

[INCA response to Ofcom's Consultation:](#)

Promoting competition and  
investment in fibre networks  
Initial proposals – Approach to  
remedies

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## 1 Executive Summary

INCA welcomes the opportunity to respond to this consultation. In preparation for this response we consulted with a group of members through a workshop that Ofcom very kindly participated in, we sought feedback through mailings and held a conference call to discuss the proposed response.

A key focus of this response is on the way that definitions of geographic markets and proposed remedies, particularly in Market 3, could have an adverse impact on investment in new full fibre and wireless broadband networks.

We will be very happy to work constructively with Ofcom to help shape the approach going forward to meet the objectives of ensuring the widest possible coverage with new full fibre (and wireless) networks as quickly as possible, whilst maintaining a positive regulatory environment to encourage competitive investment.

## Introduction and background

1. INCA is a trade association. Its members are supporting, planning, building and operating sustainable, independent and interconnected full fibre and wireless networks that advance the economic and social development of the communities they serve and permit the provision of applications and services through open competition, innovation and diversity.
2. INCA's aims are to:
  - support the development of sustainable independent networks through collaboration on the provision and procurement of products and services and adoption of common standards.
  - support collaboration between members to create new, independent digital infrastructure that can be shared by operators and suppliers.
  - support mutual trading between members.
  - represent the interests of independent networks.
  - promote the advantages and successes of independent networks.
3. INCA has more than 130 members, including: network owners, operators and managers; access and middle mile networks; public sector organisations actively promoting the development of 21st century digital infrastructure; vendors, equipment suppliers, and providers of services that support the sector.
4. Although this response focuses primarily on the conditions for building competing fibre networks, many of INCA's members build both fibre and wireless networks or wireless networks only. It is important that Ofcom does not focus only on the benefits of fibre networks and effectively ignore the benefits of very high speed and high quality fixed wireless networks.

## 2 Ofcom's proposed geographic market definitions

5. Although Ofcom has run separate consultations for its proposed approach to defining geographic markets for the wholesale broadband and leased lines markets (the wholesale local access market (WLAM) and the business connectivity market (BCM) respectively), and INCA submitted a brief response to that consultation, it was only when we saw Ofcom's proposed remedies that it became clear to INCA members how significant Ofcom's proposed market definitions are, in particular for companies deploying ultrafast networks in rural areas – of which INCA has many members.

### 2.1 Defining the non-competitive market

6. INCA is particularly concerned at Ofcom's proposed criteria for defining the non-competitive market (which we will refer to in this response as market 3), as it has become clear that Ofcom's proposed regulatory remedies for market 3 would effectively remove any investment incentives for operators other than BT.

7. Ofcom proposes to define market 3 as follows:

“areas with no existing alternative ultrafast networks, no operator plans and where we do not consider build is likely to be economic”<sup>1</sup> Ofcom further defines where it considers that it is not likely to be economic to build as areas with less than 20,000 premises.<sup>2</sup>

8. Many of INCA's members are today (and have been for several years) building ultrafast networks in areas that Ofcom considers to be economic for building new networks. Several have raised very substantial funding to build these networks and strongly contest Ofcom's underlying assumptions for the definition of market 3. If Ofcom's current definition of market 3 were to be implemented, around 30% of all UK premises would have no option for benefitting from competitive network investment, a result which seems completely incompatible with the Government's Future Telecoms Infrastructure Investment (FTIR) policy and objectives<sup>3</sup> to encourage investment by a plurality of operators and to make public funding available where necessary to ensure that fibre networks are built to as much of the country as soon as possible.

9. The FTIR makes the following statements:

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<sup>1</sup> Ofcom. (2018) “Consultation Promoting investment and competition in fibre networks”. Page 10, Paragraph 2.17. Available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0005/130001/Consultation-Promoting-investment-and-competition-in-fibre-networks.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0005/130001/Consultation-Promoting-investment-and-competition-in-fibre-networks.pdf)

<sup>2</sup> Ibid. Page 34, Paragraph's 4.30-4.31.

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/732496/Future\\_Telecoms\\_Infrastructure\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732496/Future_Telecoms_Infrastructure_Review.pdf)

“There are likely to be parts of the country (c.10% of premises) that, while commercially viable for at least one operator, may not benefit from investment. The Government will use ‘competition for the market’ mechanisms to secure investment in areas. The proposed new Electronic Communications Code (EECC), for example, provides powers to designate areas where no operator has indicated plans to deploy; and “

and

“This strategy relies on getting five things right:

1. Making the cost of deploying fibre networks as low as possible by addressing barriers to deployment, which both increase costs and cause delays;
2. Supporting market entry and expansion by alternative network operators through easy access to Openreach’s ducts and poles, complemented by access to other utilities’ infrastructure (for example, sewers);
3. Stable and long-term regulation that incentivises competitive network investment;
4. An ‘outside in’ approach to deployment that means gigabit-capable connectivity across all areas of the UK is achieved at the same time, and no areas are systematically left behind; and
5. A switchover process to increase demand for full fibre services.<sup>4</sup>

10. In a recently published report, produced by for INCA Point Topic<sup>5</sup>, INCA highlighted the significant investment already made by INCA members, the significant specific plans for investment for the next 2 years and the investment ambitions of INCA members by 2025. INCA and its members are shocked that Ofcom appears to consider that these very large investments are not of sufficient value to the UK and its consumers and citizens to create a regulatory framework that encourages and enables the realisation of these investments. On the contrary, Ofcom’s specific plans appear to be to actively discourage investment in market 3 by any other provider than BT.

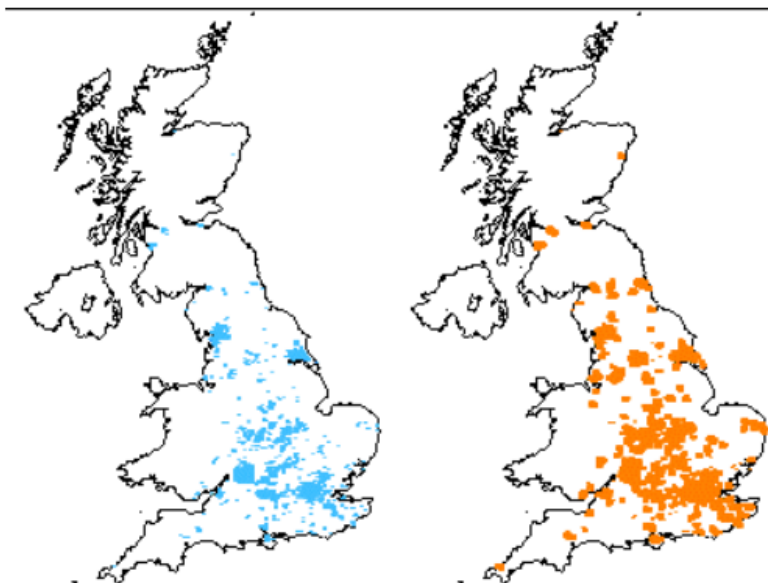
11. The Government, on the contrary, is actively encouraging all providers (including BT) to invest in new ultrafast networks, with a specific focus on providing part funding towards connecting the 10% of premises that are least economically attractive for commercial network deployment.

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<sup>4</sup> Ibid pages 4 and 5.

<sup>5</sup> <https://www.inca.coop/sites/default/files/Altnet-report-INCA%20April-2018.pdf>

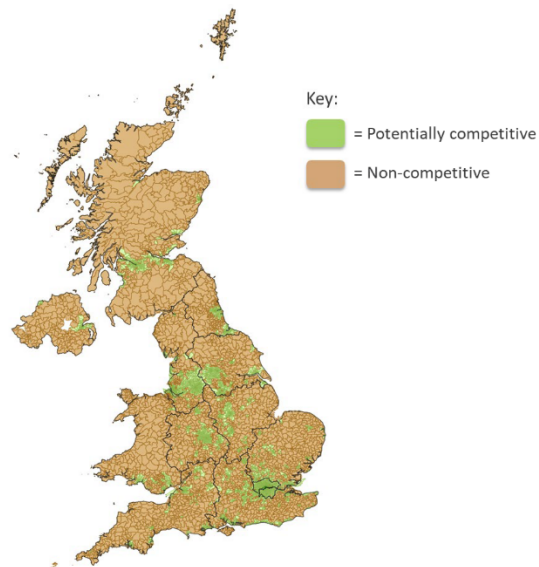
12. A number of Government initiatives, including LFFN, Rural Connectivity Funding, Gigabit Funding, and others focus on assisting providers to reach areas that are less economically attractive than large urban areas, using initiatives as the outside-in approach and others to enable a wide range of providers to serve these areas. In fact, Government is conscious that in the past Government funding initiatives<sup>6</sup> have not always worked to encourage investment by market entrants as well as BT and is now striving to ensure that this does not happen again.
13. INCA is not aware of Ofcom actively seeking inputs from several of INCA's members, to assist in its analysis of planned network deployments, but even if Ofcom has not done so, there is published data available that should have assisted Ofcom's analysis. One such published source is the Point Topic annual report on altnet coverage, investments, penetration and forward looking plans.
14. In the 2018 Point Topic report, the following maps were included:



Showing on the left (in blue) the coverage by altnets at the end of 2019 and on the right (in orange) the planned altnet coverage by 2025. When compared with Ofcom's map showing where it considers the market conditions justify inclusion in market 3, it is clear that there are some significant differences:

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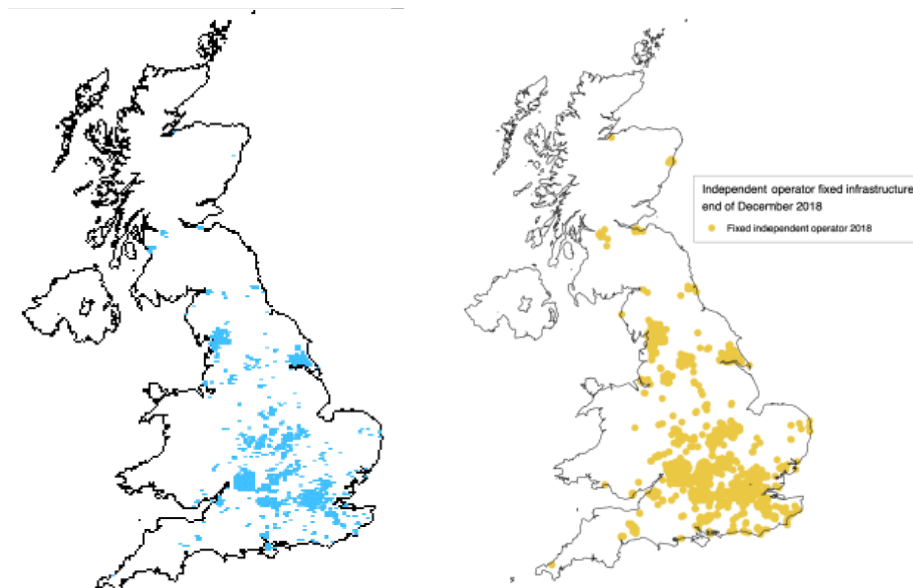
<sup>6</sup> In 2013-14, the Government's BDUK framework was reviewed by the Public Accounts Commission and subsequently revised to ensure better access to the Government funding by other providers than BT.



15. For example, the Point Topic maps show that there was already substantial altnet network presence in the north west and the south east, as well as in the midlands. Ofcom's map, however, does not recognise that presence.

16. We understand that the granularity of the Point Topic and Ofcom maps is unlikely to be the same but, nevertheless, there are significant omissions in Ofcom's map.

17. A updated version of the Point Topic report was issued recently, containing the map below, showing altnet coverage at the end of 2018.





18. It is clear from the maps above (map showing coverage at end of 2017 on the left for easy comparison) that altnet network coverage has grown substantially in the 12 months between the 2017 and 2018 data maps, demonstrating that altnets are not making unsubstantiated projections of their intentions and ability to deploy new networks in often rural areas.
19. Ofcom appears to have neither sought detailed inputs from many of INCA's members, nor used the publicly available coverage information from Point Topic. We hope that Ofcom will revise its analyses and when doing so will seek inputs from a larger group of altnets. INCA would be pleased to act as a conduit to its members, if that would be of assistance to Ofcom.
20. INCA does not believe that it is appropriate for Ofcom to define a market as non-competitive at this time of substantial investment across all parts of the UK, both rural and urban. INCA understands that Ofcom is attempting to support the Government's policy of ensuring that rural areas are not the last to benefit from ultrafast networks, but instead of determining that certain areas will never have investment in new fibre networks unless an artificial regulatory ring is drawn around them within which BT is granted the right to a near-guaranteed return on any new fibre investment. Instead, Ofcom should support the Government's policy by ensuring that investment in rural areas is incentivised equally to investment in larger towns and cities.
21. We will set out clearly in this response, why Ofcom's proposed market 3 remedies will be counter-productive as they will not only deter investment from INCA's members but will also not incentivise BT to make any substantial investment in market 3 in the 2021-26 period.
22. If Ofcom concludes that it is necessary to define a 'non-competitive' market at this time, then INCA would urge Ofcom to define that market to only cover approximately the 10% least economically viable premises in the country<sup>7</sup>. We believe that this would be significantly more effective in achieving Ofcom's and the Government's objectives at it would:
- Focus any investment by BT in the areas where altnets are least likely to invest<sup>8</sup>, and
  - Extend the investment incentives proposed for the market defined by Ofcom as 'potentially competitive (referred to in this response as market 2).
23. This approach would thus maximise the investment by BT and altnets over the 2021-26 period, bringing ultrafast networks to as much as the UK as possible and benefitting from

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<sup>7</sup> Defining those areas should be subject to a very careful analysis.

<sup>8</sup> It should be noted that several INCA members are investing in areas that would be the 10% least commercially attractive and several that will compete with BT for Government funding for those areas.

the substantial investment potential in the altnet community without having to use Government funding. We will provide our estimates of the likely altnet investment and the cost to the UK of regulating to disincentivise that investment in section 3.3 below.

## 2.2 Defining the potentially competitive market

24. Although the primary focus of this submission is on the consequences of how Ofcom defines market 3 and the proposed remedies for market 3, several INCA members are actively investing in areas that would be covered by market 2, as Ofcom has proposed to define that market.
25. Overall, INCA welcomes Ofcom's stated objectives of incentivising investment in ultrafast networks by altnets and BT alike. This is a very welcome change to Ofcom's previous approach, which focused primarily of delivering short term consumer benefits through the reduction in regulated prices to access BT's network.
26. There is, however, one specific issue which is of deep concern to INCA members, and that is the 65% network reach threshold Ofcom has proposed for the removal of price regulation on BT. Contrary to the European Commission (EC) SMP guidelines<sup>9</sup>, which require that geographic markets should display homogeneous competition conditions and be sufficiently different from the surrounding areas to be distinctly different<sup>10</sup>, Ofcom's proposed network reach threshold appears to simply draw an arbitrary line, for which Ofcom offers no justification or explanation. In Ofcom's recent draft BCMR Statement, in which the same threshold is used, Ofcom shows that almost all respondents disagreed with the 65% network reach threshold, but nevertheless sticks with it, again within any explanation or justification of why it is appropriate<sup>11</sup>.
27. INCA is of the strong view that the application of the 65% network reach threshold to determine whether price regulation should be applied would result in premature regulation and would cause direct harm to investment incentives for altnets. In locations where two or more altnets can reach between 65% and 90% of customer sites, those altnets are unlikely to have yet reached minimum critical mass to ensure a return on their investments. If BT were to introduce tactical pricing initiatives to prevent altnets from reaching critical mass the altnets would have stranded assets for which no commercial return can be achieved. The mere risk of this happening will be considered a considerable investment risk, resulting in less finance being available and increasing the cost of the financing that remains available. Neither of those results would be consistent with Ofcom's objective to encourage investment by altnets as well as BT to deliver ultrafast network coverage for as much of the UK as fast as possible.

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<sup>9</sup> <https://ec.europa.eu/digital-single-market/en/news/guidelines-market-analysis-and-assessment-significant-market-power>

<sup>10</sup> Ibid paragraph 48.

<sup>11</sup> Ofcom's draft BCMR statement of May 2019, paragraphs 5.20 to 5.23 and 5.83 to 5.93.

### 3 Ofcom's proposed approach to remedies

28. When reviewing the proposed remedies for the BCM and the WLAM, it is important to also include the expected upstream remedies to both the BCM and the WLAM, namely the access to ducts and poles (DPA) remedy that is applied in the upstream physical infrastructure market (PIM). As Ofcom has recently found that the PIM is national in scope (no sub-national geographic markets), we briefly discuss the PIM remedies for the UK as a whole before we discuss the different remedies applied in the BCM and WLAM in markets 2 and 3 respectively.
29. As Ofcom has not issued any information about its proposed approach to defining geographic markets and to applying remedies in the PIM, INCA has assumed that the approach in this market will be largely unchanged since the recent PIMR draft Statement issued by Ofcom on 24<sup>th</sup> May 2019.

#### 3.1.1 PIM remedies

30. In the recently completed PIMR, Ofcom proposes to apply an unrestricted DPA remedy to all of BT's fixed telecoms infrastructure (excluding infrastructure for serving fixed wireless access and mobile services).
31. The unrestricted DPA remedy will allow altnets to use the PIA product for any purpose they consider useful when building their networks. It can be used for building broadband and/or leased lines networks and it can be used to build local and/or long-distance networks.
32. The removal of usage restrictions (geographic as well as type of network deployment) is a big step to removing the inequalities between BT/Openreach and altnets, as BT has had unfettered access to its own physical infrastructure assets when altnets did not. INCA therefore welcomes the introduction of the unrestricted DPA remedy.
33. It is, however, important to recognise the removal of DPA usage restrictions is only addressing one aspect of inequality of how BT/Openreach can use its physical infrastructure assets and how altnets can access the same. The PIA product is, as it stands and with the changes projected over the next 4 months, an improvement over the old PIA product, but it still has significant shortcomings and there are still areas where INCA's members have identified significant scope for discrimination between altnet users and BT/Openreach's own use of the physical infrastructure assets.
34. It should also be noted that, the removal of the DPA usage restrictions will require a review of all PIA terms, not simply a removal of the provisions that explicitly prohibit use

outside the limitations contained in the WLAMR Statement of March 2018. The principle of usage restrictions is embedded into all the processes and systems developed to support the PIA product and it is likely to take some time before the product has been changed to remove usage restrictions in practice rather than simply in name. INCA urges Ofcom to require Openreach to commence process work with altnets to identify changes required to support a truly unrestricted PIA product and implement those changes as soon as possible.

## 3.2 Proposed remedies for the potentially competitive market

35. In the potentially competitive market (market 2), Ofcom has expressed its intention to regulate in a manner to encourage investment in new fibre networks. This applies across both the BCM and the WLAM. Below we comment on Ofcom's BCM and WLAM proposed remedies:

### 3.2.1 BCM remedies

36. In the BCM, Ofcom proposes to apply a charge control that keeps prices stable from the end price in the current charge control (March 2021), namely a CPI-0% control. INCA welcomes this approach to price regulation as it will not push the regulated price even further than has already been achieved through a series of aggressive charge controls.

37. Whilst, at this time, Ofcom's proposals are very high level, INCA urges Ofcom to give very careful consideration to the structure of the charge control, including the introduction of sub-caps to reduce BT's scope for gaming the charge control with the effect of introducing prices for some products or in some locations that will actively deter altnet investment.

38. INCA, however, is concerned that Ofcom appears to be of the view that keeping prices at the same level as the end price from the current charge control will result in a price level that is equivalent to the costs of a reasonably efficient operator to deploy new fibre infrastructure. Whilst INCA has not undertaken detailed costing analysis, it is aware that some of its members have done so and understands that the costs resulting from such analyses are higher than the price level resulting from the current charge control in March 2021. Ofcom therefore cannot assume that, by keeping the prices stable from that point it will maximise altnet investment.

39. Ofcom also proposes to impose a prohibition against geographic discounts and INCA also welcomes this remedy. Again, however, whilst the intended purpose of the remedy is right, the actual remedy is substantially weaker than it could be (based on the assumption that the remedy remains unchanged in scope from how it is imposed in the current WLAMR Statement (2018), namely that it applies to rental charges only and not to

connection and other one-off charges, and that BT is allowed to introduce geographic discounts for rental charges, if it can justify that its cost level in the selected location is lower than the national average.

40. INCA considers that the scope of the restriction should include all charges (including rental, connections, and other one-off charges), and that the restriction should be absolute, rather than subject to a cost justification provision.

### 3.2.2 WLAM remedies

41. As for the BCM, Ofcom proposes that the charge control for the WLAM should keep prices stable in real terms through the imposition of a CPI-0% charge control. INCA welcomes this high-level approach but, as for the BCM, urges Ofcom to investigate carefully how to best structure the charge control to prevent it being gamed by BT. Also, as for the BCM, INCA does not accept that the use of the finishing price from the current charge control in March 2021 will be a proxy for setting prices that reflect the costs of reasonably efficient operator deploying new fibre infrastructure.
42. With regards to the proposed prohibition of geographic discounts, INCA's comments for the BCM are also applicable to the WLAM.

### 3.2.3 Missing remedies

43. INCA applauds Ofcom's stated intention of wanting to encourage investment in fibre by all industry players, but it seems that this new approach is only skin-deep. Whilst changing its approach to setting charge controls, Ofcom has not followed through and proposed remedies to prevent BT from acting anticompetitively to deter rival investment in fibre networks. INCA is concerned that Ofcom's approach is half-hearted and encourages Ofcom to explore options for restraining BT's behaviour that will reduce the investment risks for altnets and consequently increase the available funds for investment as well as the cost of capital for fibre deployment.

## 3.3 Proposed remedies for the non-competitive market

44. In market 3, Ofcom proposes remedies for both the BCM and the WLAM that reflect Ofcom's view that commercial investment in new infrastructure is unlikely to be economically viable.

### 3.3.1 BCM remedies

45. Although Ofcom proposes that active leased lines will be regulated in the same manner in market 3 as in market 2, that is inflation adjustment from the March 2021 price level, Ofcom proposes a cost-based dark fibre remedy in market 3 that is not proposed for market 2.
46. Whilst some altnets will benefit from very low price dark fibre access (DFA), there is a concern that the price proposed by Ofcom may so low that it makes the deployment of separate altnet networks uneconomical.
47. INCA is confident that a significant part of the areas in what Ofcom has currently defined as market 3 is viable for commercial investment and therefore we believe that the proposed prohibition of geographic discounts (including the improvements to that remedy as set out above) should also be imposed in market 3.

### 3.3.2 WLAM remedies

48. In the WLAM, Ofcom proposes that BT's prices should be set using a charge control, based on a Regulated Asset base (RAB) costing approach. INCA understands that this would likely result in a not insignificant reduction in the VULA price in market 3 including the removal of the Hypothetical Ongoing Network (HON) costs and the adjustment of charges to reflect BT's efficiently incurred costs (as would have been the case in the national market in Ofcom's current approach).
49. Further, should BT decide to make only limited fibre investment in market 3 then it is our understanding that the costs of that investment would be spread across all copper and fibre connections in market 3, likely resulting in a very low regulated fibre price.
50. So far altnets have been able to compete with BT in rural areas without having to match BT's prices, due to their vastly superior product (compared to BT's copper connections). This has however limited the penetration levels in some areas due to price sensitivity. If BT starts marketing a fibre product at or near the price level of the current FTTC 40/10 product, then this will likely have a very negative impact on altnets, potentially causing significant churn as well as making future investment unviable.
51. Other adjustments that INCA understands Ofcom would make to the market 3 cost-base (starting from the national VULA price at the end of the current charge control in March 2021) include:
  - An adjustment to reflect the higher than average cost to connect each premise (as the overall density of premises is lower in market 3 than the national average). This would therefore result in an increase in unit costs. And
  - An adjustment to reflect Ofcom's assumption that BT's market share in market 3 will be substantially higher than in market 2 (as Ofcom assumes no or very little altnet

investment in market 3). This would result in a reduction in unit costs, due to increased economies of scale.

52. These adjustments may, to some extent, cancel each other out, but it is uncertain what their real impact would be and INCA does not have access to the data to estimate that. One critical assumption in this respect is what market share BT would end up with in market 3. We understand Ofcom to assume that BT will have a very high market share in market 3, and INCA is concerned at that assumption.
53. As explained earlier in this response, INCA's members and other altnets are actively investing in ultrafast networks across the UK, many in rural areas that would form part of market 3 were the definition to remain as proposed by Ofcom. The investments made by altnets are a mixture of fibre and wireless connections and, whilst INCA agrees that fixed wireless access (FWA) should not be considered as part of the overall WLAM, it should still be recognised that FWA networks will attract a not insignificant number of customers, primarily in less densely populated areas. Many of INCA's members build wireless networks in locations included in Ofcom's current definition of market 3, the economics for wireless networks differ from those of full fibre networks and it is likely that a not insignificant portion of premises in Ofcom's market 3 areas will be served by high speed, high quality FWA networks that will substantially improve the connectivity over the current copper-based connections.
54. INCA believes that, as Ofcom's proposed remedies will certainly deter a significant amount of altnet investment in market 3, Ofcom needs to make sure that it uses a realistic assumption of BT's market share, when projecting BT's likely average unit costs in market 3. If overestimating BT's market share, Ofcom would underestimate BT's average unit costs of connections in market 3 and thus set the regulated VULA price too low.
55. Once Ofcom has thus reduced BT's VULA price in market 3, BT is then given the opportunity to increase its wholesale prices in that market by investing in new fibre infrastructure. BT would be able to recover that investment across all connections, whether copper or fibre. The RAB approach thus offers BT a near-guaranteed rate of return on its fibre investments in market 3.
56. It is Ofcom's assumption that the reduction in the VULA price will incentivise BT to invest in fibre in market 3, in order to increase its cost base and therefore also its returns. INCA considers that assumption to be a major flaw in Ofcom's approach. Although the reduced prices for copper-based VULA access in market 3 would result in reduced earnings for BT, it is by no means certain that investment in fibre in market 3 would be the most attractive investment proposition for BT. Below we explain why that is the case:



57. Firstly, from a financial perspective, it is clear from a review of historical regulation and looking at BT's returns over time, that Ofcom's approach has always been to allow BT to recover its efficiently incurred costs, so it is not clear how the near-guaranteed rate of return (the WACC) in market 3 will present a significant investment incentive for BT.
58. BT's investment incentives in market 3 should be seen in the specific context that Ofcom's proposed price regulation in market 2 is to adjust prices by CPI from their level at the end of the current charge control, in March 2021. This therefore means that the copper-based VULA price level in market 2, at the outset of the 2021-26 period, may be substantially higher than in market 3. In addition to that, Ofcom proposes no price regulation for broadband services at higher speeds than the 40/10 VULA anchor product, so BT would be free to set its prices for those services commercially. And, in addition to that, when BT has rolled out fibre to an exchange area, Ofcom proposes to move from the copper-based VULA anchor product to a fibre-based 40/10 product, which can be priced higher than its copper-based equivalent due to the incremental benefits of the fibre connection.<sup>12</sup>
59. It can be concluded from the summary of the market 2 price regulation approach, that BT is likely to get a higher return on its fibre investment in market 2, than in market 3. Thus, it is not at all clear that Ofcom's proposals for market 3 will in fact result in increased investment by BT in market 3.
60. In addition to BT's likely rate of return on fibre investment in markets 2 and 3, it is of critical importance to BT that it deploys fibre in market 2 as fast as possible, as the presence of BT's fibre infrastructure is likely to be a significant deterrent for altnets to deploy their fibre infrastructure in the same locations. Vice versa, for BT it would be much less attractive to deploy new fibre networks where an altnet has already deployed its fibre network.
61. INCA is concerned that Ofcom assumes that 2 or 3 separate fibre networks can be economically viable in the most of market 2. That may be the case in a small number of super-urban locations, but for the majority of locations a network operator would need around 50% market share in order to make the network investment viable. In some locations included in market 2, it may only be viable to have a single fibre infrastructure. INCA is not aware of any other major economies with 3 parallel fibre networks, and believes this is for good economic reasons. In any case, INCA believes that, within this period, investors (with the exception of BT) are likely to invest where no other fibre infrastructure is present.

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<sup>12</sup> It should be noted that INCA agrees with Ofcom's proposed charge control approach for market 2. The problem is not with the market 2 regulation, but with Ofcom's assumptions for BT's investment incentives in market 3.



62. The likely conclusion from the above is that the next 5 to 6 years will be a period of intensive investment and 'landgrab' for BT and altnets, seeking to be the first to deploy new fibre infrastructure in as many locations as possible. During that period, INCA does not believe it is credible to assume that BT will prioritise limited funds and construction resources to deploy new fibre networks in the areas that Ofcom designate as market 3<sup>13</sup>. The reduction in pricing for the copper-based VULA product will already act as a disincentive for altnets to continue investing substantially in market 3 areas, so BT will be under substantially less competitive pressure to deploy fibre market 3 than in market 2.
63. We believe that it can be safely concluded that, if BT invests in fibre at all in market 3 during the 2021-26 period, it will be it faces competitive fibre deployment or where it receives direct Government subsidies. It would have absolutely no incentives (financial or competitive) to invest in the less commercially attractive parts of market 3.
64. INCA believes that, if Ofcom persists in wanting to define a non-competitive market for the 2021-26 period, then that market should cover only approximately the 10% least commercially viable locations for fibre deployment. Doing so would preserve investment incentives for altnets in the areas where commercial investment is viable and concentrate the near-guaranteed return investment incentive in the locations where commercial investment is least likely. In addition to preserving and maximising investment incentives for both BT and altnets, this would dove-tail with the Government's plans to target [refer to the additional money earmarked] into the 105 least commercially viable locations in the country.
65. Many investors in rural areas have very specific business models, that make the investment work for them, but which would not be suitable for larger national network deployments. At present INCA members and other altnets are investing actively in rural areas and delivering direct benefits to consumers and citizens in those communities. Ofcom's proposals put a substantial amount of that investment at risk in return for what appears to be very unlikely prospects of BT investing substantially in the market 3 locations.
66. INCA has commissioned an indicative assessment of the potential impact on altnet investment of Ofcom's proposed approach to definition of and remedies in market 3, compared with INCA's alternative proposal.

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<sup>13</sup> Other than where it received direct Government funding.

67. This analysis estimates the investment required to build FTTP networks in market 3, assuming an eventual 50% market share in all locations. The results below show the likely investment for different proportions of market 3 being addressed by altnets.

<b>Proportion of market 3 addressed</b>	<b>Altnet premises passed</b>	<b>Altnet lines connected</b>	<b>Investment capex</b>
33%	2.8m	1.4m	£1200m
50%	4.2m	2.1m	£1800m
67%	5.5m	2.8m	£2400m

68. INCA notes that its recent survey commissioned from Point Topic<sup>14</sup> identified that UK altnets aspire to cover 15.96 million premises<sup>15</sup>, with 4.83 million superfast or ultrafast connections by 2025, and also that £3.36 billion has been invested by altnets in the past year. While these numbers concern the whole of the UK, INCA believes that a substantial part of this forecast deployment would fall within Ofcom's currently defined market 3. For the purpose of this analysis, we have assumed that approximately 1/3 of the INCA altnet fibre deployment would take place within Ofcom's market 3.

69. INCA believes that around 67% of market 3, as currently defined by Ofcom, is potentially competitive, and that if this part of the market were regulated by Ofcom in the same way as market 2, investments of £2.4bn by altnets could be considered as viable over the period 2021-26. This would provide 5.5m premises with an all-fibre alternative network to BT's, and all the advantages that that competition would bring. Even if the altnets only addressed half of those premises (33% of market 3), it would still amount to £1.2Bn of investment and 2.8m premises passed.

70. On the other hand, if Ofcom persist with the proposed definition of market 3, and regulate prices down to BT's costs, then INCA believes that almost all of this altnet investment would not be viable. Up to 5.5m premises would be denied access to a competing provider, and up to £2.4Bn of investment would be lost. Furthermore, for the reasons outlined above, it seems unlikely than BT would prioritise all-fibre investment in these market 3 areas over market 2 areas; not only would 5.5m premises be denied a competitive provider, they would also be denied full-fibre access during the 5 year period, and restricted to legacy copper/FTTC networks.

<sup>14</sup> Metrics for the UK independent network sector: Results from spring 2019 survey

<sup>15</sup> Including some overbuild.

## 4 Conclusions

71. In summary, across markets 2 and 3 as currently defined by Ofcom, and assuming the application of remedies proposed by Ofcom:

72. In market 2:

- Ofcom is unlikely to maximise investment from across the sector (BT + altnets) due to the uncertainty as to how the proposed charge control compares to the costs of a reasonably efficient operator, and
- The lack of remedies to prevent anticompetitive behaviour by BT will increase investment risks for altnets, resulting to a reduction of funds available and an increase in cost of capital for altnets.

73. In market 3:

- Ofcom's objective of maximising investment incentives for BT is unlikely to be achieved as BT would have stronger incentives (both commercial and financial) to invest in market 2 during the initial land-grab period, and
- As a consequence of Ofcom's proposed remedies, between £1.2b and £2.4b altnet investment in market 3 is at risk.