 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty-fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 17 July.

[Adjourned till Wednesday 9 October at 2.00 pm

Witnesses

List of written evidence

(published in Volume II on the Committee's website www.parliament.uk/pac)

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

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Oral evidence

Taken before the Committee of Public Accounts

on Wednesday 17 July 2013

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon	Stewart Jackson
Stephen Barclay	Fiona Mactaggart
Guto Bebb	Nick Smith
Jackie Doyle-Price	Ian Swales
Chris Heaton-Harris	Justin Tomlinson
Meg Hillier	

Amyas Morse, Comptroller and Auditor General, **David Corner**, Director, National Audit Office, **Ashley McDougall**, Director, National Audit Office and **Marius Gallaher,** Alternate Treasury Officer of Accounts, were in attendance.

Examination of Witnesses

Witnesses: **Malcolm Corbett**, Chief Executive Officer, Independent Networks Co-operative Association, **Dido Harding**, Chief Executive Officer, TalkTalk, **Nicholas James**, Chief Executive Officer, UK Broadband, and **Sean Williams**, Group Director of Strategy, Policy and Portfolio, BT Group, gave evidence.

Q1 Chair: Welcome. Thank you so much for coming. Are you comfortable? It is very hot, but it is a little cooler here than it is in some of our offices.

This stage in our proceedings is really to garner from you—it is probably less true of Sean Williams than it is of the three of you sitting to his right—what issues we need to address when we question Sean Williams and then the accounting officers later on. This is your opportunity to let us know, as indeed some of you have in writing to us over time, what you find frustrating in the way that this hugely important programme is being developed.

If I may, I will start with Nicholas James, because my understanding is that your parent company in Hong Kong has given you £150 million to spend on rural broadband. Is that correct? Why have you not spent any? Why have you not been able to invest any of it so far? For those who do not know you—I happened to look you up—can you say a little about your company?

Nicholas James: Yes. UK Broadband is a subsidiary of PCCW and Hong Kong Telecommunications. We also move a third of the world's data around the world on cables. We are a reasonably sized company in Hong Kong and we are the UK arm.

We felt that, with the technology that we have developed and the spectrum that we own, we could support the broadband programme. I sought funds and got £150 million from Hong Kong in 2011. It is true to say that we have not spent a penny, because there was no way that we could join in the process due to the way that it was structured.

Q2 Chair: Can you elaborate on that, please?

Nicholas James: Yes. In the beginning, the country had a choice between BT and consortia. That is an important point to bear in mind, because nobody could do it on their own other than BT. It was a question of how to create consortia that would be able to bid. A number of rules changed during the course of 2011 and up to now, which in effect ruled all of us out in one way or another. We were a partner to five fibre operators who were interested in being bidders—we were the wireless partner—but they all fell by the wayside one after the other.

There were several reasons. One is that the geographical areas are too small. You cannot build a viable business in the way that we have carved up the geographical areas. The risk is that if you only get one of the areas, you cannot amortise your start up costs across that area. If the areas had been bigger—twice the size or more—you could have taken the risk of only winning one. However, because they were not bid together but in sequence and are still being bid, you do not know until the end how many you are going to win. You need to have enough that you will win if you win one to make it viable to build. That did not happen, because the areas are too small.

The second reason is that the original plan was to provide 100% NGA, as defined by the EU, to every household in a bid area.

Q3 Chair: You had better explain NGA to us.

Nicholas James: NGA means next generation access. If you do not deliver NGA, you are not eligible for state aid. The definition of that is 30 megabits down. There is no figure for the up speed, but we have generally thought of it in the UK as 3 megabits to 5 megabits.

What then happened is that the bid areas, which were delivering 100%, were reduced to between 80% and 90%—the so-called 90% that we talk about today. That meant that a consortium that was setting out to deliver NGA to 100% was then disadvantaged against BT, which could not deliver 100% but could deliver less than that. The more you reduce the areas, the more you favour a BT solution.

Having said that, BT is essential to the programme. Whatever competition we had offered, it would have got 60% or possibly 65% of the business anyway. The issue is with the rest, which is where we could have all played a part but have not been able to.

One issue is that reducing it favoured the single provider. Secondly, originally, it was supposed to be NGA to every household. That has been reduced because we have allowed state aid to fund fibre to the cabinet. Just to explain that, it means that if your home is connected to a cabinet today that has fibre in it, you tick the box of NGA. In reality, you may not get NGA, because if the copper that goes from the cabinet to your home goes more than about a kilometre, it cannot deliver NGA. So we have changed the rules from delivering real NGA to every household to reducing it, to delivering, in effect, fibre to the cabinet in large parts of the UK. That favours the incumbent, because we would have had to come in and we do not have the cabinets in the same way; we would have had a different solution. That favoured the incumbent and put off, obviously, some of the rest of us.

Q4 Chair: You are going to have to explain just a little bit more to me why that favours the incumbent.

Nicholas James: Because, in effect, they already have the network.

Q5 Chair: They have got the cabinet there.

Nicholas James: Yes. It is a combination. If you reduce the 90% and you allow FFTC, then the advantage that the consortium could bring, which is delivering a new, different solution, disappears. That is why a lot of people withdrew.

A couple of other things. Value for money. We said all along that there should be a final test of value for money in any assessment of what finally got contracted by a local authority. That has gone out of the window. I can understand that, because if you only have one person on the framework, you sort of have a different conversation. But the whole concept was that a provider would have to show that they had maximised the available technology in the best possible way to deliver the best outcome for the money, which would have allowed alternative providers, who had alternative technology solutions, to show they had a better solution for the money available. That measure disappeared.

My fourth point is, fixed wireless. It does worry me when you have a Report that says wireless cannot deliver NGA. That is completely untrue. Fixed wireless can deliver NGA. Mobile wireless cannot. So fixed wireless can; the EU has accepted that. We have demonstrated it to the EU. There was no attempt by the UK Government to get over the fixed wireless barriers. So two of our potential partners withdrew because they knew that they would not be able to deploy fixed wireless, and therefore they knew they could not solve the problem.

Broadband Delivery UK was given an opportunity by the EU to apply to allow fixed wireless to be allowed in January, and only last week, when it knew I was coming to this session, did it write the letter.

Mr Bacon: Unbelievable.

Nicholas James: My last point is, there is a general issue here, where the EU rules make it really clear that each region has to publish initially its assessment of what is going to happen in its area. It then goes through a period of consultation. It then decides what it wants do and then it has to have a second consultation. This is written in the EU guidelines and in the BDUK guidelines. BDUK has added one word, “credible”, that the EU had not added, which is interesting, but other than that, it remains. I do not know of any bid area that has had those two proper consultations. Lancashire certainly did not; it had one, which was a little bit of a consultation, and not the second one.

So the opportunity for people to come forward with alternative suggestions was denied, and in my view—we have taken legal advice on this, but decided, frankly, there is no point doing anything—what we are doing is challengeable under the EU rules, because we are not actually following those two very clear guidelines of setting it out.

The example of that—I did not want to put Sean on the spot, because in most cases BT are going to do a really good job; they just do not have enough competition, in my view—and the one area where I have a real beef with them is, they are still not telling us what they are going to build where. So the so-called 10% is still not clear. That is why I have not spent any more money, because I cannot even try and address the 10%. Right?

The problem is that if that consultation process set out in the EU rules had been properly followed, then they would have had to declare clearly where they were going to build, and what speeds and what they were going to deliver, which would have revealed the 10%. As it happens, we have not gone through that second consultation in any serious form, and in most cases not at all. Therefore we are in the position we are.

Q6 Mr Bacon: You’re one of the clearest witnesses that we have had for a very long time, if not ever. I am not sure whether you are mostly clear or mostly depressing; you are actually both. It is quite staggering. Can you characterise BDUK for us?

Nicholas James: Yes. When I was boy, we closed half the railways in England. Dr Beeching was accused of running the trains at times people did not want to catch them so that he could close the lines. I would apply that absolutely to BDUK. They started off with good intentions: “Let’s do 100%, let’s get best value for money”. For one reason or another, due to lobbying from various quarters—

Q7 Chair: What does that mean?

Nicholas James: I believe that they were influenced by a number of people, and slowly took the goalposts down.

Q8 Nick Smith: What does that mean?

Nicholas James: The 90%. We should be delivering 100% but we are delivering 90%.

Q9 Nick Smith: Who influenced them?

Nicholas James: It has to be BT. I am not criticising it for that; I am a business and I do influencing too. We are all in the business of influencing.

Q10 Chair: But not where there is £1.2 billion of public money involved.
Nicholas James: But that is not BT's fault. That is the fault of the officials that allowed themselves to be lobbied. It is not BT's fault. We should have had a much more robust process that did not give in to some of that pressure. That is the issue for me. We have not had a robust enough process and that is the outcome of where we have got to.

Q11 Chair: We have got all afternoon, but I just want to give everyone a chance. I am now going to Malcolm Corbett first and then I will come to you Dido at the end. Malcolm, just say where you come from and then raise the key issues that you think that we should tackle this afternoon.
Malcolm Corbett: My name is Malcolm Corbett, and I am the chief executive of the Independent Networks Cooperative Association, which is an association of about 500 non-incumbent organisations in the private, public and community sectors that are developing next generation broadband networks. I think the issues that INCA members have been discussing, for quite a long time, with BDUK and with politicians are around the issues of why did competition in the main programme fail? What is the result of that competition? We have seen the National Audit Office Report which points out what some of the consequences of the failure of the competition are, and issues of transparency and issues about what we need to be doing next.
Nick has gone through very well some of the issues to do with why competition failed from the point of view of non-incumbent networks. There are a lot of organisations that are prepared to commit substantial amounts of money to this process. However, in rural areas where you already have one incumbent which, by definition, has the only network in those areas, and if the challengers cannot get access to any of that existing infrastructure to help make their business case stand up better, then it is very challenging.
BT were pushed very hard by BDUK and Ofcom to create an offering, to create a passive infrastructure access product—something which would allow people to actually make use of the existing ducts in the ground and the telegraph poles that we use for these networks. However, all of the non-incumbents concluded that it was so hedged-around with commercial caveats that it became unusable for them: they could not use it for business-grade services, to link communities that they were building local networks in back to the internet, the so-called backhaul connection, or to run mobile phone masts. They had restrictions on other aspects like having notices to quit of 30 days on the infrastructure and a whole range of different things like that meant that nobody felt able to use it.
Without that passive infrastructure access, you have got a real problem. One of the issues that we think is really important is where we are going to put public money—our money, taxpayers' money—into these networks, into companies like BT and potentially others that should be done on a fully open access basis. In other words, we should encourage people to be able to use that infrastructure for competition, not just at the level that BT wants other companies to use it, at the so-called active layer, but right down to the passive layer. That is in line with EU rules and competition rules, and it is part of the reason that DG Competition took so long to argue with BDUK about whether or not they should get state aid approval.
There were two other major problems within the initial constructs, one of which was around demand risk. If you are going to challenge to build new networks in these rural areas, you have got to make sure that you have got customers that are going to come along and buy those services. Very little was done to ensure that that is the case, either through creating mechanisms of anchor tenancy—i.e. public sector organisations or others who want to use these services in their areas becoming anchor tenants on new networks. That was not put into place. In fact, two programmes could have been easily linked by the Government: the Public Services Network programme, putting out networks to all these public service organisations, and the BDUK programme. That was not done.
Secondly, there is a problem with service providers like TalkTalk. I am sure Dido will speak about this herself in a little while. Service providers operate on very thin margins—ISPs, that is: TalkTalk, Sky, Virgin and BT itself. If you have to change your processes in order to put your network services over somebody else's infrastructure, that could be a very expensive process. This was identified early in the process for BDUK, but nothing serious was done about it. Two organisations—ourselves and the Broadband Stakeholder Group, which links Government and industry together—both put in place processes to try to work out how to facilitate that, but nothing happened there.
I think Nick has explained the problem of consortia building, which meant that really none of the consortia could see how they could work. As a consequence we have no competition on this programme, and we have lost a lot of investment that could come into this sector. So Fujitsu were offering £1.5 billion into this process. Nick has talked about £150 million from UK Broadband, a comparatively small organisation. Others were prepared to bring forward investment, which simply is not happening.
BT last year promised £1 billion into this process at the House of Lords Committee. The National Audit Office has said that has turned itself into £356 million. Nick—small company—was offering nearly half that, £150 million, from UK Broadband; so we have lost a lot of investment that could be coming in to deliver these sorts of new networks, which our economy really needs.
We analysed the situation in 2012 as INCA. We asked our members: "Why did this competition fail?" We presented our analysis to the officials in DCMS and BDUK. They agreed with the analysis. We presented it to the Secretary of State. We said, "Would you like us to put forward proposals to address these issues?" She said, "Yes, please"; she wants to see more

competition—she is committed to that. We submitted our proposals and the officials said, "No, not really."

As a consequence, we now have a situation where state aid intensity in this programme is 77%; so every pound that is going to get spent—77p comes out of us, the taxpayer. If you go to Sweden, and you go to deeply rural areas of Sweden, you will find precisely the opposite. You will find state aid intensity of between 25% and 33% in very rural areas of Sweden, where fibre-to-the-home networks—very future-proofed networks—are being delivered by a whole variety of different organisations. It is a completely different picture. They cannot believe what we are doing here. They think it is completely bonkers.

One of our members, Rala, a small company, delivered 90 projects—village fibre-to-the-home projects—last year alone in Sweden. If you talk to the Americans the rural utility service loan fund set up under the Department of Agriculture has lent out $4 billion over the past few years to deliver these next generation access networks. I spoke to the woman running that fund a couple of months ago, to ask her opinion on our process, and she can't believe it. She expects all of that $4 billion to come back, to be redeployed and re-used, not simply to be granted and handed over to an incumbent to spend. In her view the process should be completely different. Another of our members, a company called Calix, has delivered 1 million fibre-to-the-home connections in rural America in the past few years. It is a very different sort of model. It is a totally different model on state aid.

The second issue that we are really concerned about—

Chair: I will have to speed you up a little bit.

Malcolm Corbett: Yes. This was highlighted hugely in the National Audit Office Report—the issue of transparency. There is a huge issue of cost transparency—transparency over BT's costs. It is very unclear exactly how they are going to spend money and whether we are really genuinely going to get value for money.

We have also got a big problem with transparency over BT's roll-out: where they are going to go and where they are not going to go. There are many other providers around the country who are delivering future-proof networks today, both in the community sector and the private sector. All of those face the danger of being overbuilt—having their networks overbuilt by BT turning up with state funding. That to me seems to be entirely the wrong way round. We are in a situation at the moment where companies like Gigaclear in the private sector or B4RN in the community sector, or many others who are building these networks, risk being overbuilt by BT using state funds. That cannot be the case.

I have to say, to many of those smaller providers, BT does not look like our big, friendly, cuddly British Telecom. It looks much more akin to a predatory organisation who is going to go after them, and go after them hard. It is a bit like they are facing this sort of vampire death squid lurking in the depths, waiting to gobble them up and destroy them. That is what it feels like to many of these organisations. We have examples of that every day, with organisations coming to us and saying, "Look, we face this problem in our area". Local authorities are extremely fed up with this process—they hate the fact that they are faced with a procurement in a competition with only one competitor. They get fed up with the bullying tactics that they have to confront; they will tell you privately about that, if you can persuade them to. They face real challenges trying to get value for money for their ratepayers; for us, the taxpayer; and for Government. There is a serious set of problems.

I think that Maria Miller, the Secretary of State, is determined to try to fix some of the problems that she has found, which she inherited. That started on Monday, when there was a meeting to discuss the small Rural Community broadband fund. That is a bunch of fantastic small projects that are going to deliver 100% fibre to the home in their deeply rural areas. Nobody will be left behind; everybody will be covered. In one case it is a well-heeled Cotswold community next to a place full of trailer homes. They are going to cover everybody.

The B4RN project in Lancashire has raised £1 million from the local community; they have farmers out digging trenches and the Women's Institute learning how to be fibre-splicers so that they can reduce the cost of making all this stuff work. They are working really hard. All those projects are stalled at the moment, because BT will not say where the final 10% actually is. BT knows; the local authorities know. They sign in their contracts a Speed and Coverage Template identifying a roll-out plan for their area. If we could get access to that information we would have a pretty good idea of where the final 10% is and people could act. Those rural community broadband projects currently are stalled, but Maria Miller wants to see them go through and she is arguing very hard that we should try to fix some of these problems. I am very heartened that we have a Secretary of State who really wants to make something happen.

We really need to get to grips with some of these issues. We want to see transparency over costs and roll-out. We want to understand where BT is going to go and where it is not going to go. Our members want to act. We want to make sure that private sector initiatives and community initiatives do not get overbuilt with state funding; that is entirely the wrong way round when it comes to state aid.

State aid should be used only for market failure. We want to see fully open access: if we are paying for this infrastructure, which we are, we want to make sure that that is open access so that other providers can use it and deliver new, innovative services to all of us.

If we are going to spend more money in this area, we want to get active engagement with the officials from the non-incumbent sector so that we can ensure that next time round we get better value for money out of this process than we are likely to get this time round.

Q12 Mr Bacon: I am really glad that this is being transcribed, because you have said so much, some of which is so staggering, that I think we will be studying the transcript quite carefully.

On the investment that has been forgone, you mentioned the £150 million from Mr James, which

he mentioned earlier, and £1.5 billion that has been promised by Fujitsu. Have you an estimate of the total value of the investment that has been forgone?
Malcolm Corbett: Not off the top of my head, no; but that would be easy to get.
Mr Bacon: Could you come up with an estimate and write to us with that?
Malcolm Corbett: I would be happy to do so, yes.

Q13 Guto Bebb: You mentioned in passing that there are examples of bullying of local authorities. That is quite a serious claim—could you expand on that?
Malcolm Corbett: One local authority was mentioned on Monday to the Secretary of State. One local authority was very supportive of one of the local rural community broadband fund projects. That is a small scheme of only £1 million[1], designed to support innovative projects in very rural areas. The chief executive of that local authority was very supportive of one of the local schemes; she publicly said that she thought it was great. It is an absolutely fantastic project. She was then told by BT that if she continued to provide that public support her county would go to the bottom of the queue.

Q14 Chair: Where was that? You cannot tell us?
Malcolm Corbett: I could, but I am not sure that it would be a great idea.

Q15 Mr Bacon: Given the behaviour of BT in relation to the national programme for IT in the health service, where in many cases it basically blackmailed local health providers, that does not surprise me at all.
Malcolm Corbett: Many local authorities are very upset by this process. To be honest, BT is doing what BT is going to do and what it has to do—it has just scored £1.2 billion.
Chair: Our job is to make sure that £1.2 billion of public money is properly used.

Q16 Mr Bacon: I think that only 26 of the contracts have been signed so far. Of those across the country, therefore, 18 or so have not been. Presumably they do not have to be. Somebody is shaking his head helpfully behind you—so they do not have to be signed?
Malcolm Corbett: No.

Q17 Mr Bacon: Would it be your recommendation to the Committee that they not be signed and that the process of how the contracts end up being let, at least for those remaining ones, fundamentally be revisited?
Malcolm Corbett: You're the parliamentarians. You have a Report in front of you from the National Audit Office saying that it is very hard to judge whether you are getting value for money for the public sector spending in this process. I think you have to make a judgment about that.

Q18 Chair: Nick, would that be your recommendation?
Nicholas James: Yes, I think we should call a halt and have a proper look. We need to do that quickly, because the Government's imperative, rightly so, is to get as many people connected up as fast as we can. So what we must not do—
Chair: But not by squandering public money.
Nicholas James: What we must not do is make bad decisions after bad decisions and delay it.
Malcolm Corbett: We have already changed the target. The target used to be the best superfast broadband network in Europe by 2015. Earlier this year, BDUK announced that it wanted to have a transformation of broadband. We are no longer going for the best in Europe.

Q19 Nick Smith: I want to pick up on one of the phrases that Mr Corbett used. He said that BT was like a vampire death squid. It is always the colourful phrases that get me. Give us an equally pithy example of where you think BT has used its death squid powers?
Malcolm Corbett: There's a really great company called Gigaclear, which has a list of about 300 villages that want to have fibre to the home, and which it can deliver. Gigaclear's model is based on demand aggregation. If you get sufficient numbers of people who are prepared to sign up for a service and they can get a decent connection back from the village to the internet—the backhaul connection—Gigaclear, on an entirely private sector basis, will go and invest in that area.
I have a letter that Mathew Hare, the chief executive of Gigaclear, has written to Ed Vaizey in the past few days, complaining about the fact that BT is turning up to villages where it has people working to organise demand, saying, "Don't worry your pretty little heads about Gigaclear. We're going to turn up here with our state funding soon, so you don't need to bother with this project." There are even some examples of where that apparently has not been true.

Q20 Nick Smith: So they're using spoiling tactics to take on the minnows in the development.
Malcolm Corbett: In our sector, B4RN is everyone's favourite community project at the moment—Broadband for the Rural North, in Lancashire. Just over 3,000 homes in a series of villages in a deeply rural area have been working for a long time to build up a fund of £1 million of community investment to go into this. They have the farmers digging, and so on. They had an agreement with Lancashire council and BT that their area would not be included within the main programme and they suddenly find they have letters being written to residents in part of their area saying again, "BT's going to come and deliver to these people, so don't worry about B4RN."

Q21 Mr Bacon: When you say that BT knows where the 90% are but won't say—which I regard as scandalous—the fact that it doesn't say means that it could change where the 90% are.
Nicholas James: Precisely.

Q22 Mr Bacon: Is BT doing that? Do you get some sense of finessing at the margins and of things moving in and out of the goalposts?
Malcolm Corbett: I am being told that by officials.

[1] Note by witness: should read £20 million.

Q23 Mr Bacon: By civil servants and local government officers?
Malcolm Corbett: Yes, by civil servants. So far, to my knowledge only one local authority has said, "Let's get on with something different, shall we?" That is Northamptonshire, which has published some very useful maps of the coverage it expects from the contract with BT, and of where they don't expect to get coverage. It has started an engagement process with alternative providers, saying, "What can we do together to get all these areas covered with next generation superfast broadband?" That is the only one at the moment.
Chair: Let me move on to Dido.
Dido Harding: Where would you like me to start? With the giant squid?

Q24 Chair: I think you are coming at it from a different perspective, right?
Dido Harding: I run TalkTalk. We are not an infrastructure builder; we are a user of infrastructure. We have about 19% of the consumer broadband market in the UK, and BT is my single biggest supplier and my single biggest competitor. BT is probably my reason for being, in that we would not exist, in truth, if BT did a better job—we would never have even begun.
The reason I am here is that I am worried that if we are not very careful the focus on trying to build the network as fast as possible will mean not only that the money is immediately not well spent, but that you're forfeiting competitiveness going forward. Today, BT takes approximately a 30% to 35% market share of copper broadband connections. On its network—so excluding Virgin for a second—it accounts for more than 85% of superfast broadband connections. It is doing an excellent job of rebuilding its monopoly.
My worry with this programme is actually not what has happened up until now; it is what happens going forward. The reality is that BT is behaving like a very intelligent and well-run monopolist. It has a natural monopoly in digging up the roads across this country. There is not a village in Britain that does not have an Openreach engineer. As one of BT's biggest customers, I have to say that it is very good at it.
The problem is that that natural monopoly is such that however the Broadband Delivery UK rules have been designed, it would have ended up winning the vast majority of the bids. Without really firm scrutiny, taxpayers' money would then be badly spent. It would be badly spent in the short term, but, more importantly, if BT is not properly regulated going forward, you might have the network built, but people will not be using it. 60% of the population today could take superfast broadband if they wanted to. Only 6% actually do. That is in large part because it is too expensive.
We, as a customer of BT, have lodged a Competition Act complaint with Ofcom, which it has opened, because we think that BT is charging too much for wholesale access to superfast broadband.

Q25 Chair: There is not much difference between the wholesale and retail price, is there?
Dido Harding: The basis of our margins squeeze complaint is that BT is fundamentally overcharging on the wholesale price and then—

Q26 Mr Bacon: BT would rather have a low-volume, higher-margin model than see it spread out as quickly as possible
Dido Harding: I think it is a game of timing. BT would like to have an unregulated fibre market for as long as possible. It is hugely tempting to every politician I have met in every country to want to build the network as fast as possible and BT will tell you that the best way to do that is not to regulate the product.
Actually, however, all that means is that price is too high for a while. There is a real first-mover advantage in acquiring customers and doing so as fast as you possibly can before the regulator catches up with you. That is the reason why we submitted evidence to the Committee. The battle is not yet over. The BDUK process was always going to get to this point.

Q27 Chair: What would you like to see?
Dido Harding: As Amyas Morse has said, DCMS and Ofcom need to exercise every single ounce of the scrutiny powers that they possess to ensure that the natural monopoly behaves itself. I do not think that BT is a giant evil squid; it is just doing a good job as a monopoly infrastructure provider. The important thing is to ensure that that is regulated.
DCMS is in the same position that I am and I said to the Secretary of State, "Welcome to my world. You are buying from a monopoly provider. The difference is that you can help shape the regulatory environment and I can't. I do not get any choice from whom I buy superfast broadband and nobody helps me to set the price other than my ability to negotiate with the big beast."

Q28 Ian Swales: You said that you're a user of the infrastructure and also that BT is one of your biggest competitors in terms of what they provide. Can you say a bit more about that competitive environment and how you see BT operating? If we have the infrastructure, what kind of things does BT do competitively with TalkTalk?
Dido Harding: At the retail end, BT retail is selling phone and broadband to consumers and to businesses just as we are and it acts, as it absolutely should, very competitively. What we see, however, is that it is not passing on the cost of fibre to their consumers. I have to pay £8 a month extra per customer per line for a fibre connection. BT retail manages to sell fibre at basically the same price as they do copper. That is the basis of our margins squeeze concern.
We are actually very pleased that Ofcom is starting to get to grips with this. Literally in the past two works, Ofcom has published its review of the wholesale local access market and is starting to set out a framework for regulating the provision of superfast broadband. I would certainly welcome this Committee remaining engaged and involved, because the way that you get value for money from the £1.2 billion is actually from whether there is take up and whether the prices are

low enough. The two are intrinsically linked. It is not just about whether the network is built.

Q29 Ian Swales: Because in theory BT could drive out the competition at the retail end and then charge what it likes for its now monopoly provision.
Dido Harding: That's exactly right and that is what is happening at the moment in that 90% of its fibre connections are on its own in-house retail outlet, rather than ourselves, Sky or any other of the 60 or 70 retailers of its fibre products. We account for next to nothing of its volume.

Q30 Guto Bebb: Just to follow up on the comments you have made, it appears you are saying it could be argued that politicians have been guilty of swapping competition in the roll-out for the capacity that has been made available. I do not know whether that is a fair assessment of what you said. If the competition has been driven out at this point in time, your comments would indicate that you believe that that can be resolved if we get the regulatory framework correct moving forward, in comparison with the situation thus far.
Dido Harding: Yes. I think that the infrastructure build is a natural monopoly.

Q31 Guto Bebb: Has that been made worse by the way in which we have put the framework together?
Dido Harding: No. We were very involved with Fujitsu as one of the potential competitors. I would dearly have loved any of the alternatives just to bring some competition and an alternative choice for me to buy services from. We worked very hard and closely with Fujitsu in particular. In the early days, the engagement of alternative providers definitely brought BT's prices down.
I think that Malcolm and Nicholas referred to the fact that on access to its poles and ducts, the first round of pricing that BT offered to BDUK was just outrageous. Because some alternative potential providers were going through the process, the prices came down quite dramatically. However, I think that the harsh truth is that however you cut it—however much of the very valid points that both Malcolm and Nicholas have made—you would still end up in the same place, which is BT winning the vast majority of the contracts.

Q32 Chair: I think that everybody accepts that. You accept that they would have got 60%—it's about the 40%.
Nicholas James: Yes, we completely accept that. But the competition would (a) bring some competition and (b) get the price down, and therefore give you a real test for value for money.
Dido Harding: My point looking forward is that it is the retail competition that really matters in this market. Consumers and businesses need to have choice on who they can take their services from, otherwise, in the end, you will have low take-up and high prices. That is true when you look at it globally. Today, in our copper broadband market, we actually have one of the most competitive retail markets in the world. We have one of the lowest prices and the highest take-up rates. They are all intimately linked. The danger is that, in the desire to get the network built quickly, there is a temptation from everyone involved to believe that you have to sacrifice competition at the altar of investment. I do not think that that needs to be true.

Q33 Guto Bebb: Just to finish that point, we have obviously ended up with BT being the sole developer of the network. We accept that it would have had a significant proportion of the contracts—60%, 70% or whatever—but did the system that we chose to implement make that 100% BT delivery a reality, or could that have been avoided?
Dido Harding: I think I am more in the camp that says that it would have ended up at 95% or 100% rather than 60%, to be honest. Each time you knock down the issues, there would have been some more, because there is the fundamental economic reason that BT is more efficient. Even if you took away the very valid point that my colleagues here have made, you would still end up with a cost advantage that would have meant that BT won those contracts.

Q34 Guto Bebb: Do Mr James and Mr Corbett want to comment on that?
Nicholas James: We can argue about percentages, but for the work that we did, we planned 40% of the UK in detail, village by village, postcode by postcode. I am under an NDA so I cannot tell you who our partners were, but we had three very big partners, one of which has been mentioned twice in this room.

Q35 Nick Smith: What is an NDA again?
Nicholas James: A non-disclosure agreement. Our view was that we could win 25%. We worked out what BT could do it for—we were obviously planning knowing where their cabinets were, and all that—and we reckoned that we could do 100% of those areas and win 25% of the business. That is where we were. At the end of the day, Dido might be right, they might have dropped their prices by so much, but we were going to use a mix of technology in order to deliver 100%. BT is really using only a single technology.
Dido Harding: You may be right.
Nicholas James: That is where the measure is important, because if you deploy multiple technologies, you can do more for less money, but, if you employ a single technology, you are stuck with that. The whole point of the consortia was to bring in different expertise to have a combined technology solution.
One house might be delivered in one way, another in a different way, but everyone would get 100%. If you did that properly and did a cost model across it, you could show that that was more cost effective for public subsidy at getting to 100% than if you stuck to the single model that BT is now using. That is why we thought that we could win 25% of the business.
Malcolm Corbett: Something else that is worth saying is that there is a capacity constraint issue here. We know that, according to the National Audit Office, fewer than 10 of the counties will get delivery by 2015, when it was supposed to be all of them. Effectively, what you have is that BT has been the

only recipient of any of the funding to deliver any of this work, and you have a whole industry sitting on the sidelines. You have got all that capacity not being utilised and not being engaged in the process, and that has led in part to the delays.

Q36 Meg Hillier: I am following this debate from an urban perspective and it seems to me that what you are saying is that had this been done differently, there could have been emerging new technologies that got a grounding and might have provided benefits to urban areas such as mine in Shoreditch, where there are still huge connection problems. Is that what you are saying?
Malcolm Corbett: Yes.

Q37 Meg Hillier: So this would have been the beginning of the next wave of connection.
Malcolm Corbett: There is one extraordinary fact in here, which is that in BDUK there has been some analysis on the roll-out of superfast broadband according to postcode, and the number of businesses in those postcodes. As the number of businesses goes up, the superfast roll-out goes down.
Meg Hillier: We can have a separate conversation about Hackney and the challenges there.

Q38 Chair: We are not talking about Hackney today, although I am going to talk about Barking in a minute, when I get to Sean Williams, as I have an issue around my constituency. Richard just said to me, "Off to the Tower."
I will ask you some questions, Mr Williams. When you appeared before the House of Lords Select Committee, you said that you were willing to spend £1 billion, in addition to the £2.5 billion of BT capital, to match Government funding to roll it out into the final third and to get as far as possible into the final third. You said you were going to spend £1 billion. That was in June 2012, just over a year ago. Where is that £1 billion?
Sean Williams: Our commitment was to spend up to £1 billion.

Q39 Chair: No. You said that you were willing to spend a further £1 billion, not up to £1 billion.
Sean Williams: Yes. That was on top of the £2.5 billion we are already spending in our commercial footprint and to match £830 million of expected central Government funding. Our current estimate is that relative to the £462 million of BDUK funding, we expect to contribute more than £700 million.

Q40 Chair: I have to tell you that that does not marry with the data we have here. Figure 14 on page 37 shows that the latest projection of your capital funding is £356 million.
Sean Williams: Yes, and we have explained to the NAO that it has missed out another £350 million-plus of operational cost that we will incur to roll out the network.

Q41 Chair: No, I am talking about capital. This is capital investment. I will repeat what you said in the House of Lords: "We are willing to spend a further £1 billion in addition to the £2.5 billion or so of BT's capital to match Government funding".
Sean Williams: We are. We are going to spend more than £700 million of BT money, matching the £462 million of central Government money for the BDUK footprint. When you count in Cornwall and Northern Ireland, the number will be more than £800 million.

Q42 Chair: We will come to Northern Ireland, but we are not talking about the Northern Ireland programme; we are talking about this programme. I want to marry those figures with the one in figure 14, which mentions £356 million.
Sean Williams: The difference is the operational costs that we will incur to roll out the network.

Q43 Chair: I do not count operational costs as capital. In fact, I was going to ask you how much of the £356 million was capitalisation of your labour costs.
Sean Williams: I cannot answer that question off the top of my head.

Q44 Chair: Is some of it capitalisation of your labour costs?
Sean Williams: Yes, clearly, but there is a lot of labour that goes into rolling out the network some that we capitalise and some that we do not, which we would not be spending, but for the fact that we are helping to roll out the network.

Q45 Chair: In my view, capital is capital.
Sean Williams: Our commitment was to spend up to £1 billion in addition to—

Q46 Chair: No. You said that you were spending a further £1 billion. You are playing around; sorry. What I am drawing your attention to is that what you told the House of Lords Select Committee in June 2012 is not what is happening now. You are not spending that amount, and a lot of that capital expenditure is capitalisation of labour costs.
Sean Williams: All the money that we are spending to roll out the network, whether we capitalise it or not, is money that we would be spending otherwise[2].

Q47 Chair: That is not the point. You promised the House of Lords Select Committee that it would be BT capital, which is pretty clear. That is investment in infrastructure.
Sean Williams: It's all money that the shareholders are spending to roll out this network which they will not get back.

Q48 Chair: With great respect, Mr Williams, one of the shocking things in this story is that you are getting £1.2 billion of capital assets for free from the state. That is outrageous. That is our money, not your shareholders' money.
Sean Williams: That is the gap funding model which funds—

2 Note by witness: All the money that we are spending to roll out the network, whether we capitalise it or not, is money that we would not be spending otherwise

Q49 Chair: That's what you are getting. Don't say that the shareholders are being so generous.
Sean Williams: The shareholders will put in over £700 million to match the BDUK spending. The point of that is that the gap funding just pays for the difference. We pay what we would be willing to pay for such a network, and as it costs more than that to achieve the Government's objectives, the public purse provides the rest.

Q50 Chair: I have so far challenged the veracity of your statement to the House of Lords, and I want to challenge you on your costings. You did the Northern Ireland contract, didn't you?
Sean Williams: Yes.

Q51 Chair: In the Northern Ireland contract, as far as I can see, the public subsidy was about 37%. It was a subsidy of £14,000 for each cabinet and path. Do you agree with that?
Sean Williams: I don't have the figures to hand.

Q52 Chair: I have them. In the UK, the subsidy is £47,596 for a cabinet and path on a total cost of over £61,000, according to the NAO Report. In Northern Ireland, the total cost was £37,787. The subsidy has massively increased, although my understanding is that it is easier to do it in the UK than it was in Northern Ireland. How on earth do you justify that, except that you are exploiting your monopoly position to charge whatever you want?
Sean Williams: The analysis of cabinet costs between Northern Ireland and England shows that there is a 12% difference, a lower cost in Northern Ireland -

Q53 Chair: No, that was an early analysis. This is a more in-depth analysis that shows a much greater variation.
Sean Williams: That's the analysis that we agreed with the NAO. The reason why they are different—

Q54 Chair: I suggest that there is a greater difference.
Sean Williams: I don't recognise that number, Chair. We recognise the number of 12% less expensive in Northern Ireland, and there are a number of reasons why that is the case. First, the labour costs of civil engineering are lower in Northern Ireland than they are in England. Secondly, the cabinets do not have power meters in them, so they are less expensive to construct in Northern Ireland than in England.
The third point is that the whole of Northern Ireland is done with a single solution, rather than multiple kinds of solutions. The fourth is that the intervention area was designed at an earlier point of the fibre deployment, so they included some cabinets that were cheaper to enable. There are many other points, including the fact that the topography of the networks in Northern Ireland are different.

Q55 Chair: Do you agree with that Mr Corbett and Mr James?
Nicholas James: We don't deal with cabinets in the way he does, but our information is that he ought to be able to do his cabinets a lot cheaper than he is.

Q56 Mr Bacon: Why did the CEO of Openreach say that each cabinet cost £100,000?
Sean Williams: That would probably depend on how you were counting the cost of the cabinet, and whether you are including the costs of connecting customers at the end and the costs of the backhaul connections, and which cabinets you are talking about in which areas. It is not very easy to put a precise number on them, because they are different in each locality.

Q57 Mr Bacon: She did on 13 December on Radio 4. It was a huge overstatement, wasn't it?
Sean Williams: I think the cost of our cabinets is £29,000.
Mr Bacon: That was wrong when she said £100,000.
Sean Williams: I can't explain what she was referring to on that occasion.
Malcolm Corbett: She did. Liv Garfield, on the *In Business* programme, said that each cabinet costs £100,000. She did say it. I have got it on my iPad; if you want to hear it, I have it here. I would say that a small company in Kent, Call Flow Solutions is preparing to deliver a project in Goudhurst which is based around putting in new cabinets. They are £25,000 each all in—complete, everything.
Dido Harding: May I say that this is exactly why you need the monopoly provider to be really tightly regulated? This is a game for economists to go through each line item, rather than trusting what BT tells you.

Q58 Chair: I agree with that. As you are a monopoly provider, why on earth are you resistant to total openness?
Sean Williams: We are providing 100% transparency on every single item of cost.

Q59 Chair: Can you tell me what is the average contingency across all your contracts? What is the average that you put in as a contingency sum?
Sean Williams: It varies by contract—

Q60 Chair: Your average.
Sean Williams: It is typically between 5% and 8%.

Q61 Chair: I was told it was 50%.
Sean Williams: I don't recognise that number.

Q62 Chair: If we had transparency, we would know. Can I ask the NAO? You say in your Report that you can't tell the contingency in the contracts. Is that right?
David Corner: Yes.

Q63 Chair: You are giving me a figure. I have been told by an insider that it is actually 50%.
Sean Williams: I would like to point out to the Committee that we cannot charge for contingency; we can charge only for actual costs.

Q64 Chair: You don't know, because you might use the contingency.
Sean Williams: No, we can charge only for actual costs on the basis of invoices that are auditable.

Q65 Ian Swales: It says at paragraph 10 of the Report: "The Department has secured limited transparency over costs", and there is a rating of seven out of 20 in terms of transparency, which is even below the threshold that there is supposed to be even to award you the contract. How you can sit there and say that you are providing maximum transparency, I just don't understand.
Sean Williams: Because we are providing 100% transparency of every cost—

Q66 Chair: To whom?
Sean Williams: To the local authorities. The Report states that there is a worry about whether local authorities will have enough resource and capability to deal with the quantity of information we will be providing.

Q67 Chair: Is it true that, in your contracts with local authorities, you are preventing local authority officers from raising any concerns publicly or discussing their contractual arrangements with other local authorities? Is that true or not true?
Sean Williams: No, it is not true.
Malcolm Corbett: What about the non-disclosure agreements?
Sean Williams: Can I deal with that, because it was a theme in the remarks earlier? Every local authority, when we sign a contract, has an outline plan, which specifies to the level of individual postcodes where the likely BDUK footprint will be. Local communities can then ask the local authority, "Is my area covered in the BDUK footprint or not?" Local authorities will give them the answer. That process is currently working. It has worked successfully for Rothbury in Northumberland. It is being used successfully for probably dozens of other RCBF bids at the present time. That is a fact.
Malcolm Corbett: Members of INCA have put in freedom of information requests to a number of local authorities to get Speed and Coverage Templates that cover the whole county so that you can identify where the roll-out will be, over what time scale, and those areas where there will not be roll-out—the final 10%. We have put in freedom of information requests and they have all come back saying, "This is commercially confidential information that cannot be released". I cannot see how it can possibly be in the public interest that our money is being spent in this way without us knowing where the money will be spent and where it will not be spent so that communities can take alternative action.
Sean Williams: We have suggested to the Department and BDUK that they should be published at that point.[3]

Q68 Chair: Which point?
Sean Williams: At the point of contract, the outline plans could be published. It is a matter for local authorities whether they wish to do that.

Q69 Chris Heaton-Harris: I represent a Northamptonshire constituency, and we have heard that it is one of the ones that has proper mapping. Why doesn't that account for the rest of the country?
Sean Williams: It is entirely up to local government and to central Government to make a policy choice as to whether they want to do that. We are perfectly willing to support it. As it is at the moment, the information is in the hands of local authorities and, if communities ask, they will be told the answer. That is the way in which the process is currently working successfully.
Malcolm Corbett: Maybe the Committee could make a strong recommendation that local authorities should immediately publish the Speed and Coverage Templates that they are signing in contracts with BT so that communities in those areas will understand what the coverage plans are.

Q70 Nick Smith: Mr Williams, Mr Corbett talked earlier about your vampire death squid capability. He used an example where you use doorstep and mail campaigns to swallow minnows—every pun intended. What do you think of that accusation?
Sean Williams: There are two stages in the process. At the beginning, there is an open-market review in which everybody declares where their actual footprint is and where their intended footprint—commercial footprint—is so that they can all be excluded from any public subsidy so, if there were a commercial opportunity in villages in any part of the country, they can be excluded from the intervention area. We strongly support that being the case. We do not want any of this public money being used to own and build commercial opportunities.

Q71 Nick Smith: So why did you pick on these little, local minnow campaigns?
Sean Williams: We didn't.

Q72 Chair: Why did you pick on B4RN? Why are you stopping them? This is the Lancashire one, where they have said that their state aid would be a maximum of 25% compared with the 89% for yours. Suddenly, you have come in on top of them and said that you will deliver in the area to cut them out, and you are getting your 89% state aid, when they have 25%.
Sean Williams: The second stage is—

Q73 Chair: Why have you gone in there?
Sean Williams: We haven't. At the second stage—
Malcolm Corbett: We have letters saying that you have.

Q74 Chair: Have you? Have you gone in?
Sean Williams: If I may finish, please, Madam Chair. At the second stage, when the BDUK footprint is defined, other local funding opportunities can ask the local authority whether the area in question is already covered by BDUK. If it is, clearly we do not want a situation where we have two dollops of public funding going into the same area. If it is not, they can simply proceed with their project in areas that are not covered by BDUK.

[3] Note by witness: We have suggested to the Department and BDUK that they could be published at that point.

Q75 Nick Smith: What do you think of that anodyne explanation, Mr Corbett?
Malcolm Corbett: That leads to the absurd situation where a rural community broadband project, such as Cotswolds Broadband or any of the other ones, will be in a situation where BDUK is advising that the local authority first signs its contracts with BT for its main project, then asks BT to do a change control on that contract and then pays BT to do an impact assessment of that change control in order to determine whether this local scheme ought to be allowed to go ahead. What world are we living in here?
Mr Bacon: This is the sort of world that we encounter quite frequently, Mr Corbett. It is called the expenditure of our constituents' taxes. I have written a very good book on it, by the way.
Malcolm Corbett: Let me make one thing clear. Those local projects on average are looking for 25% to 40% state aid. They are raising money from their communities and bringing in private investment. Cotswolds Broadband has some very substantial investment coming in behind it, as have the others, and they are doing things in a different sort of way.

Q76 Mr Bacon: Mr Corbett, on the question of your members applying for freedom of information requests and being told, "Sorry, this is commercially confidential," are you saying that that happens because you think the councils feel obliged to say that because of the non-disclosure agreements they have with BT?
Malcolm Corbett: No, there are two things going on here. One is that those Speed and Coverage Templates are regarded as commercially confidential within the contractual arrangements.

Q77 Chair: By whom?
Malcolm Corbett: By BT, of course.
Sean Williams: By the contractor.
Chair: But it is your bloody contract.
Malcolm Corbett: The Speed and Coverage Template is supplied by BT to the local authority, and it is then regarded as being commercially confidential. The non-disclosure agreements are to prevent local government officers from discussing with each other what is going on, effectively.
Nicholas James: It means that one council cannot share with another what its deal is with BT. There is no way of seeing whether they are getting equal treatment.

Q78 Chair: This is a ridiculous state of affairs, isn't it? Let us see if we can get some progress. My understanding is that you are committed—we will deal with the accounting officers later on—to covering 90% in those areas where you have a contract. Why can't you publish, tomorrow, the 10% that is not covered by your contract? Why can't you do that tomorrow?
Sean Williams: Because it would be a matter for local authorities to decide.
Chair: That is not what we hear, Mr Williams.

Q79 Chris Heaton-Harris: We had it in Northamptonshire, because Northamptonshire has done this. Is Northamptonshire an exemplar in this field, Mr Corbett?
Malcolm Corbett: It certainly is.

Q80 Chris Heaton-Harris: So we have got best practice. Can you, Mr Williams, look at the Northamptonshire contract and interpret it in the same way for the rest of the county councils around England?
Sean Williams: It is a matter for local authorities to decide. As far as we are concerned, every single local authority could decide to publish their local plans. That is fine, but it is a matter for them.

Q81 Chris Heaton-Harris: So there is no restraint on other local authorities contacting Northamptonshire, which published all this stuff, to say, "We would like to know how you were able to do this"?
Sean Williams: Indeed; we have written to the Secretary of State suggesting that that very thing should happen. It is a matter for Government policy, and we will, obviously, support whatever Government policy there is.

Q82 Stephen Barclay: Does the Department at the centre have copies of each county's plan?
Sean Williams: BDUK has access to all the plans.

Q83 Stephen Barclay: So what is to stop BDUK fulfilling the point that the Chair raises?
Sean Williams: BDUK has a role in this, particularly as the very important central policy maker. If it makes a policy that says that all the local plans should be published, I am sure they will be. I do not think we can do it unilaterally; it is a matter for local government to decide.

Q84 Stephen Barclay: Indeed, but sometimes there is a chilling effect around NDAs and people think that they cannot publish even if they can. As the other party to the contract, you are making it clear today in your evidence that there is no objection from BT to full disclosure.
Sean Williams: Correct.

Q85 Stephen Barclay: You are also saying that BDUK has all the plans in one central location.
Sean Williams: That is my understanding.

Q86 Stephen Barclay: In other words, you cannot identify any impediment to BDUK publishing that data tomorrow.
Sean Williams: I think it is a matter for local government to choose.

Q87 Stephen Barclay: No, I am not asking local government. Basically, you have myriad practices. They are not sharing best practice, and you will have officers without expertise going up against people with expertise. We constantly get examples where the comparative data show major distortions between different areas. What I am interested in is one central

point: BDUK. It has all the data. There is no commercial impediment from you—
Sean Williams: There is no commercial impediment from BT.

Q88 Stephen Barclay: So, in addressing the point raised by the Chair—I represent a very rural constituency and, potentially, I personally live in the 10% not covered—there is nothing to stop BDUK publishing the data, is there?
Sean Williams: I think it is governed by the contract in which the local authorities also have an interest. It is also important that central and local government make a policy choice on this—

Q89 Chair: Whose contract is this? Who signs the contract?
Sean Williams: The contracts under the BDUK framework are signed between the supplier, which is generally BT, and the local authority.

Q90 Chair: Always BT.
Sean Williams: So far.

Q91 Chair: Always BT.
Sean Williams: So far.

Q92 Chair: Always BT, so it is BT's contract.
Sean Williams: It is the contract under the BDUK framework.

Q93 Chair: Who wrote this contract?
Sean Williams: It was negotiated in the BDUK framework process.

Q94 Chair: Who wrote it? Did you write it and then BDUK okayed it? Who wrote it?
Sean Williams: No, it was an extremely long and arduous negotiation—

Q95 Chair: Who wrote the original contract that you negotiated with BDUK?
Sean Williams: Lawyers from both sides negotiated the contract.

Q96 Chair: I do not know why you cannot be straight with me, Mr Williams.
Sean Williams: I am trying to be as straight as I can.

Q97 Chair: You are not, Mr Williams.
Sean Williams: We did not write the contract.

Q98 Chair: Is this a contract that emerged from civil servants, or is it a contract that you wrote and negotiated with civil servants in BDUK?
Sean Williams: We did not write the contract.
Nicholas James: To be fair to Sean, every potential supplier on day one was negotiating with BDUK to get the right framework agreement so that we could all be on it. In the end, what happened was that it was written in such a way—I went through some of the issues earlier—that it ended up meaning that only BT were on it. Sean is right that it is not his contract, but it is civil servants' responsibility for coming up with it and not delivering something that more people could join in with.

Q99 Chair: Or not negotiating hard enough with BT.
Mr Bacon: Because everyone else found the process so hideously complicated.
Nicholas James: It was very complicated, but it also started having things in it which people could not live with.

Q100 Chair: Comptroller and Auditor General, go on.
Amyas Morse: Mr Williams, I think that you are a former civil servant—is that right?
Sean Williams: I was on the board of the Office of Fair Trading. Before that, I was on the board of Ofcom and responsible for Ofcom's regulation of broadband.
Amyas Morse: Fantastic. In that case, this is an apposite question: to step back for a moment, would it be fair to say that—this no fault of yours—the competition has not quite provided the competitive pressures that the Department might have envisaged when setting it up?
Sean Williams: I would not say that that is fair. I would agree with Mrs Harding, who said that Fujitsu brought down BT's prices. The fact is that Fujitsu, in its joint venture with Virgin Media, TalkTalk and Cisco, was a very credible competitor in the BDUK process and was the source of a very strong competitive dynamic at the time of the negotiation of the BDUK framework. That is evidenced by the fact that BT is taking a 15-year payback on its investments in this project, which is even longer than the payback in its own commercial deployment. It was a highly competitive process.
Amyas Morse: It is difficult to compare the commercial framework because you have not agreed access rights for the Department, have you? You have denied the Department inspection rights to satisfy itself on whether you are applying the same terms.
Sean Williams: On the contrary—
Amyas Morse: It has undertaken to do it, but it does not have access rights to inspect and find out whether that is a fact or not. Is that not right?
Sean Williams: We have made a contractual commitment to consistency between the two.
Amyas Morse: I know that you have, but you have not given the Department the right to come in and inspect.
Sean Williams: To audit a commercial programme? No, we have not.

Q101 Ian Swales: This is important to confirm: relating back to Mr James's comment, you said that this was an incredibly competitive consortium that had been put together. Do you agree with Mr James's observation that the framework contract was written in such a way that that powerful consortium could not bid for the work? Do you agree with that assertion, which I think Mr James made?
Sean Williams: No, I do not. They did qualify under the framework. They did make bids in three instances. There are comparable bids: other people's prices are available for others to inspect to see whether BT's are

the lowest prices. The truth is BT's are the lowest prices.

Q102 Ian Swales: Mr James is shaking his head at the point—
Sean Williams: It is stated in the Report.

Q103 Ian Swales: I don't know whether he is shaking his head because of your response. Mr James, could you comment on that? Your point was that these other consortia were taken out by what was in the contract.
Nicholas James: To be fair, by two things: one that was in the contract and one how BDUK changed the goalposts as we went along. When we bid for North Yorkshire, which is one of the ones that we bid for, we had to plan delivering NGA to the whole county—the whole 100%. When it was agreed that that could be reduced, it meant that we could not be as competitive. It is a bit like this: we assembled a team to run an 800 metre race, with lots of different people; the competitor had a really good 400 metre team. What happens? In effect—
Ian Swales: The length of the race was changed?
Nicholas James: The race got turned into a 400 metre one, so the 400 metre team won. That is a broad exaggeration, obviously, but, in reality, in North Yorkshire, that is what happened. We could have won that, but in the end we did not, because we could not compete as, if you like, the bars got reduced.

Q104 Ian Swales: Mr Williams, these consortia, like the one you referred to, are they still bidding? Every time you roll up, are they—
Sean Williams: No. I would just add that all the prices we are putting in are the prices that were negotiated under the framework at the time when they were a very serious competitive threat.

Q105 Mr Bacon: Mr James, can I labour that point a tiny bit? What you are saying is, in the North Yorkshire case, as the bar came down, the competitive advantage that would have been available to you, in terms of mixed sourcing or mixed solutions that would have given you the ability to deliver 100%, also eroded, so your advantage eroded. That is what you are saying, yes?
Malcolm Corbett: The person who was sitting on the other side of the table is sitting right behind me—the chief executive of the North Yorkshire network at the time. I think that he would agree and probably nod his head vigorously if I were to say that, in his opinion, the Fujitsu/UK Broadband bid was superior to BT's bid.

Q106 Stephen Barclay: To be clear, the effect of reducing from 100% to 90% was to distort the competition in favour of the existing monopoly supplier, which had won every other bid.
Nicholas James: Correct—and, very importantly, FTTC. BDUK decided part of the way through this process that it would accept that anyone connected to FTTC ticked the NGA box.
Malcolm Corbett: Whether or not they could get superfast broadband.
Nicholas James: Yes. When we started, it was only if you delivered NGA to the home that could you get state subsidy.

Q107 Mr Bacon: In other words, FTTC quality, whatever process it was done by?
Malcolm Corbett: All the "up to" stuff that all your constituents moan about like mad—up to 20 meg, up to 50 meg or whatever, and they do not ever get anything like even half that usually. The same thing will apply with superfast broadband. We will go into this process whereby lots of people will have NGA—next-generation access—because they are connected to a cabinet that has a fibre running to it, whether or not they get any uplift in speed. Once you go beyond 1.5 km from the cabinet, you get no benefit of speed, because the copper line cannot sustain it. We are going to continue with all this—
Nicholas James: In effect, BT is going to get paid as though it had connected people to NGA when it has not. Our North Yorkshire bid would have connected every house to NGA.

Q108 Mr Bacon: Descoping and paying more and getting less is something that we are quite familiar with, I am afraid.
I have a specific question for Mr Williams relating to your earlier exchange with the Comptroller and Auditor General. On page 7 of the Report, in paragraph 10, it states: "BT also contractually committed to ensure the costs in its bids would be internally consistent and consistent with its commercial investment case although the Department is reliant on self-certification from BT as it was not able to negotiate inspection rights." Is that sentence correct?
Sean Williams: That is correct.

Q109 Mr Bacon: Thank you. So when you said earlier, "On the contrary," to the Comptroller and Auditor General, that was not correct.
Sean Williams: I said that we have a contractual obligation for consistency between—

Q110 Mr Bacon: I think what the Comptroller and Auditor General said was that you had not granted full inspection rights, and you said, "On the contrary." But that is what this says—that the Department did not have full inspection rights, and you have just confirmed that this sentence is correct.
Chair: If you don't give full inspection rights, how can you say that you are completely open?
Sean Williams: I also said that we did not grant the auditing of our commercial programme. No, we did not.

Q111 Mr Bacon: I am talking about the Department, not the auditor: "the Department is reliant on self-certification from BT as it"—the Department—"was not able to negotiate inspection rights." You confirmed that that sentence is correct.
Sean Williams: Correct.
Mr Bacon: Right. Well, there is the problem.
Chair: You don't have openness.

Q112 Mr Bacon: How you can say you have openness when you don't is just extraordinary.
Sean Williams: Because we are going to give 100% transparency of every single cost—

Q113 Chair: But you have just said that you cannot inspect—you have not allowed the Department to inspect.
Sean Williams: Every single cost that we incur will be auditable.

Q114 Fiona Mactaggart: If you have no inspection and no competition, the person who suffers is our constituents.
Sean Williams: To be completely clear, all the costs that we incur in BDUK are auditable; all the costs that we incur in our commercial programme are not inspectable or auditable by BDUK.

Q115 Ian Swales: The Report says that 40% of your costs are likely to be labour and project costs, which are difficult to assure. What costs are you saying are fully transparent?
Sean Williams: We will be filling time sheets for all the labour that we put into the BDUK programme, so they are auditable and inspectable.

Q116 Chair: Let me put it to you that one of the reasons why your costs are so high, relative to the other examples given by Mr Corbett and relative to the costs of the programme in Northern Ireland, is that you have shoved in a very high staff and management component—40% for an infrastructure project. It is unbelievable.
Malcolm Corbett: I think we should congratulate the officials who discovered the £3 million overcharging in one project alone, in paragraph 3.10.

Q117 Chair: Can we have an answer? How on earth do you justify a 40% charge on staff and management on an infrastructure project? I have never heard that sort of figure in relation to any infrastructure programme or project that I have ever looked at. Accept that you are skewing BT costs from elsewhere on to this programme to up it to get more of the subsidy.
Sean Williams: Well, I don't recognise that. These are very complicated contracts to manage. We are the most experienced deployer of fibre networks—

Q118 Chair: You are the only one. You are not the most experienced; you are the only one because you managed to carve everybody else out of the market.
Sean Williams: If you made a comparison across Europe, ours is the largest and fastest commercial deployment of fibre networks. We are very experienced in how much project management would be necessary to run very complicated projects over a 15-year term. With regular milestones and regular auditing, it will be a very laborious process.

Q119 Chair: Mr Williams, having been told in this Report that you are not open to inspections, for you to sit there and tell us you are open is wrong. I do not know whether you want to send me a justification, but I promise you I have never seen an infrastructure programme with this level of on-costs; it is completely crazy. I was going to ask you about another cost; it was one of your risk costs. Will you tell us perhaps—it would be lovely if you could write to us about how you got to those costs—your negotiated premium for take-up risk? You have take-up at a very low level, at 20%. How much was the premium?
Sean Williams: We have done all our business cases—both our commercial business case, which has been running since 2008, and our BDUK business case, which has been running since 2012—on the basis of a 20% take-up, which was referenced against comparisons across the world of broadband take-up in fibre deployments. They are all referenced against the same estimate of 20% take-up. If take-up exceeds 20%, there is a clawback—a gain-sharing arrangement—so that the Government or the local body will be able to claw back some of the money and consider whether it keeps it or invests it in further deployment. That is the way the clawback works.

Q120 Chair: You have not answered my question. You negotiated a premium for take-up risk. How much was that for?
Sean Williams: I am afraid that I do not have the number. The way it works is that we have a project margin on a per subscriber basis, so that if the number of subscribers gets above the planned number at the beginning—

Q121 Chair: What was the premium for? You put it at a very low level. I am asking you a simple question. What was the percentage? I don't know how you calculated it. I don't know whether you calculated it as a percentage because you are so "open". Can you tell us the level of the premium, or the percentage of the contract that went as a premium for the take-up risk? You negotiated one—that much I know.
Sean Williams: On each contract, we specify in numbers of pounds per subscriber the project margin, which is shared if the number of subscribers exceeds—
Chair: That is not the answer.
Sean Williams: The only point that I am not able to answer is what was the number of pounds per subscriber. I am afraid that I do not have that information ready to hand, but I am very happy to provide it to you. It is specified in all the contracts. It is a contractual term. It is slightly different in different contracts, but it is a specified number of pounds per subscriber greater than the number that is in the plan.

Q122 Chair: One of the reasons why I am interested in things like the management costs at 40% is that any sharing of profits comes just on take-up, so you pull out the management—
Sean Williams: Madam Chairman, that is not correct. If our costs do not reach the costs estimated in our contract, then the costs that are saved are retained by the local body, so we are—

Q123 Chair: But who knows that, if you don't allow them to inspect and you do it on self-certification—

Sean Williams: We do. We give them 100% transparency over everything we spend. It is auditable. Every single invoice, every single time sheet is auditable. In Cornwall, they have 18,000 invoices and they have been audited with a completely clean bill of health.

Q124 Meg Hillier: Paragraph 3.10 says you were caught overcharging by £3 million in one area, so, Mr Williams, can you tell us, have you overcharged in any other areas?
Sean Williams: That £3 million arose from the consolidation of three contracts into one contract, and it was possible to make a saving in some costs as a result of that consolidation of contracts. No, we have not been found—no, we do not think we are—overcharging in any other area.

Q125 Meg Hillier: The Department found that. You did not offer it up to the Department?
Sean Williams: Yes, exactly, and it shows that there is visibility. We produce an enormous amount of information in our reference cost book. I will just show you an example of our reference cost book. We have 45 pages of it—cost lines—by contract, by product, by year, by quarter. Every single one, broken down. Yes, there is enough visibility in there, as is evidenced by the fact that they have found it in this instance, to show whether or not our costs are consistent. Furthermore, that has also been evidenced by the Grant Thornton report, which is the independent insurance report, which looked at the Northants contract and found consistency.

Q126 Meg Hillier: We would hope there was transparency, because there is a lot of public money going into this, and we need to make sure that that is being spent well. We know that even if you are in the 10% that is not getting it, at the moment, you have nothing. That is a real worry, I think, probably for all of us on this Committee.
I just wanted to go, for one general point, mostly to the other witnesses. The Government talk about supporting small and medium enterprises. It seems to me, Mr James, from what you were saying about how this contract was drawn up, that BDUK had not got that message and managed to actually draw up a contract, as we have seen with interpreters in the Justice Department and others, that worked better for bigger companies. Is that a fair summary or am I being over-simplistic?
Nicholas James: It is, but I would just qualify that by saying these are big projects, so you do need somebody pretty hefty leading it in a consortia. It can't be led by a little local fibre provider. They can play a part. The issue with the consortia was finding the right big player, if you like, and then figuring out how you could use local and national resources to bolt into that and solve a problem. So where we let the SMEs down was by not getting a contract that consortia could use, but the SMEs would never have been able to get on the framework in the first place on their own.
Malcolm Corbett: The SMEs were excluded from the framework entirely from the outset. Companies like Geo—

Q127 Meg Hillier: Was the requirement that the consortia included small companies?
Malcolm Corbett: No.

Q128 Meg Hillier: The Government did not put that in?
Malcolm Corbett: No. In fact, one of the complaints that a number of local authorities have expressed to me is the fact that in the contracts with BT they can't actually get their small and medium-sized enterprises, which are capable of delivering in these areas, involved any more, because BT refuses to engage them.

Q129 Meg Hillier: And of course every time it is let down, the contract, someone takes a cut.
Nicholas James: That was the concept of the consortia—that you would use some local people and some national, as part of the solution.
Malcolm Corbett: We put together proposals for the Department on how you could construct consortia which would enable the different partners to engage and invest on the basis of their own business plans, their own structures, and to do it in a way that other countries are doing, basically, to actually create a more competitive situation, but, as yet, although the Secretary of State is very interested in this, the officials have not yet decided whether or not they want to have a go.

Q130 Meg Hillier: So Government did not manage to get the small businesses on it, even though it says it?
Malcolm Corbett: No.

Q131 Stephen Barclay: Can you just elaborate slightly? What you are saying is the Secretary of State seems keen and engaged—
Malcolm Corbett: She is.

Q132 Stephen Barclay: But you say her officials are not.
Malcolm Corbett: I think things are changing.

Q133 Stephen Barclay: Let's deal with the here and now. On what basis do you say her officials are not?
Malcolm Corbett: We did an analysis last year of why competition in the programme failed. Effectively, we went and talked to all the people who had been working on consortia to go into the framework and discussed with them why that didn't work. Then we worked with analysts to look at different types of structure that could be put into place, which would facilitate competition and create the right sort of consortia to enable competition. We shared that analysis with the officials. They agreed with it.

Q134 Stephen Barclay: At what level did you share it?
Malcolm Corbett: With the officials responsible in BDUK for this process. We presented that analysis to

the Secretary of State in a meeting in January. She said that she wants to see more competition and more investment coming into this sector. She supports that. We asked whether we could put forward proposals to make this happen, and she said, "Yes please," so we did, and the officials turned round and said, "No thank you."
Nicholas James: To be fair, that was only for the 10%, because with the 90% you have to be on the big framework.
Malcolm Corbett: Yes. She started creating different questions.

Q135 Mr Bacon: On the other hand, would it not have been rather useful to get back up to the 100?
Nicholas James: Yes, exactly. The problem is—let me outline one more problem. If you use a solution to get to the 90% and you have not maximised the state aid but you have cut off all the exit routes, doing the 10% becomes more expensive than if you had bolted into the 90%. So we have created a situation where, if we are not careful, nobody will be able to afford the 10% except, frankly, BT. That is because we are not bolting it into something else.

Q136 Mr Bacon: Given that there are all these contracts that have not been signed—I am sorry, this is revisiting what I asked you earlier. Given that there is still an opportunity, in the sense that there are contracts that have not been re-signed, you are saying that there is still an opportunity to bolt that on and to shape those contracts accordingly, so that it can be made to work and so that the innovation you describe can be used and the competitive advantage that is available can still be used?
Nicholas James: Yes.

Q137 Chair: If they stopped now, what would be the delay to the implementation, in your view? It is a slightly off-the-cuff question. What would be the delay to the total implementation?
Nicholas James: I think it would be a reasonable delay, to be fair.

Q138 Chair: Reasonable? What does that mean?
Nicholas James: You are talking six to 12 months.

Q139 Chair: Six to 12 months? Would you agree with that, Mr Corbett?
Nicholas James: Everyone would have to gear up again.
Mr Bacon: They have just moved it by two years, anyway.
Malcolm Corbett: The programme is two years late, anyway.
Chair: What would your view be, Mr Corbett—just a view?
Malcolm Corbett: Given that the Department already seems to have abandoned the best superfast broadband network by 2015 anyway—
Chair: But what would your view be about the additional delay if there was a halt now?
Malcolm Corbett: I think that it would be some months.

Q140 Mr Bacon: Would it be worth it in terms of the goal? Okay, we have already signed 26 contracts.
Malcolm Corbett: You have a Report in front of you which says that it is incredibly hard for any of us to judge whether we are getting value for money out of this process. So, clearly, it would make a certain amount of sense to review—

Q141 Chair: But you consider that it would be six to 12 months? Mr Williams, what is your view?
Sean Williams: At least double that.
Chair: Double that. Of course.

Q142 Mr Bacon: Well, you would say that.
Sean Williams: But you have to go through a procurement process which is compliant with public procurement rules and you have to go through a state aid process which is compliant with the state aid rules.
Malcolm Corbett: No, we have got the state aid notification—that is in place.

Q143 Mr Bacon: A lot of that has already been done.
Sean Williams: That is only in relation to the current framework. There is only one other qualified bidder.
Nicholas James: The only way it works is if you get rid of the framework and start again. That is why I say that it will take time, because if you keep the same framework you will have the same problem.
Malcolm Corbett: But the competition would be very happy with a more competitive environment.
Dido Harding: As one of the members of that other consortium, I think that, as the Irishman says, you would not choose to start from here. The problem is that you would be talking years. That would not be the right answer; it would be much better to more tightly regulate the spend that is inevitably going to go to BT anyway.

Q144 Chair: I have to say, Mr Williams, that I think the 10% should be released immediately by whoever has it in their authority so to do, so that we can get some other players in the field. Your concept of transparency does not make sense to us. Particularly, because by the time you are doing these contracts you know how much they are going to cost, you ought to have total transparency so that we can see where the costs are.
Sean Williams: There will be 100% transparency about actual costs.

Q145 Guto Bebb: I want to follow up on the issue of the 10%. Just to clarify, Mr Williams, obviously BT is the sole provider of this project in Wales as well. So if there are issues in terms of communities that want to have rural broadband in Wales, would they go to their local authority to get that information or would they go to the partner in Wales, which is the Welsh Government?
Sean Williams: The Welsh Government.

Q146 Guto Bebb: I am intrigued by that answer, because I have been involved in a number of community initiatives in my constituency, in order to identify whether they can get a rural grant to put in an independent system—for example, a wireless broadband system.

Each grant application has to be referred to BT for it to clarify whether it is in the 10%, so the answer that you have just given me makes me slightly concerned as to whether the decision is yours, or whether it is that of your partner in Wales, which is the Welsh Government, because their grant form is specific that the information as to whether they are in the 10% and are therefore excluded comes from BT.

Sean Williams: That information is also available to the Welsh Government. I am not familiar with the process or the examples that you identify, but I am happy to check them out.

Nicholas James: Can I just read from the EU directive, which is what BDUK should be sticking to? It says that a necessary condition of approval is that member states publish details of the proposed measure—i.e. the contract. That does not necessarily mean the financial details, but the mapping of it. It continues: "A publication on a central web page…would…ensure that such information is made available to all interested stakeholders." That is what the EU told us to do. If we just did that, it would solve most of the problems we are discussing. It is in the rules. We are not following the rules.

Malcolm Corbett: The strong steer that you are giving here is around transparency over the roll-out plans and where the investment is going to be made and where it is not. If you were also to make a strong steer to say that we do not want to see other private sector or community initiatives being over-built with state funding, that would be extremely helpful, because it seems completely bonkers.

We think there should be much greater access to this infrastructure that we are all paying for, so that third parties can actually make use of it should they want to deliver services. There should be fully open access. If we are going to go into any further funding around this—we have some existing funding and contracts that have not yet been signed—it needs to be done in a different way that encourages a greater degree of competition and therefore a much better chance of getting real value for money.

David Corner: Just to let the Committee know, 18 contracts are still to be signed.

Q147 Justin Tomlinson: Mr Corbett, I want some more clarification on something that you said. The initial target was 100% and then it went down to 90%. You are now saying that, in reality, if you are 1.5 km away and you have a copper line, you are not going to get the service anyway. In fact, it is almost worse. It is teasing you, because they do a postcode search when you phone up to upgrade your subscription—

Malcolm Corbett: We don't know at the moment. I am not sure that anybody, apart from BT, knows how many people that will affect at this point in time, but it certainly means that when Dido is selling her services to people—

Q148 Justin Tomlinson: Are we able even to get an estimate?

Malcolm Corbett: I have seen an estimate of 10%, but I do not know how accurate that is.

Nicholas James: We are talking about millions of people.

Q149 Justin Tomlinson: Do you think that BT would know what that figure is?

Malcolm Corbett: BT should know.

Q150 Chair: Maybe BT can tell us.

Sean Williams: I am happy to clarify, but I do not have that information here.

Q151 Fiona Mactaggart: Will you write to us with it?

Sean Williams: I am happy to clarify. In fact, I think we will probably be writing quite extensively following the unfounded allegations that have been put to the Committee. I will do that.

Fiona Mactaggart: In your response, we would like to know how many thousand households are so far away that what they actually get is not superfast broadband in any form.

Q152 Mr Bacon: Could you add one other thing into the letter? How much of the £356 million mentioned in figure 14 on page 37 is cash?

Sean Williams: Cash? That is all our capitalised expenditure on labour, civil engineering—

Q153 Mr Bacon: How much of it is cash as opposed to the allocation of common costs or capitalised labour?

Sean Williams: None of it is the allocation of common costs.

Q154 Mr Bacon: But some of it is the capitalisation of labour.

Sean Williams: Yes.

Q155 Mr Bacon: How much of it is not? In other words, how much of it is cash?

Sean Williams: There are cash costs to pay the labour as well.

Q156 Chair: How much is investment?

Sean Williams: It is all investment.

Chair: No, it isn't.

Q157 Mr Bacon: It is not all capitalisation of labour, is it?

Sean Williams: No.

Q158 Mr Bacon: Right. How much of it is not capitalisation of labour?

Sean Williams: I do not have that figure right now, but there are the costs of electronics, of fibre and of our civil engineering suppliers, who are digging streets for us, as well as our own costs.

Chair: That is what we want to know

Mr Bacon: Please include a breakdown in your note.

Q159 Chris Heaton-Harris: I have a couple of quick questions for Mr Williams. You mentioned "unfounded allegations" so I am going to head down that route, if I may, and this is related to, but not directly, what we are discussing here. At this present moment in time BT is marketing a BT Sport thing where you take up broadband which is remarkably cheap.

Now, you would have heard the rumours as much as everyone in this room that there is some form of substitution process going on and that perhaps, in some indirect manner, the delay in the delivery of rural broadband is related in some way to BT's ability to provide something that costs a lot of money to its customers for free. I am keen for you just to say, "No, that is completely incorrect," and that I should go and wash my mouth out with soap.

Sean Williams: That is completely incorrect. As to the delay, we don't believe there is any delay. We think that the country will achieve the objective of the best superfast broadband network in Europe in 2015, in comparison with the major comparator countries such as Germany, France, Italy and Spain. Furthermore, our original estimate was that if we were able to win all these contracts we would complete them in 2017. That is still our expectation, despite the nine months of delay in the process of doing the contracting. There is no delay and there is no relationship to anything to do with BT Sport.

Q160 Chair: There is no delay as defined by you.

Sean Williams: There is no delay relative to the Government's own original objective.

Q161 Ian Swales: The Report specifically says, "The Department currently estimates that the Programme will reach its target 22 months later than initially planned." That is in the Report. How can you say that there is no delay?

Sean Williams: It also says that the objective of the programme was to deliver "the best superfast broadband network in Europe" in 2015. That is objective 2 on page 15. I think that will be achieved.

Ian Swales: That is just playing with words.

Q162 Chair: Mr Williams, it wasn't in comparison with Europe. That is absolutely playing with words. We didn't say that we just want to do better than Europe. We said that here in the UK, we—

Sean Williams: That is what objective 2 says in the Report and in the BDUK scheme's original objectives.

Dido Harding: May I challenge the idea that there is no link between giving BT Sport away for free to people who take up BT superfast broadband, and the idea that that has absolutely no link in your economics? It clearly does, particularly when, as of this date, you are unwilling to wholesale it to other people.

Q163 Mr Bacon: You would do very well as a Jesuit, Mr Williams: black is white, and all that. Clarity is opaqueness, transparency is fogginess, delay is on time: you would do very well. You should consider a career in the priesthood.

Sean Williams: BT Sport is available to all BT broadband subscribers whether they are fibre broadband subscribers or copper broadband subscribers; it is also available to non-BT broadband subscribers. It is completely unrelated to fibre.

Dido Harding: You can only get BT Sport on your television, as opposed to on your computer, if you take Infinity or have a Sky dish. That directly excludes my customers.

Sean Williams: That is actually not true.

Dido Harding: You can't watch BT Sport as a TalkTalk customer.

Sean Williams: You can watch it over copper broadband.

Mr Bacon: There is one person in the Isle of Man who can get it. You carefully made sure.

Q164 Stephen Barclay: Hearing your comment, Mr Williams, you said that was untrue because you can get it over broadband. I think Ms Harding's point was that you cannot watch it unless you have one of two options, one of which was broadband, so I do not think Ms Harding's comment was untrue.

Dido Harding: The matrix of where you can and cannot get BT Sport, as the papers were pointing out this morning, is incredibly hard for any football fan to follow. My fundamental point is that the several hundred million pounds that have been invested in building BT Sport have to be linked to the fact that BT is rebuilding its monopoly in superfast broadband. You cannot say that they are completely unrelated. They are related.

Sean Williams: We are not a monopolist in superfast broadband.

Q165 Mr Bacon: Boom, boom! I am sorry, I misspoke: when I said you should have been a priest, I meant you should have been a comedian.

Sean Williams: In retail superfast broadband our subscriber base is smaller than Virgin Media's.

Q166 Chair: Can you explain something to me? I am interested in this: I have seen some BDUK research that shows that the roll-out of superfast broadband by postcode declines as the percentage of businesses in the postcode rises. Why is that?

Sean Williams: I do not have an answer to that question. We are rolling out to as many premises as we possibly can, given the funds available from central Government, our own funds and those from local government.

Q167 Fiona Mactaggart: Dido Harding seems to know the answer to that question, Chair.

Dido Harding: I have a view on it, as a customer of BT to sell to small businesses through TalkTalk Business. The reality is that BT has a legacy leased line business and rolling out superfast broadband to business parks would cannibalise that business, so it has very little incentive to do it, unfortunately.

Q168 Chair: So you have a profitable business in leased lines and you are deliberately failing to meet the economic objective of this whole programme, which is to improve the efficiency of our businesses, by choosing to put in superfast broadband in those postcode areas that have fewer businesses so that you can hang on to that profitable leased lines business. That is just awful.

Sean Williams: That is not an accurate statement. The way we do our deployment modelling—
Chair: Everybody else thinks it is, Mr Williams. Everybody else: I think that, Ms Harding thinks that, Mr James thinks that.
Sean Williams: But the facts are otherwise. We deploy fibre in areas where there is most likely to be take-up. It is as simple as that.

Q169 Ian Swales: I live in the centre of a town, and we have terrible broadband. The only sensible broadband we can get is your leased lines. We don't have any option, but you won't be coming round with your new system, will you, because you have loads of leased lines all over the town.
Sean Williams: The BDUK scheme does not apply to cities.
Malcolm Corbett: There is a different BDUK scheme for cities which will encourage businesses to be able to get ultra-fast broadband services in the cities. I got a phone call from BDUK less than two weeks ago, asking if our members would like a list of enterprise zones and business parks so that they could deliver services to them.
Chair: I have one more issue to raise, and then I think we are through. Stephen?

Q170 Stephen Barclay: It is just a quick point following Mr Corbett's comments about the percentage of the pound coming from the taxpayer. What is BT's response? I think he said that 77p in the pound came from the taxpayer in the UK, and that in Sweden it was 25% to 33%. Do you accept or dispute those figures?
Sean Williams: Our share of the BDUK spend is 38%. I cannot speak about Sweden—I don't have the information.
Chair: That is not what the Report says.
Sean Williams: Yes indeed. We then have this issue of the operational costs, which we covered earlier.

Q171 Stephen Barclay: So you are disputing what the Report says as well?
Sean Williams: Yes, and we did point that out to the NAO.

Q172 Chair: May I just raise, finally, a constituency issue—I don't always do this—which has really been hassling me? We have a new housing development, with I think about 400 homes on it at the moment, which will probably be about 1,000 by the time it is all developed, on an old University of East London site, and the developer-contractor contracted with BT to provide the broadband, but you only provided it at 2 megabits, which is far too slow in a brand new development in our capital city.
When the residents wrote to you and said, "This is not good enough. We need faster broadband," the response was that you would only put it in if you got a subsidy. How on earth can you justify that as a credible way of using public money to fill the pockets of your shareholders?
Sean Williams: You wrote to our chairman on the subject, and—
Chair: We did, and he wrote back and said, "We need subsidy." This is a brand new 1,000 home development in Barking and Dagenham, on the old University of East London site.
Malcolm Corbett: There are members of INCA who would be perfectly happy to have a conversation about that project, I have absolutely no doubt at all—and they will have the conversation in, say, an hour's time.
Mr Bacon: With the local MP.
Malcolm Corbett: Yes.

Q173 Chair: But honestly, it completely shocked me. I can understand it if you are in Cumbria, but this is Greater London.
Sean Williams: It is the same deployment model that we use for all our commercial deployment, as applied to the particular case that you are speaking of. It is the model of where the most likely take-up is and what the cost of deploying the network will be.

Q174 Meg Hillier: If 1,000 homes is not enough, how big does it have to be? I have similar issues.
Chair: And it would not just be those 1,000 homes. It is in the middle of a total area.
Justin Tomlinson: We have exactly the same in Swindon.

Q175 Meg Hillier: May I ask the question about what the critical mass is?
Sean Williams: It's not about the number of premises. It is modelling about the likely take-up on—

Q176 Meg Hillier: Socio-economic modelling? So you can see if people are rich enough to buy it?
Sean Williams: Yes, there is demographic modelling about who is most likely to subscribe, and there is cost modelling about how much it would cost to deploy.

Q177 Chair: So basically you are a monopoly provider who is only prepared to provide a shared Government objective—not a particularly controversial one—of superfast broadband, which is a good thing for the economy and for individuals and through which Government services will be provided, if you can, in effect, blackmail the public by saying you will only do it with a subsidy from the taxpayer. That is what it feels like sitting here, Mr Williams. It really does.
Sean Williams: But we are putting in £2.5 billion of our shareholders' capital to cover 66% of the country—19 million premises—and a further £1 billion, as you have pointed out, to match Government funding, to achieve the Government's objectives in areas where there isn't a commercial case.

Q178 Chair: It's an outrage.
I have one final point that was raised with me by some people I know in Cumbria. If you go for 90%, you miss the very remote farmers, and it will be the same in your constituency. DEFRA is insisting that all rural payments are now paid online. There will be no other way of claiming them except online. The way you have chosen to exploit £1.2 billion of public subsidy is such that actually you are not providing the service, and farmers, in this instance, will not be able to access

the subsidies they need—which are a mess, anyway—because they are too remote and are not covered. How do you feel about that?

Sean Williams: I don't recognise the scenario. The BDUK scheme has two objectives: one is to roll out superfast broadband across up to 90%, and the second is about universal coverage of 2 megabit broadband. If we get the 2 megabit broadband universally covered, remote farmhouses will also be able to access the internet to a functional capability, so they will be able to do their payments online. That is a very important part of the overall scheme.

Chair: Maybe if you reduced the 10%, Mr Corbett and Mr James might be able to provide the funds.

Q179 Guto Bebb: You said that you can recognise the issue with farmers, but I will just return to the 10%. In addition to having community broadband initiatives in my constituency, I have been helping farmers get a satellite connection because they need to do these forms online. The same message is true there, too: before they can get a grant from the Welsh Government, they need confirmation from BT that BT will not provide them with adequate access. I think you need to go away and think about the 10%.

Sean Williams: That goes to the same point of the process by which local authorities—the Welsh Government in this instance—declare what is covered by the BDUK footprint and what is not.

Malcolm Corbett: Chair, I now have three offers from credible companies that would like to help with your broadband project.

Chair: Great, thank you. BT will probably stop you getting in there because of the access costs.

Examination of Witnesses

Witnesses: **Stuart McIntosh**, Director of Competition, Ofcom, **Sir Jonathan Stephens**, Permanent Secretary, Department of Culture, Media and Sport and **Jon Zeff**, Senior Responsible Officer, Department of Culture, Media and Sport, gave evidence.

Q180 Chair: You were warned that we thought the first session would be longer than normal, and I am sorry that it went on even longer than that.

Three of the four witnesses, Sir Jonathan, said that they thought that the Secretary of State was very sympathetic to the failures to promote competition and to get openness on costs and to release the 10% and the various issues that we have covered. They said that it was you and your officials who were preventing progress being made in that area. What do you have to say about that?

Sir Jonathan Stephens: I don't recognise that. The programme has been a top priority for the Government, for successive Secretaries of State. They have been closely involved and taking a close personal interest, as they should. All key decisions, as you would expect, have been taken and approved by Ministers.

A fundamental objective of the programme is to take the limited public money that is available and get the maximum possible coverage for it. The evidence from the NAO Report is that the solution that we have reached, after testing alternatives, is the one with lowest cost and lowest risk to the taxpayer. The underlying reality—

Q181 Chair: Hang on a minute. There are two things.

Sir Jonathan Stephens: May I finish?

Q182 Chair: No, I am not going to let you finish that sentence. You have this habit of coming in and wanting to say what you say rather than answering the question. There was an assertion. There were two things. I can't let you get away with saying lowest cost, best value. That is not what the Report says, which is why I stopped you.

The underlying assertion was that the issues are that you have not achieved competition; you have a monopoly supplier; you have not achieved openness on that contract. We have no idea where the costs are going. There has not even been release of the 10%, once you have got to the 90% of coverage being fulfilled under the BT contract. You haven't even achieved a release of the 10% to allow any competition there. That is a terrible indictment. We then hear that Maria Miller would probably be sitting round the table agreeing with us, but somehow progress in what is clearly a shared objective around this table is being inhibited by you guys. You have to answer that.

Sir Jonathan Stephens: I just have. My answer is very clear that this programme is a top priority for Ministers and Government. Ministers have been closely involved throughout it. Officials have been working hard and have secured what the NAO describes as, compared with alternative models, a model that "reduced public cost and risk to government".

The underlying reality is that no one else was offering to do more for less.

Q183 Mr Bacon: That is the complete contrary of what we have just heard. The whole point of what we have just heard from the three non-BT witnesses was that there were people offering to do more for less, and that the original NGA solution was for 100%. They told us that in order to get to 100% the application and the use of innovation and mixed delivery methods enabled a competitive advantage for smaller players that enabled them to compete against BT; and that the reduction from 100% to 90% also eroded that advantage. So that actually it was possible to get more for less, but the decision to reduce the level to 90% made that go away. That was precisely the point.

Q184 Chair: "The decision to reduce the level; the geographical areas were too small; you did not allow fixed wireless; you did not have a VFM test; you do

not have proper consultation"—and that might actually challenge your decisions. Those are the notes I took from the evidence we were given. Those are the allegations against you. To ignore them and find a little sentence that I am sure is hidden away in a footnote somewhere is not how I read the Report.
Amyas Morse: In fairness, it is there in paragraph 7. We do say, "Compared to alternative funding models, the gap funding model favoured by local bodies reduced public cost and risk to government. However—"
It then goes on, if I may paraphrase, to say that it had the effect of stifling competition.
Sir Jonathan Stephens: I am sorry, Comptroller, you quoted correctly from your bit. I don't think you should then paraphrase. It didn't have the effect of stifling.
Amyas Morse: Read it all out, if you like.
Sir Jonathan Stephens: It had the effect, in a market where there was already very limited competition, that we ended up with very limited competition and then the reality of no competition.
Mr Bacon: It says, and I am not paraphrasing, that they "were all factors leading potential suppliers to withdraw". That is what it says.

Q185 Chair: "However, stakeholders told us that the design of the Programme, including the gap funding model, the local nature of procurement contracts, the qualification requirements for prime contractors and the unattractive commercial conditions created by current regulatory and state aid conditions, were all factors leading potential suppliers to withdraw from the bidding process". So you did not achieve the first of your objectives, which was to establish competition. It is really not the way to answer the question, just to drag out a half a sentence and pretend that all is well in the world.
Sir Jonathan Stephens: I am very sorry, but I think that for the spending of public money, going for a solution that, compared to alternatives, is lower cost and lower risk to the taxpayer is a very important, not a minor, detail.
Chair: We don't think that this is either lower risk or lower cost, and we will develop that.

Q186 Mr Bacon: The issue is value for money, Sir Jonathan, not simply lower cost.
Sir Jonathan Stephens: Absolutely.

Q187 Mr Bacon: The evidence that we have heard so far suggests that you have gone for a solution that produces less but will still cost a great deal—essentially, BT has run rings around you, and you are not even able to see what their costs are because you do not have full visibility.
Sir Jonathan Stephens: Various assertions have been made. I listened to the evidence earlier—there are significant parts of that that I just do not recognise, so it might be useful to the Committee if I were to bring those out. I do not recognise that the Government started with a 100% objective and reduced it down to 90%.

Q188 Mr Bacon: Are you saying that that is categorically wrong?
Sir Jonathan Stephens: I simply do not recognise that at all. The objective has always been, with limited public funds, to achieve the maximum coverage.

Q189 Chair: Are you suggesting that Mr James misled the Committee?
Sir Jonathan Stephens: I simply don't know what he was referring to or thinking about.
Stephen Barclay: Could the NAO clarify the original statement of intent from when the project was started? Was it 100% or not, Mr Corner?

Q190 Mr Bacon: The original plan was 100% of NGAs in your area—that is what he said. I wrote it down when he said it. You are saying that that bears no relation to anything you have ever heard of.
Sir Jonathan Stephens: I simply don't recognise that.
Jon Zeff: That's right—I don't recognise that either. I am not aware of that being the objective and it is not anywhere in the Report.
David Corner: It was the maximum possible for the money.

Q191 Chair: The maximum possible.
Jon Zeff: It was for the maximum possible for the money.
David Corner: Not 100%.

Q192 Chair: Well, he understood the "maximum possible" to be 100%.
Jon Zeff: No, the only number we then put on that was that we expected, on the basis of our modelling, that our money, with match funding, would be sufficient to get to 90%. We never said that it would get to 100%.

Q193 Mr Bacon: The point that he was making was that maximum, by definition, is 100%. I think that that is what he was saying.
Jon Zeff: No, no. The maximum possible for the money that we had.
Mr Bacon: But the whole point was that if you extract more competition out of the system, you will get more delivered for less. That was his whole point. I do not think I have misunderstood him.

Q194 Ian Swales: Where does the 90% figure come from? Was it suggested by BT? How did you know that 90% was the right figure to aim at?
Jon Zeff: The 90% figure arose from the modelling that we initially did based on a generic supplier, not BT, before we began the framework. That was the figure that came out of the modelling that we did.

Q195 Ian Swales: You said "a generic supplier"—what do you mean by that? An imaginary one, or somebody else?
Jon Zeff: It was based on when we did some modelling at the time, when superfast broadband was in its infancy. It was only modelling to look at what we estimated—

Q196 Chair: With who—BT?

Jon Zeff: Not with BT; with analysts we had employed on the basis of expertise, information from industry—not just BT, but others.

Q197 Mr Bacon: They were consultants whom you employed.
Jon Zeff: They were a mix of consultants and civil servants, as we have had all the way through the programme on BDUK.

Q198 Chair: Mr Zeff, I must say that I do not think Mr James misled this Committee. If we take it that you are right—that you always thought 90%—the way in which you communicated with the people who were bidding must have been just useless, because otherwise he would have understood the terms of the competition into which he was entering.
Either he believed that it was 100%, or, when you set out the framework for the bidding, you did not give him enough detail and information for him to understand 90%. I do not believe that he misled the Committee, but we will write to him to be sure of that. Don't you think that is true? It must be that. Do you think he was misleading us?
Jon Zeff: I think we have been clear that the objective was to secure the maximum coverage with the funding that we had.

Q199 Ian Swales: Why did you decide that maximum coverage could be achieved without a flexible solution? Why did you believe that maximum coverage could only come through a fixed system?
Jon Zeff: We didn't. We were technology-neutral in our approach. On the point of fixed wireless—this was one of the issues that we had some discussion about with the European Commission because in their guidelines initially they had specified that they did not believe that fixed wireless solutions were capable of offering next-generation-quality provision. We worked very hard. It was one of the issues that was the bone of contention with the Commission on our state-aid discussions. We got to a position where we could because we felt strongly that it was important to go on the facts.

Q200 Ian Swales: So we knew better than the European Commission how flexible the solution should be and, strangely enough, we came up with a solution that favoured BT. We decided—
Jon Zeff: We felt that our competition should be technology-neutral and should discriminate only on the basis of what could be delivered.

Q201 Ian Swales: You argued that the European Commission said that to get maximum coverage you should be flexible around technology. We decided to take a position as the UK where we would go and take on Europe and say they were wrong and that fixed lines were the right answer.
Jon Zeff: No. I said the opposite.

Q202 Ian Swales: I am sorry. You said the complete opposite?
Jon Zeff: The European Commission's guidelines, which were a few years old at that time, or the Commission's interpretation of them, effectively ruled out the use of fixed wireless because they did not believe that the sorts of solutions that Mr James wanted to offer were capable of—

Q203 Ian Swales: I am sorry; I misinterpreted that.
Jon Zeff: We persuaded the European Commission that it was not right to rule out those technologies.
Chair: But you did.
Ian Swales: And then you did.

Q204 Mr Bacon: Your whole assertion that you were technology-neutral is belied by your decision to go for 90% in the end because the burden of what we heard from Mr James and Mr Corbett was that the erosion from the maximum, which by definition is 100%, down to 90%, ruled out the flexibility and the innovation and the mixed delivery model that would have included other technologies. So you stopped being technology-neutral the moment you went down from 100%, didn't you?
Jon Zeff: No, 90% was our estimate of what we thought would be achieved—

Q205 Mr Bacon: Sorry, but that is not an answer to my question.
Jon Zeff: The NAO Report specifies that we are likely to get further than 90%. We have not put a cut off at 90%.

Q206 Mr Bacon: Mr Zeff, could you just answer my question?
Jon Zeff: I do not recognise that we have put a cut-off. The implication of that is that we have—

Q207 Mr Bacon: You stopped being technology-neutral when you went down from 100%.
Jon Zeff: No. I don't recognise that at all. I don't recognise that we went down from 100% and I don't recognise that we have cut it off at 90% either.

Q208 Mr Bacon: You went down from the maximum. The maximum is by definition 100%, isn't it? Is that right Mr Zeff? Can I just be clear about that? Is the maximum by definition 100%?
Jon Zeff: The maximum you can achieve with a given sum of money is the maximum you can achieve with a given sum of money.

Q209 Mr Bacon: I am not talking about a particular sum of money.
Jon Zeff: That is what I said we were aiming to get.

Q210 Mr Bacon: I am not talking about a particular sum of money. I am talking about the phrase "the maximum". I just want you to explain to me what your understanding of that phrase is. My understanding is that it is 100%. Do you dissent from that?
Jon Zeff: My view of the "maximum" as a word is that it means the most that you can achieve in the circumstances that you are running your business.

Q211 Mr Bacon: Well the circumstances are the United Kingdom here on planet Earth. That is fairly

clear. The maximum that one could achieve in terms of delivery is 100%, isn't it?
Jon Zeff: With unlimited funds.

Q212 Mr Bacon: Not necessarily with unlimited funds. We can get to resources in a moment because there are lots of ways of delivering things, some of which are more expensive and some of which are cheaper. Some have become a lot cheaper because they use innovation which, with great respect, you may not have understood all of.
There is lot of innovation out there, some of which hasn't happened yet. So there are lots of ways of doing things more cheaply. Goodness, we used to have transistor radios and then we had silicon chips. There are lots of technologies that did not exist 10 or 20 years ago. There are lots of applications for smart phones that did not exist three or four years ago. I want to isolate these two points. Point 1 is what is the maximum that one could deliver?
Jon Zeff: The maximum one could deliver depends on the resources you have. You can't separate those two.
Mr Bacon: No, you are posing a contingent condition, if that is not a tautology, on my question. My question is: for the UK population what is the maximum that could be delivered?
Sir Jonathan Stephens: I am sorry, Mr Bacon. I think I have to bring this back to reality.

Q213 Mr Bacon: Hang on, you are suggesting that my question is devoid of reality. I would like to address my question to Mr Zeff who is in charge of this programme in your Department.
Sir Jonathan Stephens: May I—

Q214 Mr Bacon: Mr Zeff, what is the answer to my question please?
Jon Zeff: I'm sorry, could you repeat the question? I think I have already answered your question several times, but I am happy to have another go.

Q215 Mr Bacon: The question is about the maximum that can be delivered in the UK. We are talking about angels on the heads of pins here. What is the maximum that can be delivered?
Jon Zeff: With respect, the maximum that can be delivered depends on the circumstance in which you are delivering it.
Mr Bacon: You are not showing much respect. The maximum that can be delivered is plainly 100%, isn't it? In other words, everyone who wanted it could have it. That is 100%, that is the maximum, that is plain English. There is then the question of how you get it, which is the second part of your point. Since you did not even agree with the first part of my point, I am having to make it for you.

Q216 Ian Swales: You make a very interesting point because what you are suggesting is that somehow you had information about what could be delivered for a given amount of resources before the bidding process. Where did you get that information from?
Jon Zeff: This was based on modelling from a range of information. Much of it was publicly available information. If you want to know the detail of the exact sources that we used, which were largely publicly available, and expertise that we had, then I am happy to write to the Committee and give you more detail on that.

Q217 Ian Swales: Surely the right way round would have been to say "We want 100% coverage, now let's get some bidding going on to find out how much private sector money we can attract"—£1.5 billion from Fujitsu, for example, which has never arrived—"and just see what sort of coverage we can get". The fact that you made an assumption, about what we could do, limited the process. *[Interruption.]*
Jon Zeff: I do not agree with that because we did not use that assumption to limit the process. We used that assumption largely to make our initial allocations to local areas.

Q218 Ian Swales: Your answer to Mr Bacon said you already made assumptions, because you said it was not 100% but what you could do for a given amount of resources.
Sir Jonathan Stephens: May I just make a final point on this?
Chair: No. We are two minutes into the vote. Hold that thought and I will bring you in. We are reconvening at 2.47 pm.
Sitting suspended for a Division in the House.
On resuming—

Q219 Chair: I think I stopped you in midstream.
Sir Jonathan Stephens: Thank you. I want to make a couple of points on the issue we were talking about before the break. The first is that the fundamental challenge for the Department—Ministers and officials—in circumstances where there are limited public funds is to achieve the most in terms of coverage and speed for those funds. That is the nature of government.
At the moment for that sort of challenge, of how you go as far as possible for the least sums, the framework and the approach that have been adopted of the gap funding model, as demonstrated by the NAO, are the ones which resulted in the lowest cost and least risk to the Government, compared to the other models.

Q220 Mr Bacon: That is a different thing from what you just said in the first half of your speech. We would all agree with you about the first part, which is extracting the most out of the limited public funds available. It is a question of taking that lemon and squeezing it, and in so doing causing it to fertilise all the area around it.
If you go to the Laganside in Northern Ireland, you will see that £130 million of public sector money produced about £1 billion of investment. The whole area has been completely transformed. We heard that in Sweden 27% public expenditure led to a much larger cake. We also hear that here 77% of the total comes from the taxpayer. So it does not sound like the architecture has created the environment in which you end up getting the most for your available public funds. That is the whole point.

Sir Jonathan Stephens: The fundamental nature of this programme is that it is going where commercial investment cannot go. It is designed to do that—

Q221 Chair: You are not answering the question. I am going to stop you. Just address the point that Richard was making. We are heading from between 73% and 75% public subsidy to 89% in some of these last 10% areas, as I understand it. That is what I have heard. Richard was making the point that if you look at Sweden—we will come back to other examples—they are doing the same with less public subsidy. That is our real question.

You have ended up with a monopoly provider who is screwing a massive amount of subsidy out of the taxpayer, the amount of £1.2 billion. It is a lot of money. It is not a little bit—it is a huge amount of money that is going into shareholders' pockets. And you are not getting the best value because there is no real competition. That is the key issue to address.

Sir Jonathan Stephens: If anyone was coming forward to offer better coverage for the same or less money—if any of the people you heard from earlier were offering, for the same money, to deliver 100%—we would have taken it.

Q222 Mr Bacon: But the goalposts kept on being moved to make it impractical and impossible for them to come forward. When you say—

Sir Jonathan Stephens: I'm sorry, but if they came into the process there was no limit on the coverage in the process. If they came into the process and said, "We'll do you 100%", or, "We'll do you 98 for the same money," they would have won the competition—

Q223 Chair: Sorry, but this is the most Alice in Wonderland session that I think I have had here as Chair. If you heard it, the previous witness, Nicholas James, said that the rules changed. He wanted to come into the competition and he was hoping to get 25% of the business, but he could not come in because the rules changed. Actually, I wrote it down: the geographical areas were too small. That was one of the rules you set.

For NGA to every household, you suddenly said that the maximum meant 90%, not 100%. The rules changed. The value-for-money chest disappeared. Fixed wireless was not allowed, and he claims you could have gone with it. No proper consultations later on. Those are the ways in which you changed the rules. It was not that they failed to come forward; it was that you changed the rules and made it impossible for them to compete.

Sir Jonathan Stephens: I am sorry. We are going back over the previous ground. I do not recognise—the framework contract never had 100% in it—

Q224 Mr Bacon: The framework contract did not; the one that ended up being signed did not; of course not.

Sir Jonathan Stephens: No, the requirements that the framework competition was designed to meet—

Q225 Mr Bacon: The maximum possible was what this was.

Sir Jonathan Stephens: The point about technology-neutral—Mr Zeff just demonstrated how actually it was our pressure on the European Commission that changed that—

Q226 Chair: You haven't changed it.

Sir Jonathan Stephens: Yes, we have. That is what we were discussing before.

Q227 Chair: No, you haven't. This is why it is so Alice in Wonderland. There is fixed stuff that they want to do. You have only just written a letter to Europe saying, "Please change the current basis of the contract," so you can get the fixed wireless in. You have only just written the letter.

Jon Zeff: That is not quite right. One of the reasons why the state aid discussions took longer than we had anticipated was around the issue of whether fixed wireless was capable of being termed a next generation access technology and therefore capable of being legitimately part of a solution for superfast broadband. The Commission initially took the position that that was not possible, because it did not believe that wireless solutions were capable of achieving those levels of technical capability. We—through discussion and negotiation with the Commission—reached a position where it was possible. There is a condition on that.

Both the Commission and we took the view that this should not affect the competitive position of a fixed wireless provider, but there was a theoretical condition that the Commission placed on that. It was not one that we asked for; it was one that they placed on that. Fixed wireless solutions would be allowed so long as they provide a significant step change in speed, but they also put this rider on it: at some point in the future there should be an upgrade path to a fibre-based solution when that is economically viable. There is no commitment for the provider to do it but, in theory, at some point in the future, when the provider decides that it is economically viable to move to a fibre-based solution and upgrade further, there should be a path to do that.

We do not think that that condition should be there. That is the condition that Mr James has written to us about recently. It is a technical detail on a principle established within our state aid approval, following the discussions with the Commission, that does now allow for wireless to be a part of the solution.

Q228 Mr Bacon: Sir Jonathan, you said a minute ago that this money is about going where the private sector will not go. Would not a better description of it be that this money is about ensuring that the maximum amount of investment goes in, in total, to achieve the maximum possible solution, so that every single pound of taxpayers' money that is put in works as hard as it possibly can? That is a better definition, isn't it?

Sir Jonathan Stephens: Yes.

Q229 Ian Swales: I want to go back to something that Mr Zeff said earlier. He talked about reducing

risk. Can you say a bit more about that? This hearing reminds me of the old days when reducing risk used to mean buying computers from IBM, because nobody ever got fired for buying IBM. It feels a bit like nobody is going to get fired for buying BT. I want you to say a bit more about those risks that you talked about earlier regarding reducing the risk to the Government.
Jon Zeff: I think that perhaps Jonathan was quoting from the Report, which says that the approach that we took reduced risks to the public sector.

Q230 Ian Swales: But what risks are we talking about?
Jon Zeff: For example, the risk of overspend against the projected costs in our bids is borne by the supplier. Any risk around take-up, and some of the benefit, but not all of the benefit, is borne by the supplier. The supplier owns the network under the gap funding model; if take-up on the network is higher, the supplier takes the risk.

Q231 Chair: Yes, but they put a conservative assumption on the take-up of 20%. You assume 40%. International comparisons are higher, and Northern Ireland is higher. I cannot see that there is much risk in that.
Jon Zeff: Yes, I am sorry; if the take-up is lower, they bear the risk of that. If the take-up is higher, there is a clawback provision, as the Report details, and the public sector gets some of the upside.

Q232 Ian Swales: But is that not one of the key points? We are talking about infrastructure. You don't build a road based on how many cars are going to use it; you decide to build the road. It is a separate decision. You don't come to a later arrangement on how much the road is used. This is all about providing infrastructure, isn't it? It is an infrastructure project, so why was that even a factor?
The Government made the decision to put the infrastructure in place. The worry is that BT is competing with the other internet providers, so it had a vested interest in the rate of take-up. That is separate from the requirement to provide infrastructure. Given the way that you set it out, are you concerned that you confused the objectives of the providers?
Jon Zeff: No, I don't think so. The network that BT put in for retail provision is open to other internet providers to provide their services—
Chair: Not when they charge such a lot for the wholesale cost, unregulated by Ofcom.

Q233 Ian Swales: We will come on to Ofcom later, because we have concerns about it. In terms of private sector investment, we heard from the Chair that the Committee has grave concerns that the public sector is having to put more money into this as a proportion compared with international benchmarks. At the time, what was your assessment of what the public sector proportion should be, and does it concern you that there is a man sitting five yards behind you with £150 million in his pocket which you will not get? What proportion did you think the public sector ought to pay for, and what were the benchmarks against other countries?
Jon Zeff: First, the objective, which Sir Jonathan has already set out, was to achieve the most in terms of broadband provision for the limited funding we had. We did some modelling, which was commissioned from Analysys Mason initially through the Broadband Stakeholders Group—a body that brings together many companies, including BT and Mr James's company, that are involved in this sector. We then picked up their initial work and commissioned further work, but essentially the data and analysis were drawn from that wide range of stakeholders within that group.
The methodology has been published. That produced a range of scenarios and the headline that we took from that was an estimate—it was not about setting an absolute fixed place—of where we could get to with the funding we had, and the equitable basis on which to allocate that funding to local authorities. That estimate was based on data drawn from companies at a time when superfast broadband was in its infancy, but it produced a range of scenarios about how much funding would come in from the private sector and local authorities.

Q234 Ian Swales: In the Report, at figure 14, a table shows that, against what you expected, local authorities, and therefore the taxpayer, appear to be paying £200 million more, while BT appears to be paying £200 million less.
Jon Zeff: And local authorities are going further—
Chair: And BT is paying £200 million less. I wish you guys would answer the questions.

Q235 Ian Swales: As the Chair said to the previous witnesses, we are building a commercial infrastructure across which BT will be selling all kinds of services. It is taxpayers' money. Why are you allowing BT to get away with paying so much less compared with what we expected, and why is the taxpayer meant to pay so much more?
Jon Zeff: In terms of the objective and our expectation, the NAO Report reflects the fact that we will go further, so local authorities—

Q236 Chair: Can you just answer the question? Why are local authorities paying £236 million more than expected, and why is BT paying £207 million less? Can you just answer that question?
Jon Zeff: Local authorities are largely paying more because many of them are electing to go further. We are not quite through the procurement process yet, but—

Q237 Ian Swales: Further than what?
Jon Zeff: Further than the 90% that we expected would be achievable with the—
David Corner: They are only going further to 91% or 92%. That does not really account for the £200 million.
Jon Zeff: Some of them.

Q238 Ian Swales: Let's talk percentages. The figure for local authorities is £236 million against an original

assessment of £494 million—that is a massive extra proportion. You cannot pretend to the Committee that that is entirely about going a bit further than the original idea. That can't be true, surely, and the NAO has just confirmed that it isn't true, so why is the Department letting—
Chair: Why is BT spending less having promised £1 billion of capital last year?
Sir Jonathan Stephens: For example, in the case of Cambridgeshire and Peterborough, where the funding from the Department is £6.75 million and where we were looking for matched funding of an equivalent amount, the local authority has decided to put in £23 million and is looking to go significantly beyond—

Q239 Chair: What is BT putting in?
Ian Swales: What is the comparison for BT?
Sir Jonathan Stephens: Sorry, I do not have the figure for BT, but the fundamental point is that some local authorities—

Q240 Chair: The fundamental point is that BT should be putting in a lot of money.
Sir Jonathan Stephens: Some local authorities are taking the decision to invest more to secure more coverage.
David Corner: BT is putting in £7 million in Cambridgeshire.
Chair: So, £7 million.
Mr Bacon: And the taxpayer is putting in nearly £30 million.

Q241 Ian Swales: Can you specifically answer the question? Forget the local authority part; answer the question as to why BT would be spending £207 million less according to the figures in figure 14. What is the answer?
Jon Zeff: The gap funding model is based on, as we heard before, the gap between the commercial case and the viability of delivery. The initial—

Q242 Ian Swales: Are we getting to a point here where we are relying on BT to say, "This is not commercial"—just like the example in the Barking housing estate—because it knows that there is a great big pot of public money out there. If BT says that going through this business park, housing estate or whatever is not commercial, it will be identified as a gap and you will provide the money. Is that is what is actually happening?
Jon Zeff: It is based on a model where we have, as we said, built up, through the framework, the reference financial models and the modelling that will tell you what the gap is between the commercial investment and the viability.

Q243 Chair: I do not understand. This is gobbledegook to me. What does that mean, Jon? How can you assure us that, whether you are talking about Cambridgeshire, Peterborough, Barking or Ian's constituency, you are getting the most out of the private sector to make the most efficient use of public money?
Jon Zeff: It comes back to the point that BT, where it has won bids, was offering to go further in the framework with less funding than competitors. That is where we got to in the framework.

Q244 Ian Swales: Exactly. It won the bids by offering to go further for a certain amount of money. You are now allowing it to spend less money. Why?
Jon Zeff: No.

Q245 Ian Swales: Then what does this figure mean? There is £207 million less. What does it mean?
Sir Jonathan Stephens: That was an early projection. The point that Mr Zeff was making was that, in the framework process, when BT put in bids against other suppliers, their bids went further for less public money.

Q246 Mr Bacon: Than the model had originally suggested.
Sir Jonathan Stephens: No. Their bids went further for less public money than any alternative bidder.

Q247 Chair: Actually, everybody else dropped out. I do not think that there was a competitive bid. You cannot sit there and say that to us. There was no competition. You have banged on about this little paragraph that the NAO has put in. Your aim was to promote competition; you did not promote competition.
Sir Jonathan Stephens: May I just pick that point up, because it has been mentioned a few times? The aim of the programme, as I said at the beginning, was to achieve the greatest coverage for the public money that was available. We wanted to use competition when possible to promote that objective.
We went in, eyes open, with the challenges of operating in this market, so we constructed a model in which value for money does not depend solely on competition. As the NAO sets out in figure 6, there are three key limbs to securing value for money across the programme, with 14 separate value-for-money requirements, of which competition in the framework was one. We wanted, and worked hard, to maximise competition in the framework. There was competition in the framework.

Q248 Chair: You failed. If there was competition, you would have more than one supplier. This is absurd.
Sir Jonathan Stephens: You heard the earlier witnesses say that they thought the impact of competition in the framework contract was to reduce costs and to improve the terms that were being given by BT. That was active competition through to the completion of the framework contract. The point I want to make is that value for money was not dependent, and our overriding objective in this programme was not to maximise competition. That is why we designed a key series of other value-for-money controls to ensure that we secured value for money, recognising that we were operating in a market with limited competition.

Q249 Ian Swales: Can I just pick up one final point and then I will let others come in? Obviously, what we want is broadband to people's houses. The previous

witnesses made the charge that, because of the way it is now being measured in BT's favour, cabinets that might be a mile from somebody's house will be counted as if you have put broadband into all the houses in that area—at least that was how I understood the previous witnesses. How do you react to that comment? Clearly, that is not the objective of the policy.
Jon Zeff: No. We have said the objective is to achieve superfast broadband, and the contracts are clearly based on the number of customers who will receive superfast speeds.

Q250 Ian Swales: Based on their place of residence or work, not on where the cabinet happens to be.
Jon Zeff: Based on what they will actually get. There will be others who will receive benefits from the programme, as the previous witnesses said. Although they are further away from the cabinet, and therefore may not get superfast speed, they will still get a much higher speed than they would have got before, but that is not what the contractual commitment is.
Ian Swales: There is a lot of head-shaking going on behind you.
Chair: It feels like there are two parallel conversations going on—ours and yours. It would be helpful, as we move through the rest of the evidence session, if we can try to make them meet. It really does feel like that. I am sorry to say that. I have not had this before. It is almost like we are in parallel universes, and we are not connecting the issues we think are important with your responses. We are just not connecting. If we can try to make it better, we will all feel better at the end of the day. You will feel less frustrated and we will feel less frustrated. Let us have a go with Guto, and then Stephen.

Q251 Guto Bebb: I have not got a significant number of questions on this issue. I do not find the responses we have been given to be satisfactory. From the table in figure 14 on page 37, the situation is very clear. We have gone from a situation in which public sector funding is less than two thirds to a situation in which it is well over 75%. It has gone from two thirds to three quarters of the funding being provided by the public purse. The figures imply that the Department has not been concerned about the fact that local authorities are having to plug the gap in funding.
Sir Jonathan Stephens: Two things are going on there. First, the programme is going further, so more coverage is being achieved.

Q252 Guto Bebb: But on that issue, we have heard evidence that going further is the difference between 90%, 91% and 92% coverage. Yet local authorities are paying 48% more than was originally estimated. A 48% added contribution from local authorities for 2% more households does not stack up.
Sir Jonathan Stephens: It does recognise that every extra 1%, as you go through the 90s, will be more expensive by definition.

Q253 Mr Bacon: Not to BT. It is paying less.
Sir Jonathan Stephens: These are the most difficult to reach.

Q254 Chair: In which case, you should have kept the subsidy back for this lot and not have given it to the easy lot.
Sir Jonathan Stephens: The second point is that this is the difference between an early model, based on early estimates, and the results of the competitive framework. As I have said before, if others had come forward offering to do more for less public money, they would have won.

Q255 Guto Bebb: That is shocking. I was going to use unparliamentary language. The model was so clearly wrong in terms of predicting how much would come in from BT compared with how much came in from the public purse. Is there a concern that the model was wrong in the first instance? If this type of reckless behaviour with local authority money is due to the model, there is clearly an issue for the Department to address.
Sir Jonathan Stephens: It was an early model, based on relatively early estimates, at a time when the roll-out of superfast broadband was only just beginning. It was nothing more than a model. It was largely accurate in terms of the overall costs, and we now have significantly more information on the commercial case around BT's position than we had at the beginning, which is reflected here. I repeat that the conclusion of the framework contract was through a competitive process in which others had the opportunity to put in bids to achieve more for less public money, and did not.

Q256 Guto Bebb: Yes, but we have heard in prior evidence that there have been examples of local authorities being bullied by your main supplier on these contracts. When you look at the funding in relation to the increase from 90% to 92%, it looks on the face of it as though local authorities have been bullied into providing more of the funding to ensure that their localities are not left behind. Have you no concerns whatsoever about that sort of evidence that we have heard, which seems to be supported by the figures that we have got in front of us?
Sir Jonathan Stephens: I do not recognise that. From my own experience of going around local authorities, they are very keen to secure coverage. In many cases, they have come forward, without needing pressure from anyone other than local people, to say, "This is very important to us, and it is worth investing local authority money to secure more coverage."

Q257 Guto Bebb: So you dispute entirely the evidence that we have heard about local authorities claiming to have been bullied by your main supplier?
Sir Jonathan Stephens: I am not quite sure what you were referring to earlier. I am making the point that local authorities have decided and made an investment choice here to put more money in.
Mr Bacon: It is still taxpayers' money, and most of it appears to be coming either from the taxpayer at the centre or from local authorities through council tax and moneys given to local councils, rather than from BT, whose contribution has declined.

Q258 Chair: Your model was that 36% of the costs were going to be provided by the supplier, but they are now only meeting 23%. That was your model, and the difference is now being met by local authority contribution. That is your model.
Jon Zeff: That model was a projection, and our objective here was not about getting the highest proportion from a supplier; it was, as Sir Jonathan has said, about achieving the most with the funding that we had got.

Q259 Mr Bacon: This was the same early model that did not propose that 100% was possible, wasn't it?
Jon Zeff: The modelling suggested that we should be able to get to 90%, and we will actually get a bit further with the funding that we had. The primary purpose of the model was to enable us to make allocations to local authorities on an equitable basis, and that is what we did with it.

Q260 Guto Bebb: You made the point that it was about doing as much as possible with the money we had, but that is clearly not the case because the money that we had, as taxpayers, has increased dramatically because of local authority contributions. So yes, the Department's funding stayed the same, but at the expense of local authorities at a very difficult time. I do not accept your point that this is protecting taxpayers' money. You have to look at this in the round.
Sir Jonathan Stephens: That would be treating it as though we had had a bid in 2011 and had then said to BT, "No, don't pay that amount—pay less." We did not. This was our own model, and, as Mr Zeff has demonstrated, it was written primarily for other purposes. Like many models, some parts of it got it right and some parts were inaccurate. That is not very surprising given the information, but the fundamental point is that through the competitive framework—

Q261 Chair: You have said that lots of times, and I do not want to hear it again. I want a yes or no answer, because I get fed up with hearing the same thing reiterated. Are you saying that, in your view, you set a competitive framework that should have allowed more than one bidder to win? Yes or no?
Sir Jonathan Stephens: Yes, and it did.
Chair: No it didn't; you've only got BT.
Sir Jonathan Stephens: No, it allowed two bidders. Fujitsu signed a framework.

Q262 Mr Bacon: Doing a lot of work, are they, Fujitsu?
Sir Jonathan Stephens: No. They did bid for a number of projects—
Chair: To win.
Sir Jonathan Stephens: I'm sorry, but that is in the nature of competition.

Q263 Chair: Are you saying that your framework was such that it should have allowed more than one supplier to win?
Sir Jonathan Stephens: I am saying that it did allow more than one supplier to sign with us a framework contract.

Q264 Mr Bacon: Your job was to ensure that there was a competitive environment in so far as that was possible. That is not what you have achieved.
Sir Jonathan Stephens: I am sorry. I come back to this: our job was to secure value for money. That is a very important job, one I take very seriously. Competition can help that. That is why we worked hard to secure a competitive framework process. However, we knew that we were operating in difficult and challenging market conditions, and we were not surprised that competition was limited.
We are not surprised—although disappointed—that there are not competitive bids coming forward in the call-off contracts now. However, that is why we designed, as set out in figure 6, a whole raft of protections for value for money that was not just dependent on achieving competition in the framework.

Q265 Mr Bacon: Mr Zeff mentioned earlier the model. Was it not fundamentally a flawed assumption at the beginning in the model to try to pinpoint the amount of coverage that you thought could be achieved? Would it not have been better to have specified that we wanted everyone to have access?
Under these arrangements, my constituents in Norfolk aren't going to get covered. There are many others who will not. Would it not have been better to start by saying, "The benchmark we want is that everyone should have access. Now come forward with your competitive proposals"—using the word competitive—"and show us how you think that can be done"? That is not what you did, is it?
Sir Jonathan Stephens: In the framework competition, there was not a set amount of coverage.
Mr Bacon: So that is not what you did.
Sir Jonathan Stephens: We were inviting proposals as to how much coverage could be achieved.

Q266 Mr Bacon: So you prejudiced the outcome, in a way, right from the start. If you were interested in the power of the marketplace to innovate and to come up with new ideas that might do more for less, you would have started off by saying, "This is what we want. We want everyone to have access", and then you would have invited people to compete and show how they might provide that, especially with a slice of public money to help them along the way. That, surely, would have been the logical way to do it, as Mr Swales was saying earlier, and then get people to compete in showing how they might come up with solutions that would provide the aim that you said you were after. But you actually eroded that ambition right at the start.
Sir Jonathan Stephens: That is what I am struggling to understand. I do not understand—
Mr Bacon: Neither do we. The obvious ambition would have been to aim for 100% coverage.

Q267 Ian Swales: Why didn't you start there, and then prove that it could not be done under commercial competition? Why would you set the competition assuming failure to achieve 100% coverage?
Sir Jonathan Stephens: We didn't.

Q268 Chair: You just said you did. You just said that you set the competition knowing that you would get 90%.
Sir Jonathan Stephens: It is the difference of having an idea, which is not unreasonable before you start spending public money and building something, of, "What do you think? On a model, how far should this go?" I think you would be criticising us if we just went in and said, "We didn't have a clue how far we would go." However, in the framework competition, we did not specify that and say, "You only go to 90% and no further. If you want to go further, we are not going to pay for that."

Q269 Ian Swales: This is playing with words again. What you said was, "Your bid is acceptable if it covers 90%", didn't you? You only have to get to 90%. I understand why you are saying what you are saying, but you allowed a bid to be successful if it covered 90% of the requirement, didn't you?
Jon Zeff: The framework contract was about getting on to a framework and then participating in local call-off competitions. It is about getting the furthest—

Q270 Mr Bacon: Is Mr Swales correct? Is the answer to his question, "Yes, you would be accepted if you covered 90%."
Ian Swales: Just to be clear—
Mr Bacon: I'd like to have that on the record. Mr Zeff, could we have that on the record, please? Was Mr Swales right in saying that a bid could be acceptable if it provided 90% coverage—yes or no?
Jon Zeff: I am not sure that we had exact levels of coverage at the framework point, because levels of coverage are—

Q271 Ian Swales: At what point did this 90% appear, then? At what point did you decide that a bid could be successful—
Jon Zeff: We did a projection of how much we thought the funding would achieve, and we set out 90%.

Q272 Ian Swales: When did the 90% appear? In this world of fast-moving technology I am amazed that you even tried to do this, given how long these things take, but can you answer this question? When did this 90% figure of acceptable coverage appear?
Jon Zeff: The 90% was the figure that Ministers set out—that the Secretary of State set out—as being what we expected to be able to achieve with the funding that we had.

Q273 Chair: When?
Jon Zeff: I had better check that. It was in 2011, at some point. I would need to check exactly when.

Q274 Ian Swales: So at some point, the officials in your Department decided to tell Ministers that, based on your modelling, 90% was the coverage that you could expect? Yes?
Jon Zeff: That is what we expected would be achievable.

Q275 Ian Swales: And then you allowed the bidders to come in, and you would deem it was then successful if they offered to cover 90% of an area—yes or no?
Jon Zeff: That was an objective set by the Government. What I do not understand is the implication that, somehow, that means that if somebody then comes in and says, "We can go further for your money," they would be at a disadvantage, because they would clearly—
Mr Bacon: The point is if you did not have to go further in order to be acceptable.

Q276 Ian Swales: We heard the earlier evidence. The key evidence is that, because that 90% figure appeared, it totally favoured BT, who were able to get to 90%. BT, because of their rigidity of technology platforms, would not have been able to get to 100%, whereas some of the others might, but because BT were able to come in at the 90% level at a particular price, that excluded all the rest of the competition. That is what we are hearing.
Jon Zeff: With more money, others may have been able to go to—

Q277 Ian Swales: It is not more money. It is about what the objective was in the first place.
Sir Jonathan Stephens: I am sorry; I don't understand. No one was offering to do 100%, or close to 100%, for the same or less money.

Q278 Chair: You have said that so often. Let me go to Stephen to see if we can get more clarity.
Sir Jonathan Stephens: But that is a really important point, I think.

Q279 Chair: You repeat the same thing, which we do hear once—
Sir Jonathan Stephens: This is a really important point because it is about value for money.

Q280 Chair: Value for money? Look at para 4 of the Report summary, which details tests you set yourself for value for money, one of which is competition. Para 4 says you will ensure value for money by promoting competition "to ensure that payments reflect actual costs". We have not even got to that yet, because we don't think they do. Para 4 also says, "Providing assurance that bids made by suppliers are appropriate". Probably we would accept that happens, as BT is not an inappropriate supplier, but on promoting competition and ensuring that payments reflect actual costs, they were not met, have not so far been met in the 26—
Sir Jonathan Stephens: The critical point here, if I may, is the opening part of paragraph 4, which recognises that each of these elements and limbs "would not be sufficient alone". That is why we set out all the protections in figure 6—the 14 different protections. We did seek to promote competition in the framework contract. We worked very hard to do so. We worked closely with Fujitsu—

Q281 Chair: And you failed. Please don't keep repeating the same stuff. It is so irritating, because we are all pretty tired and hot, and it would be really good to get answers. You failed. You can't even say that.

Sir Jonathan Stephens: I am sorry. We signed two framework contracts. There was competition in a number of the projects, including ones that were not framework projects. You are quite correct that BT has won all those competitions, and is now, in effect, the only bidder—I am absolutely not denying that—but you heard evidence from earlier witnesses that there was real competitive tension.

Chair: Okay, you have said that as well. I am not going to allow you to keep repeating yourself.

Amyas Morse: You keep quoting this paragraph. I just want to make sure that what we hear from either of you gentlemen about this is that you recognise that, as, for whatever reason, we did not end up getting the plurality of providers that would have provided an ongoing tension in the system—that is not going to be there now, obviously—there therefore needs to be some compensatory reweighting of the other controls so that they are stronger than they would have been otherwise, and not just the same.

I hope that that is not a contentious proposition to make to you. I am hoping you are going to tell us something about what you are doing to beef up the ongoing controls. I do not want to spoil anything you are working on, but would you please tell us something about that just for a moment?

Sir Jonathan Stephens: You are absolutely right. The controls are set out in figure 6. In that respect, significant advantages were secured during the negotiations, because of competitive tension, on the framework contract. The most important controls and restraints are, first of all, the ability to have full audit over invoices for the supplier, so nothing is paid other than for costs that are actually incurred. There are significant protections in terms of clawback. There are also significant protections in terms of having the independent assurance review, which is covered elsewhere in the Report.

Amyas Morse: We understand that. What I was trying to establish is that you must recognise that there is more of a challenge now than there would have been if you had a more plural provider group. That is true, isn't it? So the question is, how are you going to beef that up to make it truly effective? That must be of concern to you.

In some areas, BT hung pretty tough in the negotiations with you. They did not allow you access to compare the commercial terms that they have committed to hold to, even with their rural broadband terms. They have actually insisted that there should be confidentiality between local authorities as well. So they have done a couple of things where they have decided to stick on you and be rather tough, and not give you what you asked for; isn't that true? May I ask about that, because I guess you must have been conducting these discussions?

Jon Zeff: The answer in a sense is back in figure 6 and in paragraph 4: there are a whole range of controls here, and we recognised from the beginning that no one of those would be sufficient alone: we need them all to work together.

Amyas Morse: But what would you like to have beefed up?

Jon Zeff: What I would say is that we recognised from the beginning that we are dealing with a market that is structured as the market is, so our framework process was designed to do as much as we could, within the market that we had, to generate competition. However, we recognised that there was always a possibility that that would not happen.

Certainly, with more than one bidder on the contract there was a possibility that in some areas there would not be competition for supply. That is why we have all of the other limbs in here, including in particular what your Report describes as a "robust" open book process on the in-life controls, to ensure that we only actually pay for what is spent.

Q282 Mr Bacon: That is assuming BT self-certification, isn't it? Paragraph 3.6 of the Report says that the "initial evaluation of BT's financial model gave a score of seven out of twenty", which was below the minimum that was required—you'd said that eight out of 20 was required, which still seems fairly low. They managed to scrape up to eight out of 20 and then they were an acceptable bidder. However, the end of paragraph 3.6 says that, despite further measures, "it was still not possible to see a complete relationship between cost drivers, unit costs and output costs". You say, "We will only pay for things where costs have really been incurred," but you have to be sure, in your own mind, that those costs are accurate and are not inflated. Yet in paragraph 10 of the summary, it says "the Department is reliant on self-certification from BT as it was not able to negotiate inspection rights." Why not?

Jon Zeff: There are two issues here, and there were two stages. There are the bid costs, where, having initially said to BT, "You scored seven out of 20 and that is not enough to get through the framework; we need greater transparency over your bid costs," we secured a greater measure of transparency, which was enough to get over the threshold that was applied equally to all bidders.

Q283 Chair: From seven to eight. It almost looks like you fiddled it to get over the eight.

Jon Zeff: I would have been delighted if they had scored 18 or 19, but they went from seven to eight. There is then the case of what we actually pay, and as was said before, what we actually pay is against auditable invoices that are provided.

Q284 Mr Bacon: I understand that you pay against invoices that state costs, but you have to understand what those costs are. As it says at the beginning of paragraph 3.6: "One of the requirements for the model was that 'the cost book is provided to the necessary level of detail to enable understanding of key cost drivers'". It goes on to say at the bottom: "Following these measures it was still not possible to see a complete relationship between cost drivers, unit costs and output costs."

You are reliant, as I referred you to earlier in paragraph 10, on self-certification from BT because you were not able to negotiate inspection rights. I ask you once again, because you did not answer my

question, why weren't you able to negotiate inspection rights?
Jon Zeff: The self-certification from BT is a slightly separate issue around the legally binding undertaking that they gave, that the model on which they based their financial model for their bids was consistent, and done on the same basis as they finance their own commercial roll-out. That is a legally binding undertaking that they give.
Mr Bacon: Answer the question.
Jon Zeff: They were not prepared to allow the Department, as I think they said, to audit their commercial model, so they provided their legally binding undertaking.

Q285 Mr Bacon: In that case, why did you conclude an agreement with them where you were using public money if you were not able to have inspection rights?
Jon Zeff: I come back to the whole range of controls that we have which are set out in—
Mr Bacon: In figure 6—people have said that 94 times.
Jon Zeff: The point is that no one of them is sufficient on its own.

Q286 Mr Bacon: You have to convince us that you have got sufficient visibility with a monopoly supplier that has a track record in this area. We know that from the national programme for IT in the health service. I do not see any evidence of being convinced that you have got sufficient visibility.
The Comptroller and Auditor General mentioned earlier the issue of local authorities being bound contractually not to share information with one another. How can that possibly be of benefit to the taxpayer? It might be of benefit to BT, the monopoly supplier, but why would that be of benefit to the taxpayer?
Jon Zeff: There is a fair amount of it. I would have to know exactly what information it is, because there is quite a lot of information sharing.

Q287 Mr Bacon: Why would it be of benefit to the taxpayer to have that condition?
Jon Zeff: It is certainly of benefit to local authorities to understand exactly how their bids sit within the overall range of bids in local authorities.

Q288 Mr Bacon: Indeed. So why would it be of benefit to the taxpayer to have a confidentiality condition that made it impossible for the local authorities to share information?
Jon Zeff: I assume that that refers to commercially confidential information of detail that is prepared for each individual.

Q289 Mr Bacon: I am not asking what it is referring to; I am asking why it would be of benefit to the taxpayer to have these restrictive conditions.
Jon Zeff: I think it wouldn't necessarily be of disbenefit to the taxpayer, provided that local authorities—

Q290 Mr Bacon: "It wouldn't be of disbenefit". Surely the whole point about visibility is that you can check.
Jon Zeff: Yes.

Q291 Mr Bacon: So you don't have to rely on—
Jon Zeff: We run very detailed bid comparison reports for each local authority that shows them exactly where each component of their bid sits in relation to others.

Q292 Mr Bacon: So you have visibility, of all the different costs, of all different contracts for all the different local authorities. Is that right?
Jon Zeff: We have visibility over the individual contracts, and we are able to provide detailed reports to local authorities.

Q293 Ian Swales: What you have done is negotiated a national contract and then allowed BT to confidentially try to screw as much as possible out of each local authority.
Jon Zeff: I think I am saying exactly the opposite. We have a national contract that gives us visibility over what is happening in each local area.
Chair: You do, but the local authorities don't.
Jon Zeff: We are able to provide a lot of information to local authorities.

Q294 Mr Bacon: Why don't you just allow everybody to share it? BT said that they would be happy to, didn't they? They said that in earlier evidence.
Sir Jonathan Stephens: That was something slightly different.
Mr Bacon: That was a separate point, you're right. It was about the mapping and the area of coverage, but the same applies to cost. Surely it would be beneficial for local authorities to be able to see each other's costs.

Q295 Ian Swales: We have a local authority member in the room who was nodding vigorously when I made that point. I think that we have hit on another thing here which is the ludicrous situation of a massive purchasing contract and then allowing a company to go and negotiate the best deal for itself, separately, around the country. It just seems crazy having got the framework contract in place.

Q296 Stephen Barclay: Mr Zeff, in response to a question from Mr Swales, I think I understood you say that in 2011 you announced that 95% coverage would be sufficient—is that correct?
Jon Zeff: No, the Secretary of State announced—I do not have the precise words—that 90% was where we expected to get to with our programme.

Q297 Stephen Barclay: Right. When in 2011 was that announced? May?
Jon Zeff: I would need to check when that was. I believe that it was in May.

Q298 Stephen Barclay: Just five months earlier, in December 2010, you published "Britain's Superfast

Broadband Future". Was it the EU's objective to deliver 100%?
Jon Zeff: The European Commission has set out a digital agenda, which sets an aim of getting to 100% by 2020, if I remember rightly.

Q299 Stephen Barclay: Indeed. I am quoting paragraph 2.7 of page 14 of your own document, which says that, "the Commission want to see 100% access". Do you accept that the Commission's intention was 100% access?
Jon Zeff: By 2020, I believe.

Q300 Stephen Barclay: Yes. Do you accept that?
Jon Zeff: The Commission have said that that is what they would like to see across Europe by 2020.

Q301 Stephen Barclay: And that was one of the key issues they were looking at in terms of state aid.
Jon Zeff: State aid is looking at a slightly different issue. State aid is looking to ensure that state intervention does not distort competition.

Q302 Stephen Barclay: So is 100% access irrelevant in discussions on state aid?
Jon Zeff: I am not aware that state aid looked at the actual level of access that you are achieving.

Q303 Mr Bacon: I am sorry, Mr Barclay, you are absolutely on the money here. Surely the point is that—I am sure that Mr Barclay will agree—if you are going to have state aid, it had better achieve something. And the something that it was going to achieve was 100%—yes?
Jon Zeff: No. We never—
Mr Bacon: If possible. I am not talking about what you were saying; I am talking about what the EU was saying.

Q304 Stephen Barclay: Your previous answer suggested that that was their target, so if their target was 100% access by 2020, to be very clear, you are saying that that is irrelevant in terms of discussions on state aid?
Jon Zeff: It is not part of the discussions on state aid. Those are about the structure and competitive conditions around the intervention that we make. It is about the market.

Q305 Stephen Barclay: Indeed, so the extent of coverage would not be one of the issues considered in discussions on state aid?
Jon Zeff: Would it be considered in any way? It is not a criterion on which state aid approval is granted or not as to how far you are getting. What state aid rules do say, and one of the issues that the Commission is concerned about, is that, when you are going into areas where there is no pre-existing intervention, and where you are putting state funding in to provide a network, you need to ensure that there are, for example, very strong conditions around access to that network for other players who might want to use it.

Q306 Stephen Barclay: Is it your evidence that the Department's target was 100% coverage by 2020, but, six months later, you set an interim target of 90% coverage by 2015?
Jon Zeff: No, that is not my evidence.

Q307 Stephen Barclay: Right. So it was never the Department's intention, at any stage, as part of "Britain's Superfast Broadband Future", to deliver 100% coverage?
Jon Zeff: The European Commission had a target of achieving 100%—

Q308 Stephen Barclay: I am not asking about that. My question was very clear. I said, was it the Department's intention, at any stage, to cover 100%?
Jon Zeff: With this programme it has never been the Department's expectation that it would get to 100%.
Stephen Barclay: Okay. Paragraph 2.8, referring to the EU target of 100%, reads: "This is a challenging target", and goes on to say, "we believe our objective is the right one". If not 100%, what challenging target does paragraph 2.8 refer to?
Jon Zeff: I have not got it in front of me, but if you are saying that, in the superfast broadband document, would the Government have said that we would like to see 100% coverage by 2020, it may say that in the document. But that is different, because that predates this programme. That is different from what they aim to achieve with the specific funding we had. Indeed, the Government has now talked about—

Q309 Stephen Barclay: No, again you are answering a question that I am not putting—it is like a parody of "Yes Minister". Please stick to the question. We heard evidence earlier in the sitting that smart commercial bidders were under the understanding that they should offer a solution of 100%.
At the very least, there was some miscommunication, possibly by the Department, or misunderstanding on the bidders' part. Their evidence said that they were working up solutions to 100%. In your evidence, you have said that you did not set a ceiling. You were happy for the maximum to be 100%, but you set a floor of 90% for it to be acceptable. I am trying to understand whether the challenging target, on which these commercial bidders drew up their commercial plans in December 2010, was referring at that stage to the EU target of 100%, or a different target. Which was it?
Jon Zeff: As I said, I would have to look at the exact context of that particular sentence, but I think I have just answered that question in saying that—

Q310 Stephen Barclay: No, you haven't. I am asking a very simple question. In December 2010, when you launched "Britain's Superfast Broadband Future", what was your floor? What was your minimum target at that stage?
Jon Zeff: At that stage, we wanted to see the maximum coverage we could get. We wanted to get as far as we could towards the EU target, which is about getting to 100% by 2020.

Q311 Stephen Barclay: Indeed. So, it was your aspiration at that stage to deliver 100%, but on a slower time frame?
Jon Zeff: I said we wanted to get as far as we could. The target that was set for this programme has been clear all the way through. There was no misunderstanding of that through the framework process. Ministers said that they expected the funding that we had would get us to 90%. We would never have said that we did not want to go further than that, if somebody would go further than that.

Q312 Stephen Barclay: Again, you are answering a totally different question, but it is clear that you are not going to give an answer, so I will move on. Will the UK have the best superfast broadband in Europe by 2015?
Jon Zeff: That is our expectation.

Q313 Stephen Barclay: You believe we will. How many counties will be covered?
Jon Zeff: By 2015? I expect that all the projects will be well under way by then.

Q314 Stephen Barclay: "Under way" is not the same as covered. By 2015, what percentage of the UK population do you expect to have access to superfast broadband under this programme?
Jon Zeff: By 2015, we expect, on current projections—they are projections, because there are contracts still to be signed—to have got to something around 88%.

Q315 Stephen Barclay: When you set the floor of 90% in 2011, did that include homes more than 1.5 km from cabinets?
Jon Zeff: We are talking about homes that have access. As I said, the contracts are based on homes that have access to superfast broadband. I do not know exactly how far you need to be away from a cabinet to get what speed, but I suspect that that varies, depending on where you are. It is about having access to superfast broadband.

Q316 Stephen Barclay: Can I deliver the 90% minimum requirement under your contract if, included within that 90% are homes that are 5 km from a cabinet that, in theory, have access to superfast broadband, but in practice do not?
Jon Zeff: The contract specifies the number of homes that will receive particular speeds. You would not be counted as receiving a superfast speed if you are 5 km and are not able to receive a superfast speed.

Q317 Stephen Barclay: The fact that there is superfast speed to the cabinet that I am 5 km away from and cannot access would preclude me from the 90%?
Jon Zeff: Yes, it would preclude you from the contracted coverage in that area.

Q318 Stephen Barclay: Right. Obviously that contradicts the evidence we received earlier.
Jon Zeff: You would still get a benefit under the programme.

Q319 Stephen Barclay: Mr Corner, are you able to assist? In the same sitting, we have heard diametrically opposed evidence.
David Corner: The requirement for particular speeds is written into the contract.

Q320 Stephen Barclay: So those would not be included within that 90%. I represent a constituency which will have less than 90%. What is your estimated cost, Sir Jonathan, of delivering the final 10%?
Sir Jonathan Stephens: I do not believe that we have an estimated cost at the moment. We announced at the time of the spending review a commitment by the Government—

Q321 Chair: That is not answering the question. Stick to the question. You don't have an estimate?
Sir Jonathan Stephens: We do not have an estimate of the full, final 10%.

Q322 Stephen Barclay: So we are meeting the EU objective of 100%? You have no idea really of when you will be able to cover the remaining 10%?
Sir Jonathan Stephens: We have a commitment to consider that, and work at it. That commitment was made in the spending round. We have further funding to take us significantly through that final 10%. I cannot at this stage tell you what the full final 10%, all the way up to 100%, would cost.

Q323 Stephen Barclay: In essence, you cannot make a value-for-money judgment on the scheme, when you do not know the costs of the full scheme.
Sir Jonathan Stephens: Well, I have to make a value-for-money judgment on the funds that are being invested now. That is the basis on which the programme has been designed.

Q324 Stephen Barclay: In your original document, the EU set 100% target, you said that that was a challenging target, but that your target was the right one. For my constituents who will be within that 10%, you have no idea how much it will cost. You have no idea when it will be delivered, and you have devised a scheme that makes it less likely for those people in rural areas where the transport infrastructure is particularly bad—one bus a week in some of my villages—and where the case for having superfast broadband is strongest. It is in our remotest areas with poor transport links that we should be targeting the scheme. You have designed a scheme that actually makes it least likely that my constituents will get it. You cannot tell us that that is value for money, because you have no idea what the cost is.
Sir Jonathan Stephens: We have designed a scheme that will deliver access to superfast broadband to about 4.6 million premises.

Q325 Mr Bacon: Mr Barclay was talking about the ones that will not get it, not the ones that will.
Sir Jonathan Stephens: I completely understand. There will be some that will not get it. In the last spending round, the Government invested a further—
Chair: Please don't repeat. It is 10 to 6.

Q326 Stephen Barclay: It is not the original objective.
Sir Jonathan Stephens: The objective of the programme was to take a sum of public money and to secure as much coverage as possible. As a result of this programme—it is now going further—we will secure more than 90% coverage, 4.6 million homes, that would not otherwise receive superfast coverage.

Q327 Stephen Barclay: In terms of speed and coverage templates, paragraph 3 says that "BDUK is a unit within your Department." We heard earlier that BDUK is a central repository of all the maps along the lines of Northamptonshire. Will you give a commitment now to the Committee that, within seven days, you will publish the speed and coverage templates for all counties within England and Wales?
Sir Jonathan Stephens: I am not in a position to give that commitment now. I am sympathetic, and I understand the point about identifying where the final 10% is. What you heard from BT today represents quite a significant shift in its position, which is welcome. The ability of local authorities, as Northamptonshire has already done, to release the details about the areas of coverage is very significant and one that we support.

Q328 Stephen Barclay: So what is the impediment? If you have these data, and if BT has said that it has no objection, what is the impediment to disclosure? The Government have a commitment to transparency from the Prime Minister down. We heard about officials not reflecting their Ministers' wishes. I am sure you would want to reflect yours.
Sir Jonathan Stephens: If I may say so, that is quite a serious accusation about officials who are bound by the civil service code.

Q329 Stephen Barclay: To be clear, Sir Jonathan, that was not my accusation. It was an accusation made by an earlier witness at this session.
Sir Jonathan Stephens: One of the reasons why I am not in a position to give that commitment now is that I do not have a ministerial decision to give that commitment. I cannot and should not anticipate such a ministerial decision.

Q330 Guto Bebb: Sir Jonathan, you said that the comment from BT was a significant step forward, yet the evidence from BT was that the information was readily available, and that it had no problem. You have said that it is a significant step forward. So your understanding is that BT was previously opposed to sharing that information. You specifically said that it was a significant step forward.
Jon Zeff: We will have to follow it up but the detail in the speed and coverage template is supplier confidential information. BT said they are willing for data on the coverage areas now to be released. Those are data owned by local authorities, in their possession. One thing we will need to do is discuss that with local authorities.

Q331 Chair: Why discuss it?
Jon Zeff: Because those are their data.

Q332 Chair: Whose data?
Jon Zeff: The local authorities are signatories to the contract.

Q333 Guto Bebb: Why, therefore, is BT's shift important? If the data belong to the local authorities, why is the shift from BT important?
Jon Zeff: Because some of the data are supplied under non-disclosure agreements on competition, as you would expect in a commercial contract.

Q334 Guto Bebb: So, on that basis, BT misled the Committee when they said that they had no objection. Because what you are saying is that they did have an objection.
Jon Zeff: No, I am just saying, as I understand it, that that is a change from their previous position. It is very welcome if they have no objections. I am not suggesting that they have.

Q335 Chair: Hang on a minute. I can't understand how you ever got to a contract that allowed them not to release the 10% that they weren't going to cover. How on earth did you ever get a contract like that?
Jon Zeff: As I said, the contract, the speed and coverage template, has a lot of detail in it.

Q336 Chair: You guys are really—Just answer the question. How did you get to a contract that did not have in it an obligation on BT to release the 10% that they were not going to cover so that alternative suppliers could be identified?
Jon Zeff: There is a process whereby initially—at the beginning of the process—there is a public engagement consultation. I think it was referred to before. That is designed to identify where other suppliers have either existing network or plans to build commercial networks within the next three years. Any areas where there is either an existing network or planned network are carved out under the state aid rules and are not allowed to be covered.

Q337 Chair: But the 10% not covered—that is a different area. The 10% not covered by the 90% contract that BT gained in 26 local authorities in the country. We have ample evidence that nobody knows what that 10% is. We have had lots of examples.
When a private provider or a consortium comes along and wants to build something there, BT comes in and says, "Actually it is in our 90%. Go away, you guys, or we are going to override it." Why, in the original contract, was there not an absolute determination that the 10% should be revealed? That is question one. If you are not going to answer that one, here is No. 2. Can we get your assurance that, when you go away from today's meeting, by the time you get our Report, you will ensure that the 10% in those 26 contracts is opened up, so that we can get other suppliers in to deliver fast broadband?
Jon Zeff: Just to be clear: once the coverage area is fixed, that does have to be disclosed.

Q338 Chair: Why is it not disclosed anyway?
Jon Zeff: Because there is a period when it is not absolutely fixed.

Q339 Mr Bacon: That is part of the way in which BT are using their monopoly advantage. They are finessing which bit is in the 90% and which is not, in order competitively to disadvantage other potential players. That is part of the whole point.
Jon Zeff: There are legitimate reasons why it can vary. For example, it is not until after they have signed a contract that any of the detailed survey work around the terrain is done. That may tell you that there are particular difficulties in going to one area as against another. There is some flexibility built into the contract, the benefits of which are recognised by both sides.

Q340 Mr Bacon: Hugely advantageous to BT, to the detriment of everybody else.
Jon Zeff: The point at issue is at what stage and what level of certainty does that information get released. I think we have heard that potentially there is scope to release more information around that earlier than we had before.
Sir Jonathan Stephens: In the interests of trying to come together, this is an important issue and I think the Committee's discussion has genuinely illuminated it and helped move things forward. As I said to Mr Barclay, I am obviously not in a position to commit Ministers, but I am very happy, as the Chairman suggests, to take this away to ensure that by the time you publish your Report we have considered the issue and achieved what progress we can in releasing information so that people have a good basis on which to plan.
Chair: Thank you.

Q341 Chris Heaton-Harris: I appreciate that very much indeed. In fact, one point that I wanted to make was that these maps have existed in Northamptonshire for a couple of months now and, being a Northamptonshire MP, I am now being hassled by a load of e-mails from my constituents who live in the 10% area and who are looking for suppliers. Getting that data out there will help you to achieve the target, so I do not understand why you were not so keen to come forward on that.
I have one question for Sir Jonathan. I know that you dismissed this at the very beginning and again just then, but we did hear, and you heard, the criticism that officials in your Department are not listening. I can understand why you dismiss that out of hand and it is absolutely right that you do so, but I would appreciate it if you would check that that is not the case. I assume that you would anyway, but if you can tell the Committee that, that would be very helpful.
Sir Jonathan Stephens: Of course I will. I take any criticism of officials seriously. I am sorry that I have forgotten specifically which criticism you are thinking of.

Q342 Chris Heaton-Harris: It was the one about how the Secretary of State had been very receptive and helpful but then the officials contacted had been less so. If you could check that, that would be fantastic.
Sir Jonathan Stephens: If anyone has any evidence that they want me to look at in that respect, I am really happy to do so.

Q343 Chris Heaton-Harris: Fantastic.
Just because I feel sorry for Mr McIntosh—actually, I don't at all. You have been sat there throughout this hearing and I have been watching you either writing copious notes or doodling a lot. I raised a concern, which was echoed by Ms Harding of TalkTalk, about potential problems with BT and sports rights. Is that of any concern to you?
Stuart McIntosh: TalkTalk has raised this issue in the context of the Competition Act complaint that it brought to us very recently. As you would expect, we are looking at the issue very seriously at the moment. Because it is a Competition Act complaint, which is a very serious accusation, we need to be careful about what we say in public in relation to it. It will come as no surprise to you to learn that BT rejects the case. At the moment, we are using our formal powers because we have concurrency with the Office of Fair Trading to obtain information from the various parties involved in the matter. We will look at it and determine whether the issue that has been identified by TalkTalk exists.

Q344 Chris Heaton-Harris: You obviously do not have to name them, but have any other companies brought forward similar accusations?
Stuart McIntosh: I think I'm correct in saying that one other company has raised the issue, but I don't think that they are party to the complaint at this stage.

Q345 Chair: I am glad that we have moved on to you. I'm sorry that you had to sit there for so long. TalkTalk wants access to the broadband once it is in. I am interested in why you did not put in appropriate safeguards to ensure competition in developing the infrastructure. Why did you feel that that was not appropriate?
Stuart McIntosh: We think we have.
Chair: You haven't.
Stuart McIntosh: Let me try to explain. The context—it was quite helpful to hear from Dido Harding—is that we have a regulatory framework for broadband that has helped to produce one of the most competitive markets in Europe and arguably worldwide, which is reflected in availability and in price. We have among the lowest prices, certainly in Europe. It is also reflected in BT's share of that market. BT, as the incumbent operator in the UK, has about 30% share of the broadband market, which is about the lowest of the 28 countries in the EU. The reason why that is the case is because, over the years, we have applied regulation that has made it possible for companies such as TalkTalk and Sky—

Q346 Chair: No—we are not talking about that. I am talking about the infrastructure.
Stuart McIntosh: We have made it possible for companies like TalkTalk and Sky to do that, through giving them access to BT's infrastructure. We review these markets every three years. There is a cycle that

we follow and I can explain the reason for that, if that is of interest.

We last reviewed this market in 2010; this was at the point where investment in these superfast broadband infrastructures really was at the early stage. Indeed, there has been quite a lot of uncertainty, both in this country and across the industry globally, as to what consumer appetite is for these sorts of services, based on superfast broadband infrastructures. When we looked at that we decided that we would place obligations on BT with regard to the superfast infrastructure it is providing, so that companies like TalkTalk, Sky and others would be able to get that access and sell the services.

The one thing that we did not do at that point, which I think relates to the issue that Ms Harding raised, was decide to regulate the price on the wholesale input. If you look at the existing generation of broadband, we regulate that wholesale price, which supports competition and has led to these very low retail prices. We considered very seriously at that point whether it was appropriate to do the same thing in this market. We decided then not to do that, for a couple of reasons.

First, there was a great deal of uncertainty—and in some measure there is still uncertainty—regarding the take-up of these services. We are getting more information on that now; back in 2009 and 2010, when we were doing the work, there was a lot of uncertainty. The costs of building these networks are investments that you make up front; so actually figuring out a reasonable charge for that in the early days can be very difficult. We were very conscious of those uncertainties. To be perfectly honest, we were concerned not to reduce the incentives to invest in upgrading the UK's network.

However, that was not enough. The critical thing for us was looking at consumer behaviour and trying to understand the extent to which the superfast broadband market is, in economic speak, a separate market from the current generation of broadband market—in other words, is it likely that the providers of these services are going to be able to charge a very good premium? Based on our understanding of consumer requirements at that stage, we did not think that that was likely to be the case, so that was the judgment we made then. There was lots of regulation—

Q347 Chair: Three years ago?

Stuart McIntosh: Three years ago. What has happened since is that significant investments have been made. It is quite remarkable that 65% of the UK has availability—or, at least, the opportunity—

Chair: By a monopoly supplier.

Stuart McIntosh: And Virgin Media. Virgin Media covers about half the country; it is very important that you don't lose sight of that. The majority of customers today who take superfast broadband services are on the Virgin Media network, not the BT network. I have lost my train of thought slightly.

Chair: Three years on.

Stuart McIntosh: Three years on, we have much better availability. We have companies selling good services. It has also proved to be the case that the premium that is being charged on these superfast services, relative to ordinary broadband services, is very modest: as a consumer, you only have to pay a few pounds more. That is actually at the source of Dido Harding's concern and complaint. Two things on the list—

Q348 Chair: But she charged more than BT charged their customers.

Stuart McIntosh: No—she is charged the same as BT's downstream business. One of the things that is a very important differentiator for the UK market compared with every other market in Europe is that we have ring-fenced BT's access network. Every transaction that goes over that network and the commercial details, in terms of the prices that are offered, the way that orders are placed and provisioned and the way that lines are repaired, is exactly the same for the competitors as it is for BT's downstream business. That is one of the big differentiators in the way that the UK market works compared with elsewhere.

I come back to Dido Harding's concern, which is that the margin that has been left between the retail price charged by BT and the wholesale price, which BT's downstream business is also paying, is not enough for her to be able to sell the product profitably. That is the issue we are looking at at the moment.

The second thing is that during the course of this year we have been renewing our market review. That is quite a big exercise; it involves the whole industry. Two weeks ago we published a consultation on this where one of the big issues that we teed up, based on input from industry, including TalkTalk, is whether or not we should look at being more specific with regard to the regulations on margin squeeze between the wholesale and the retail price. That consultation has just gone out. Industry will come back to us in September and we hope and intend to take a decision on that early next year. The current regime in effect runs until about March next year.

Q349 Chair: I hear all that, but the accusation we have heard today from previous witnesses—not just TalkTalk, who just want access to the broadband to be able to sell retail—is that the way that BT manipulates access to its infrastructure prevents the suppliers of the infrastructure from entering the market. There are conditions that they lay on access to the infrastructure for suppliers of infrastructure which have inhibited competition. That is a really serious accusation as well as the Dido Harding accusations.

I don't understand what you are doing to challenge those wide accusations. I have to tell you, Mr McIntosh, that before this meeting—Fujitsu are not here because they are involved in litigation—not a single supplier came to me to say that they think the current way in which BT enables access to its infrastructure promotes competition, which is what you are about.

Stuart McIntosh: Absolutely. I would recognise and accept that there are improvements and changes that can be made in any system, including ours. I would note a couple of things, however. One is that the regime as it currently applies has allowed major companies to come into the market and build very successful businesses based on that infrastructure. It is quite interesting that eight or nine years ago, neither TalkTalk nor Sky were major players in the provision of broadband services. Now they are.

Q350 Chair: They are retailers.
Stuart McIntosh: They are retailers who use—

Q351 Chair: I am not talking about the retailers.
Stuart McIntosh: They are retailers who use access to the wholesale infrastructure.
The second thing is that with regard to access to the infrastructure, one of the things that we did in 2010, which again was with a view in part to the agenda to support public programmes of investment in extending broadband, was for the first time to require BT to provide access to its physical infrastructure—the ducts and poles. That has never been done before in the UK.
I found it quite interesting that BT proposed new prices for access to that in early 2011. Those prices were high. We had quite extensive discussions with them and they revised those prices and brought them down quite substantially. Interestingly, we talked to Fujitsu quite a lot around this period, and their big concern when they came to us was over the pricing of the access; and after the changes in the prices, they basically assured us that that aspect was okay.

Q352 Chair: I'm sorry to say this. It is not the prices. It is the other conditions that have been inhibitors. Mr Corner, give me some examples. You only have access for a year, you told me?
David Corner: This is what stakeholders have told us: that there are other conditions. It is not just the price.

Q353 Chair: You can't use access to the infrastructure to do deals with commercial organisations. You can't use it to do deals with big public bodies like local authorities, which is where the money is. You can't do any of those deals. So it is the way in which they limit—it is not just the price, but the limitations placed on that. You should know that better than me. I have just read up for this hearing. You should know that.
Stuart McIntosh: I think I recognise the point you are making. The main issue that has been raised with us in connection with this is whether these ducts can be used to provide what are know as leased lines.

Q354 Chair: Can you speak up? I missed that.
Stuart McIntosh: The main issue that has been raised, I think, although I am happy to be informed if it is different, is whether access to these ducts and poles can be used to provide what are called leased line services to businesses.

Q355 Chair: That is one of the issues raised.
Stuart McIntosh: That is the main issue that has been raised with us or mentioned to us. We have said, and I have said this directly to Mr Corbett myself, that if they are looking to roll out broadband schemes in rural areas and those restrictions are a major issue for them, they need to come to us and provide us with evidence and analysis that allows us to understand the issue. It is not to say that we would necessarily agree with them. But I would also have to say that despite our making that suggestion, they have not come back. We have been very open to this issue.
We have consulted on this as part of the market reviews we have done over the past year or two. We have received very little concrete information or evidence from these organisations which would allow us to look at the issue to see whether we really should make the regulation change.

Q356 Chair: Okay. I hear that. I am going to ask you one last question and then we will draw this session to a close. You have the detailed BT cost data, don't you?
Stuart McIntosh: We do have a lot of detailed cost data but not all of BT's cost data.

Q357 Chair: What assurance can you give the Committee today that the consumer's interest is being protected by the way in which BT price this?
Stuart McIntosh: I would point to the basis on which we set the wholesale prices for access to BT's network and the way that that is reflected in their retail services. We scrutinise very closely the costs that they claim are related to the services that they provide.

Q358 Chair: So you would assure this Committee that the regulation that you currently undertake on the way in which BT exploits its monopoly position does not in any way disadvantage the consumer?
Stuart McIntosh: The regulation is designed to ensure that BT is not allowed to exploit the residential consumer.

Q359 Chair: You are completely convinced of that?
Stuart McIntosh: I would never claim a standard of perfection, but I think the regulatory regime does well in protecting consumers, and I think it is reflected in the prices. We can provide you with information as to how prices in the UK compare with other leading markets in Europe. I would not say that that is absolutely conclusive evidence but it is quite strong evidence.
Chair: Thank you very much indeed.

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