

Defining relevant markets for the 2026 TAR

Independent Networks Co-operative Association
(INCA)

1 May 2024

Non-confidential

Table of Contents

1	Executive Summary	1
2	Introduction	4
3	The 2021 WFTMR relevant markets	5
4	PIM.....	7
4.1	PIM for the TAR	8
5	WLAM	9
5.1	WLAM product market(s) for the TAR	11
5.2	WLAM geographic market(s) for the TAR	14
5.2.1	Area 1	16
5.2.2	Area 2	24
5.2.3	Area 3	26
6	BCM	32
6.1	BCM product market for TAR	32
6.2	BCM geographic markets for TAR	33
6.2.1	The HNR Area for the TAR	34
6.2.2	The CLA for the TAR	35
7	IEC	35
7.1	IEC market for the TAR	36
8	Conclusion	37
9	About us	37

1 Executive Summary

- 1 The telecoms access review (TAR) has now been formally commenced and INCA's members, known as the Altnets, have come together to collect data and commission analysis to assist Ofcom in that process and to ensure that any decisions ultimately made by Ofcom in March 2026 will have as their foundation a full understanding of the commercial, operational, financial and economic realities in the market as faced by Altnets.
- 2 This document looks at all the product and geographic markets defined by Ofcom in the WFTMR and provides initial analysis and the perspectives of Altnets on whether those definitions remain appropriate including why that is or is not the case.
- 3 Ofcom has indicated that it intends to create as much continuity and stability as possible across the WFTMR and the TAR. INCA agrees with that objective, and we have, therefore, sought to only suggest changes to the WFTMR definitions where we consider such changes to be necessary for the successful achievement of the overall regulatory objectives of protecting consumer interests and incentivising full-fibre deployment across as much of the country as possible.
- 4 In this paper we discuss all the main markets covered in the WFTMR and offer our initial analysis on how they have developed and whether they remain appropriate for the 2026-31 TAR period.
- 5 Three key development give rise to recommendations of clarifications or changes to the WFTMR market definitions, they are:
 - The challenges faced by Altnets in gaining high levels of take-up on their new full-fibre networks and the resulting status of even larger Altnets not yet being established in the locations they serve. This means that it is not anticipated that they can place an effective competitive constraint on BT in the relevant wholesale

markets during the TAR period. This impacts on the definition of Area 1 for both the WLAM and the BCM.

- The very significant levels of Altnet investment and deployment in small towns and rural areas. Where Ofcom had anticipated no material competitive investment. This means that Ofcom needs to carefully reconsider its regulatory approach in such locations and whether it is justified in adopting a different regulatory policy between more and less densely populated locations. This impacts on the definition of Area 3 for both the WLAM and the BCM.
- The planned closure of more than 80% of BT's exchange sites. This could materially descope the EICM and potentially result in the removal of many existing regulated inter-exchange circuits, upon which many smaller and rural Altnet full-fibre deployments are based. This impacts the definition of the EICM.

6 In summary, our conclusions are as follows:

- 1) The **physical infrastructure market** (PIM) remains unchanged;
 - 2) In the **wholesale local access market** (WLAM), the product market remains unchanged, but the geographic market has changed considerably since 2019/20 when the WFTMR data was collected, and the three geographic markets defined in the WFTMR need careful consideration.
- Our analysis concludes that the WFTMR criteria for Area 1 could remain relevant but that this is subject to a clear definition of the interpretation of the term 'established'. We conclude that we do not expect any locations to qualify within the Area 1 criteria.
 - The criteria used for the delineation between Areas 2 and 3 are no longer appropriate and the rationale for a continued distinction needs to be revisited and based on clear and transparent evidence. We identify that unless Ofcom intends to apply different remedies in Area 2 and 3, then it cannot be justified to have two markets with identical remedies but opposing objectives – namely full-fibre

deployment by BT and others in Area 2 but full-fibre deployment by BT only in Area 3.

- 3) We conclude that the **business connectivity market** (BCM) remains unchanged and recommend that Ofcom deploys consistent criteria for the definition of any geographic sub-markets in the BCM and the WLAM.
- 4) The **Inter-exchange connectivity market** (IECM) needs fundamental review due to the planned closure by BT of more than 80% of its current exchange sites. The exchange closure programme could result in the decimation of connections that fall within the relevant defined market and the consequent removal of regulated connectivity on which many Altnets rely for the viability of their more rural full-fibre deployments.
- 7 Whilst market definition can be perceived as a technicality in the market review process, it determines the boundaries within which the assessment of significant market power (SMP) will be conducted and could be critical to the outcome of that analysis. It also sets the boundaries for potential regulatory interventions where SMP is found and where remedies can be varied. INCA and its members are, therefore, committed to working with Ofcom to provide any data and analysis that can support the market definition analysis.
- 8 We are conscious that Ofcom does not intend to consult on its market analysis proposals until it has also concluded its subsequent (and consequential) SMP analyses and design of appropriate and proportionate remedies. This means that any errors potentially made at the market definition stage will be very complex to unwind. INCA would, therefore welcome the opportunity to meet with Ofcom to discuss this submission at Ofcom's earliest availability. That will create the opportunity for us to produce any follow-up data or analysis required by Ofcom to fully access our submission and should help reduce the risk of misunderstandings making their way into the Ofcom consultation due in quarter 1 2025.

2 Introduction

- 9 Ofcom has commenced its Telecoms Access Review (TAR) process to determine whether any market participants in the UK fixed telecoms markets hold significant market power (SMP) and, if so, what remedies should be imposed to prevent the abuse of that SMP.
- 10 INCA's members invest in new infrastructure to compete with the incumbent network operator (Openreach¹, part of the BT group) and the established competitor VMO2.
- 11 Competition in telecoms depends on interconnectivity of networks, so that all consumers can communicate with each other and also, in many instances, on access to infrastructure and/or facilities controlled by the established provider(s). Additionally, due to the high up-front capital costs of building new competing telecoms networks and the presence of significant economies of scale in the telecoms sector (due to those high up-front fixed costs), competition is also dependent on controls that prevent the established provider(s) from pricing in a manner that makes competition unviable in its early stages.
- 12 Ofcom, therefore, rightly reviews the UK fixed telecoms markets regularly to reassess the presence of SMP and design appropriate and proportionate remedies. The first step of that process is to define the relevant markets for which SMP needs to be assessed. This document focuses on the market definition element of the TAR as the relevant markets defined are the key building stone upon which SMP analysis and potential remedies design are built.
- 13 This submission is intended to support Ofcom's market analysis process and INCA would be grateful for the opportunity to present and discuss the analysis included

¹ For ease of reference, we will use the term BT, unless there is a reason why we need to distinguish between BT and Openreach, in which case we will use Openreach to refer to the infrastructure operations of BT group.

below to Ofcom at the earliest opportunity. We believe it is worthwhile to invest in this key building block and wish to reduce the opportunity that Ofcom's work at the subsequent the SMP and remedies stages of the market review being based in incomplete data or understanding of the detailed market dynamics.

- 14 This paper does not present detailed data analysis as we do not have access to that data. We will be pleased to engage with Ofcom in that analysis as and when the data becomes available.

3 The 2021 WFTMR relevant markets

- 15 The 2021 WFTMR (the WFTMR) covered a range of fixed wholesale markets, the four main of which are the Physical Infrastructure Market (PIM), the Wholesale Local Access market (WLAM), the Business Connectivity Market (BCM) and the inter exchange market (IEM). Other markets were also covered but they are not central to the conditions for infrastructure competition and are therefore not addressed in this paper.
- 16 The WFTMR was the first of its kind in the UK, in that it ran the review of all fixed wholesale telecoms markets in parallel with the objective of ensuring that regulation was consistent across all the relevant markets and recognising that those markets are interrelated in a number of ways. For example, it was recognised that new competitive infrastructure providers (Altnets) would depend on both the broadband market (primarily serving residential customers) known as the WLAM and leased liens market (serving almost uniquely the business and public sector markets) known as the BCM, and that, therefore, regulation in those two markets need to be consistent.

17 In the four markets outlined above, Ofcom identified the following product and geographic markets:²

- PIM – a single product market with a national scope;
- WLAM – a single product market with three geographic sub-markets; Areas 1, 2, and 3;
- BCM – a single product market of leased lines of all speeds with the same geographic sub-markets as WLAM and two additional geographic sub-markets – The Central London Area (CLA) and the High Network Reach Area (HNR);
- IECM – Ofcom defined inter-exchange connections as separate from the leased lines included in the BCM. It further defined each of BT's exchange locations as a separate market. Ofcom did not group exchange locations of similar characteristics as the market definition state, leaving that to the SMP stage.

18 The market reviews are forward-looking, which inevitably puts Ofcom in the difficult position of having to anticipate the likely developments over the forthcoming five-year period. Added to that that the data available for that analysis is likely 12-24 months old by the time the final decisions are made, the WFTMR was particularly difficult for Ofcom due to the several significant market changes expected during that five-year period.

19 At the time of collecting and analysing data for the WFTMR and drafting the WFTMR statement, (2019/20) -

- The Altnet sector was in its early stages, and it was difficult for Ofcom to assess the number of Altnets that would emerge, how much network infrastructure they would build and where that new infrastructure would be geographically.

² Once a product market is defined, it is then necessary to assess whether the competitive conditions within that product markets varies materially between different locations. If so, and if those variations are stable and durable, then it may be appropriate to defined geographic sub-markets for that product market.

- It was also not possible for Ofcom, at that time, to understand the market dynamics at the retail and wholesale levels which would result from the emergence of new competing infrastructures.
- The BT copper retirement and exchange closures programmes were due to commence during the review period and Ofcom could not be certain how these changes would impact the relevant markets.

20 Given the very material changes expected during the WFTMR period (2021 – 2026), Ofcom had to make assumptions and base its conclusions on those assumptions. Inevitably, not all of those assumptions have been proven completely accurate and it is, therefore, important that the TAR process takes a fresh view at developments since 2019/20 as well as likely development during the 2026-31 TAR period.

21 It is helpful that the very significant developments indicated above have now progressed substantially and it is therefore possible for Ofcom to base the TAR analyses on more stable and predictable market conditions than were the case for the WFTMR.

22 Below we will address each of the four main product markets identified above and identify key developments since 2019/20. Whilst it is not the intention for this paper to critique the WFTMR market definitions, it is necessary to identify where actual market developments differ from those assumed in the WFTMR. This is simply for the purpose of identifying where WFTMR market definitions and underlying assumptions may be appropriate for carrying forward into the TAR, and where that is not the case.

4 PIM

23 The WFTMR PIM market was defined as a single nationwide product market, with no geographic submarkets.

24 The PIM product market was defined as follows:

“a) deployed for the purposes of supporting a telecoms network (i.e. we exclude non-telecoms infrastructure), irrespective of the owner of that infrastructure; and
b) deployed to host fixed (or ‘wired’ elements of) telecoms networks (e.g. ducts, poles and chambers). We exclude physical infrastructure which is deployed to host the radio transmission and reception equipment needed for wireless connections in a telecoms network (e.g. masts and antenna installations).”³

25 Ofcom excluded wireless infrastructure from the PIM on the grounds that wireless infrastructure was unlikely to offer the speeds needed for broadband connections for the future and also posed no material constraint on the fixed wired infrastructure on both supply and demand sides.

26 Ofcom also excluded PI other than that operated by BT, due to the significant sunk costs associated with PI deployment and the time it would take to develop the commercial, operational and technical terms of accessing existing infrastructure from other providers.

27 Ofcom concluded that there were no geographic sub-markets as ubiquity was identified as an important characteristic of the PIM. It was considered that a patchwork approach to PI would constitute a barrier to widespread use of PI by emerging infrastructure competitors.

4.1 PIM for the TAR

28 INCA considers that Ofcom’s analysis and conclusions from the WFTMTR remain valid and that the widespread use of the remedy in the PIM (Physical Infrastructure Access – PIA) is a testament to this.

29 INCA research shows that wireless infrastructure remains unsuitable for mass-market gigabit-capable broadband connectivity and that the existence of fixed

³ WFTMR V2 paragraph 3.20.

wireless access (FWA) broadband networks has not constituted a supply-side constraint in the PIM. There is, in fact, evidence that many providers that were offering FWA-based broadband services at the time of the WFTMR analysis, have now migrated to FTTP networks or operate both FTTP and FWA networks.⁴

30 INCA considers that geographic ubiquity remains an essential characteristic of the PIM and that, as such, it would be inappropriate to consider geographic sub-markets.⁵ Moreover, the time and cost that would be required to establish the commercial, operational and technical conditions for access to infrastructure operated by other parties (such as VMO2) would likely mean that any such access would not be available until most of the current wave of new infrastructure deployment is nearing its completion. Any remaining deployment is also likely to be in locations where no non-BT PI is available.

5 WLAM

31 The WFTMR defined a single WLAM product market “WLA for the supply of broadband at a fixed location” that

- “a) includes services at all bandwidths;
- b) includes broadband access services provided by networks deploying mixed copper/fibre, cable and full-fibre technologies;
- c) Includes services supporting both residential and business broadband connections;
- d) excludes leased line access services; and

⁴ Or are in the process of doing so.

⁵ Note that this should not be interpreted as having any impact on the Hull market, which is addressed separately. When Ofcom commences the Hull TAR later this year, INCA will respond based on the specific of that market.

e) excludes retail provision of broadband services delivered over networks deploying wireless technologies.”⁶

32 The WFTMR WLAM excluded wireless services, but included all services using different wired technologies, including FTTC, FTTP and DOCSIS.

33 Ofcom found that competitive conditions varied materially in different geographies and identified three geographies sub-markets in the single WLAM product market. These three geographic markets were known as Area 1, Area 2 and Area 3, with reducing competitive constraints on the incumbent moving from Area 1 to Area 3. However, as no locations were found to fit with the Area 1 definition, that market was not formally defined.

34 Ofcom defined the three geographic markets as follows:

- WLA Area 2: “postcode sectors in which there is, or there is likely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks”; and
- WLA Area 3: “postcode sectors in which there is not, and there is unlikely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks.”

35 The proposed definition for Area 1 was: “where there are at least two established rival networks to BT”, but this market was not formally defined due to there being no post code sectors that qualified under those criteria. As a consequence of Area 1 not being formally defined in the WFTMR, little effort was directed towards the interpretation of the draft market definition.

⁶ WFTMR V2 paragraph 6.69.

5.1 WLAM product market(s) for the TAR

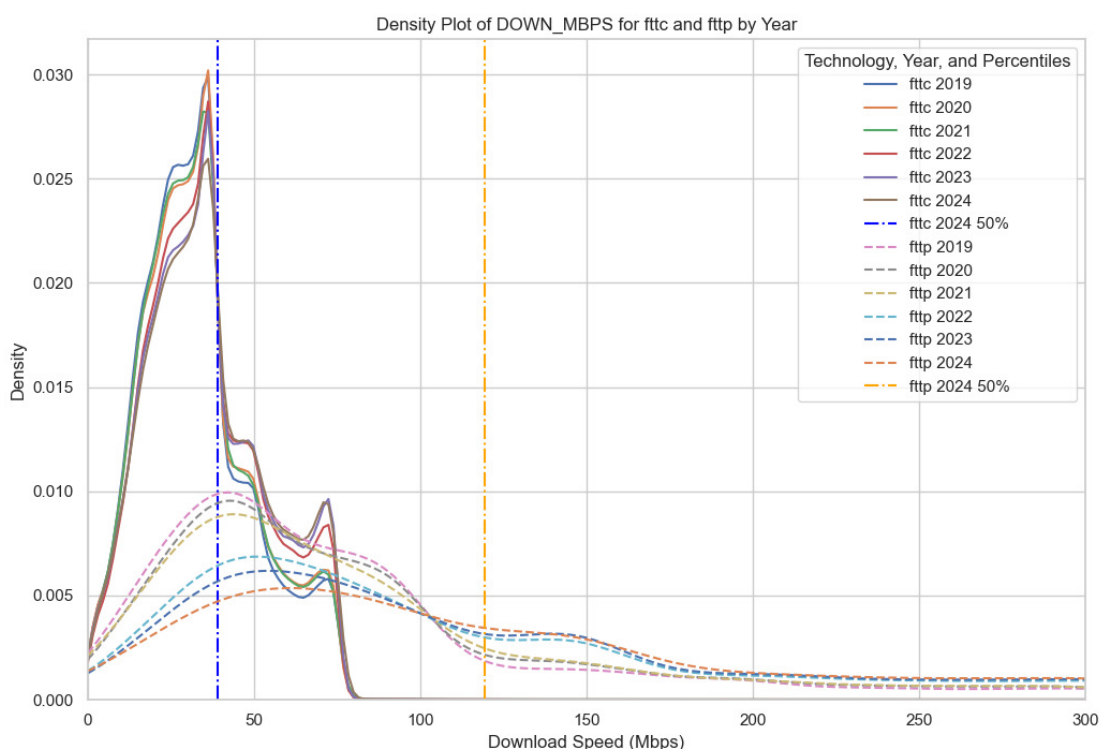
36 Although the UK broadband market has undergone significant changes since the 2019/20 WFTMR analysis, INCA considers that Ofcom's product market analysis remains valid. We discuss our reasoning for that below.

37 Firstly, we believe that wireless broadband services remain a separate market to the wired broadband services market. This is because there is evidence that wireless broadband providers are migrating to FTTP services and that the speeds and quality of services offered by wired broadband services are materially superior to those of wireless broadband services. INCA has also reviewed pricing structures for wireless broadband services and have observed that usage-based pricing remains a frequent characteristic of those pricing structures, INCA considers this to represent a significant difference to the unlimited usage pricing typically applied for wired broadband services which reduces the level of potential substitutability between wired and wireless broadband services. INCA is observing that a number of operators that started out building FWA networks are now also building FTTP and in some cases converting their older FWA networks to FTTP. FWA is therefore likely to represent a smaller number of connections over time, making it more unlikely that FWA could be a constraint on the wired broadband focal product.

38 As for the different technologies used to deliver wired broadband connectivity (FTTC, FTTP and DOCSIS) INCA also believes that all of these remain in the same market. The relatively slow take-up of full-fibre services, where it is available, as shown in the table from the 2023 Connected Nations report copied below suggests that the majority of customers still use FTTC connections and that there is an active gradual substitution from FTTC to FTTP. The recent wholesale discounts by Openreach for FTTP-based broadband services to encourage speedier migration from FTTC to FTTP also suggest that pricing of broadband products across the two technologies affects take-up of both technologies, hence they are very likely to be in the same market.

39 In collaboration with Point Topic, INCA has analysed speed test results across the different technologies in use. Whilst speed test data cannot be guaranteed to provide a representative picture of the contracted speeds across the UK, they do represent a stable basis for doing year-on-year analysis and an indication of the likely distribution of broadband speeds contracted.

40 The figure below shows the spread of speeds from speed tests on FTTC and FTTP technologies across the period 2019 to 2024. To focus on the speeds where the two technologies both offer services, we don't show results above 300Mbps.



Source: Point Topic.

41 As demonstrated clearly above, the majority of customers are contracting for speeds that can be delivered by both FTTC and FTTP. This confirms our view that FTTP and FTTP remain demand-side substitutes.

42 Consistent with our conclusion that different wired technologies for providing broadband connectivity are in the same market, INCA also believes that broadband services of different speeds are in the same market. Ofcom's most recent Connected nations report for 2023 includes a new table that breaks down full-fibre broadband subscriptions by speed:

Table 2.8: Take-up of services on full-fibre networks by advertised download speed

Advertised download speed	Percentage of customers taking a package in this band
>=30 & <50 Mbit/s	4%
>=50 & <100 Mbit/s	25%
>=100 & <300 Mbit/s	39%
>=300 & <900 Mbit/s	18%
>=900 Mbit/s	14%

Source: Ofcom analysis of provider data (May 2023).

43 Unfortunately, Ofcom has not shared a breakdown of broadband speeds taken by users across all technologies, so there is no data showing the current take-up of different speed products, nor the change in that take-up over time. It is clear from Ofcom's table, however, that at least 29% of FTTP customers consume broadband speeds that can be delivered via FTTC, which further confirms our conclusion above.

44 It is, however, interesting to observe that <100Mbit/s speed products make up more than >25% of FTTP subscriptions.

45 With regards to whether existing broadband customers would, in response to a SSNIP, switch to a leased line (LL), INCA has observed no indications that LL is becoming a substitute for broadband services, nor do we anticipate development that would cause this to happen during the 2026-31 period. The pricing differences alone would make substantial barrier to customers choosing to substitute a broadband service for a leased line service. The speeds and reliability of broadband services are increasing through the introduction of full-fibre networks, offering improved functionality to broadband customers. We therefore conclude that only a change in connectivity requirements causing a need for the specific characteristics

of leased lines (low latency, higher security, secure point-to-point connectivity) would likely cause a broadband consumer to switch to consuming leased lines services instead. INCA, therefore, believes that LL should not be included in the relevant market for wholesale local access.

46 In conclusion, INCA is of the view that the product market for WLA remains unchanged from that defined by Ofcom in the 2021 WFTMR.

5.2 WLAM geographic market(s) for the TAR

47 As outlined above, in the WFTMR, Ofcom concluded that the competitive conditions for WLA across the UK varied materially and to the extent that it was appropriate to identify different geographic submarkets.

48 Ofcom's WFTMR conclusions in this area were primarily based on analysis of current and planned network presence and the extent to which the presence of networks other than that operated by BT would exert competitive pressure on BT and thus influence BT's behaviour (in terms of incentives to build new FTTP infrastructure as well as pricing and other commercial behaviour).

49 In summary, Ofcom concluded that current or planned network presence by VMO2 and CityFibre would likely exert competitive pressure on BT, but that current or planned presence by any other Altnets was unlikely to do so. Ofcom therefore used the planned network presence of VMO2 and CityFibre to identify areas of different competitive conditions that would justify different regulatory consideration and action.

50 Ofcom concluded that "the areas where there is likely to be potential for material and sustainable competition by reference to the areas planned to be covered by 2026 by Virgin Media or CityFibre". ⁷

⁷ WFTMR V2 paragraph 7.23.

- 51 Ofcom’s rationale for concluding that the presence of other Altnets would not exert competitive pressure on BT was that Ofcom expected “the competitive impact of these smaller expansions will be substantially less”.⁸
- 52 Ofcom also acknowledged that “there is inherent uncertainty in defining geographic markets over the forward look, particularly during a dynamic period in which we are expecting substantial network build”.⁹
- 53 Since 2019/20 when the WFTMR data was collected and analysed, however, Ofcom now has access to much more data on actual network deployment by BT, VMO2, CityFibre and the large number of smaller Altnets.
- 54 For the TAR, it is essential that Ofcom carefully analyses the data available on actual network deployment and compares that to the plans submitted by the various parties for the WFTMR, as that should provide some insight into the reliability of forward planning data submitted and the extent to which it can be relied upon for Ofcom’s decision-making.
- 55 Additionally, it is important that the market definitions used are clear and (to the extent possible) unambiguous. For example, it would be helpful for Ofcom to explain how interprets the terms ‘material’ and ‘sustainable’ when defining Area 2 and 3. Likewise a clear understanding of how the term ‘established’ is interpreted for the purposes of Ofcom’s definition of Area 1 would be essential. We will discuss these in further detail in the following sections.
- 56 As Ofcom recognises, in order to justify the introduction of geographic sub-markets in a defined product market, it is necessary to identify areas where competitive conditions are sufficiently similar to enable them to be grouped together as a homogenous market, and that such an area is sufficiently different from neighbouring areas. Areas in which the conditions of competition are

⁸ STET

⁹ WFTMR V2 paragraph 7.22.

heterogeneous do not constitute a uniform market. It is also important that any markets thus identified show characteristics that remain consistent over time.¹⁰

57 For the purpose of the TAR analysis, it is reasonable to use the WFTMR WLAM geographic markets as the starting point. INCA agrees with Ofcom that continuity and stability is important in regulation, and it would, therefore, not be constructive to start from scratch. The three current geographic WLAM submarkets are discussed below.

5.2.1 Area 1

58 In the WFTMR, Ofcom did not formally define the Area 1 geographic market, due to not finding sufficiently large areas that would qualify within the description used for the analysis. Area 1 was described by Ofcom as *‘where there are at least two established rival networks to BT’*¹¹, and is where there is most likely to be effective competition. It contrasts with Area 2 where Ofcom said there is the *“potential for material and sustainable competition to BT”*.¹²

59 The process of a market review means that, whilst Ofcom may find a geographic market exists based on heterogeneous competitive conditions, it cannot be assumed at the market definition stage that a particular geographic market is or is not effectively competitive. Nevertheless, Ofcom did say later in the Statement that it would be likely to *‘deregulate, or at least significantly reduce regulation in, Area 1’*.¹³

60 Ofcom did not define what “established” means nor did it provide any information on how it would do so. It did, however, provide certain clues in the Statement and in the Consultation Document. First, it indicated that it would consider a network operator to be *present* in a postcode sector (the smallest geographic area assessed) only if it covered at least 50% of the premises in the postcode sector. Being

¹⁰ European Commission Guidelines on market analysis and assessment of significant market power. Paragraphs 48 to 50.

¹¹ Ofcom ‘WFTMR Statement’ Vol. 2 Market Analysis’ Para. 7.29

¹² Ibid Para 7.7

¹³ Ibid Para 7.69

established, however would clearly have to satisfy a higher threshold than merely being present. Thus, as any operator that covered less than 50% of premises in a postcode sector is not considered to be present, it consequently cannot be “established”. The core question therefore appears to be: What are the additional criteria that need to be satisfied for a network operator to be established and therefore count towards areas that would fall within the Area 1 definition?

61 In the WFTMR Ofcom identified only 34 postcode sectors where both VMO2 and CityFibre, were *present*, but as set out in this paper, CityFibre could not then and cannot now be considered *established* in any of the location where it has presence and therefore no locations could be defined as satisfying the WFTMR Area 1 criteria.

62 In the Oxford English Dictionary (OED), ‘established’ is defined as: ‘*That has been in existence or use for a long time and is, as a result, widely accepted or generally approved of*’. We discuss two specific elements of this definition below.

63 First, length of time the rival has been in existence, must be seen in the context of the local area in which the network operator passes more than 50% of total premises A network operator that has operated for several years in another part of the country cannot be assumed to be established in a location where it has only recently entered. With the exception of VMO2, it is unlikely that any rival network operator has been present in specific locations for a sufficient period of time to be considered established.

64 Second, being established is a comparative definition, that is to say, whether a particular rival has existed for a long time relative to BT and other competitors. Apart from VMO2, the other larger rivals to BT were founded more than 25 years after BT’s privatisation in 1984. BT had, of course, existed for many decades before that as part of the Post Office.

65 Third, whether the rival is ‘widely accepted’ can be tested by looking at its presence in the end user market for companies not involved in wholesale, and in the

wholesale market for those not involved in retail. The proportion of premises connected to premises passed would provide a good indication of the acceptance by the market of that company in both cases. Although this is a wholesale market review and therefore it could be argued that only acceptance in the wholesale market should be considered, the self-provision of network connections to downstream retail functions in vertically integrated operators (such as VMO2), is also relevant in this regard.

66 Take-up rates for Altnets, whether indirectly via third party retail ISPs or through the retail services of vertically integrated operators, have been slower than hoped. The largest altnet, CityFibre (wholesale only), has a penetration of around 10%, compared with 33% for Openreach (marketed through BT retail and all the large retail ISPs) and 34% for VMO2 (vertically integrated). Whilst the take up rates of Hyperoptic (25%, and, to a lesser extent Community Fibre (20%) (both vertically integrated),¹⁴ are closer to BT's, they operate much smaller networks of around one million premises passed each. It is important to note that the take-up figures quoted here do not translate to market shares as not even BT has full ubiquitous full-fibre coverage in all the relevant post code sectors.

67 In the WFTMR Consultation Document Ofcom described competition from altnets as “nascent” on the basis of a low level of penetration by rivals in the two significant areas where altnets had rolled out their Multi-Service Networks (MSN).¹⁵ The actual level of rivals’ penetration was redacted.

68 The presence of the altnets in the retail market can be complemented by information on a wholesale-only network’s relationship with the largest ISPs. We understand that CityFibre does not have a wholesale agreement with Sky, the largest independent ISP, nor with BT retail, but does have wholesale agreements with TalkTalk and Vodafone. In addition, TalkTalk also has agreements with

¹⁴ Although Community Fibre is understood to be launching a wholesale service and has confirmed that it has an agreement with TalkTalk.

¹⁵ 2020 (Ofcom) WFTMR Consultation Volume 2: Market assessment Para. 7.48

Community Fibre¹⁶ and Freedom Fibre although these are smaller in scale than the agreements with CityFibre.¹⁷

69 Taking CityFibre therefore as the most potentially significant altnet participant in the wholesale market, based on what we understand of the competitive dynamics in the wholesale market, and indeed CityFibre's own reported take-up levels (currently running at around 10% on its footprint) it does not seem credible to assert that it is now 'established' in the sense outlined above. First, TalkTalk and Vodafone's combined current retail market shares nationally amount to less than 18% of the total market. As noted, Sky has not reached agreement to sell across CityFibre's network and both BT and Virgin Media seem very unlikely to do so. With the bulk of fibre take-up being driven by ISP initiated migrations from copper to fibre, current market shares of the retail ISPs are a strong proxy to determine the maximum addressable market for CityFibre in the short to medium term.

70 Second, we note that even having established wholesale agreements with TalkTalk and Vodafone, CityFibre may struggle to obtain the volume of orders from these companies that might have been expected in the absence of special offers such as Equinox 1 and 2. We note that it is the strong inference of the filings that CityFibre made to Ofcom during the public consultation on these offers that the offers have had a chilling effect on take-up. The fact that Openreach is able to undermine the commercial value of existing agreements between CityFibre and independent ISPs is a strong indicator that (a) CityFibre has not yet become established in any meaningful sense, and (b) Openreach retains the market power to stall and potentially foreclose competition.

71 Overall, therefore, we conclude from the evidence above that only VMO2 could be classed as established according to the OED definition, being both long-established and generally accepted by the market.

¹⁶ ibid

¹⁷ ISP Review 22 March 2024 Wholesale Provider IP River Joins Freedom Fibre's UK Broadband Network

72 This dictionary definition can be supplemented with a more economic assessment based on the definition of Significant Market Power (SMP), which is defined as “the power [of an undertaking] to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers” in the relevant market. A rival to BT Openreach could be considered as economically established if it has the ability to constrain the potential SMP operator’s ability to behave independently of others in the market, thereby removing the firm’s SMP.

73 In establishing whether an entrant can constrain a regulated firm, the relevant counterfactual would be how the potentially dominant firm would be likely to behave if it were not subject to regulations rather than its actual behaviour. Also, as Ofcom pointed out in the consultation, the potentially established rival network would have to be not reliant on ex ante regulation in the WLA market.¹⁸ The question to ask, therefore, is: In the absence of regulation would BT’s behaviour be constrained by its competitors?

74 The cumulative effect of Altnet investment has been to accelerate BT’s investment in new full-fibre networks in both rural and urban locations with the objective of protecting its dominant position at the infrastructure level, and to introduce wholesale pricing levels and structures that we regard as anticompetitive, to which Altnets cannot respond. At the national level, though, virtually no network rivals have the coverage and customer base necessary to constrain BT’s behaviour in the wholesale market.

At the local level, even if Ofcom were able to establish that there are postcode sectors where two network rivals to BT have the coverage necessary to count as present, as it did in 2021, it would then need to assess whether such presence translates into an ability to constrain BT’s behaviour and so means that the rivals are established.

75 Although the WFTMR criteria for Area 1 were not intended to indicate with certainty that the inclusion of locations in Area 1 would result in a decision that BT

¹⁸ Ofcom (2020) op cit Para 8.7

has no SMP in those locations, Ofcom indicated strongly that it would look to implement partial or complete deregulation in Area 1 locations. For that reason, we consider it instructive to look at the criteria for finding SMP as part of the initial assessment of whether a location qualifies to be included in Area 1.

76 The starting point for assessing whether a firm has SMP is its market share in the relevant market. Ofcom has traditionally used a market share of 50% as in itself evidence of SMP, although even a market share of less than 50% may still result in a finding of SMP, depending on other factors.¹⁹ This suggests that, in order to reduce BT's market share to below 50%, competitors would jointly need to have at least 50% market share and at least two rivals would need to have a material market share (e.g. 20%), as that is part of the definition of being established.

77 Other criteria are used alongside the potentially SMP operator's market share to determine whether it has SMP, even if the operator has a less than 50% market share.²⁰ In the Consultation, Ofcom said that it would examine barriers to entry and expansion, countervailing buyer power and pricing.²¹ We think that, in addition to those, Ofcom should also assess:

- absolute and relative size of the undertakings, easy or privileged access to capital markets/financial resources, economies of scale or
- scope, and a
- highly developed distribution or sales and distribution network.

78 Looking at some of the other criteria listed above, BT is clearly larger than its rivals, absolutely and relatively. In the year to March 2023, BT plc had a group turnover of £20.68 billion and profits before tax of £1.79 billion. By contrast, CityFibre, the largest altnet, had revenues in the year 31st December 2022 of £81 million and a loss of £223 million. BT had a total balance sheet value (assets less current liabilities)

¹⁹ Ofcom op cit Para A1.35

²⁰ Ibid Para A1.36

²¹ Ofcom 2020 op cit Para. 8.75

of £42.36 billion against £3.02 billion for CityFibre on the same basis. This difference in size also gives BT privileged access to capital not available to any altnet.

79 The level of funding available to fibre builders is important as it indicates their capacity for extending their network coverage: the more funding they have the more they can extend their networks and the less vulnerable they are to short term market conditions.

80 BT has not announced the future capital expenditure it will make in its fibre network but has said that it is targeting passing 25-30 million homes by FY28 – FY30 compared with its current level of around 14 million homes and £15 billion of investment. It could therefore be investing around £30 billion to extend its network to 30 million homes. This level of funding is not available to other individual fibre network builders, although in aggregate the independent sector has achieved investment commitments of approximately £25bn.

81 Although market reviews are forward-looking we support the position Ofcom took in 2021 when it rejected the proposal from UKCTA and Axione to include prospective network build in its definition of Area 1 and to only count actual build. In rejecting the proposal, Ofcom stated:

“We are likely to deregulate, or at least significantly reduce regulation in, Area 1 and it would be risky to do this on the basis of prospective build. In addition to the uncertainty of prospective build plans we would be concerned about the time it could take for an operator to build a network and become established. We will capture any such build in future reviews after it has occurred.”²²

82 We agree with Ofcom’s statement and its reasoning. There is always uncertainty about future actions and many unforeseen circumstances can delay network build. To some extent, continued competitive build may be dependent on sustained

²² Ofcom op cit. Para 7.69

regulatory oversight of the market. For this reason, we think Ofcom should not change the way it measures the number of premises in Area 1 and stick to the number of premises actually passed, rather than prospective build. By sticking to the same approach, Ofcom will be reinforcing regulatory consistency, which is important to investors in the market.

83 We suspect that Ofcom will find that, since the WFTMR analysis, only a small number of additional postcode sectors have presence of two substantial rivals. We also suspect that Ofcom will find that BT rivals' market share will be above a constraining threshold in fewer still. Even where BT's share is below 50%, the weakness of rivals on the other criteria would most likely mean they cannot be considered as established. Ofcom would therefore have to conclude that such locations do not meet the WFTMR Area 1 criteria.

Conclusion on Area 1

84 We conclude from the above that it is extremely unlikely that BT faces competition from two *established* rivals in the vast majority of postcode sectors across the UK. This does not preclude the presence of two or more rivals in the same postcode sectors but, given the relative size of BT and rivals in the wholesale market, we would be very sceptical that these rivals can place a competitive constraint on BT's behaviour in the wholesale market and so would not count as "established".

85 We anticipate that Area 1 either does not exist at all or is too small to have significantly different competitive conditions to Area 2. Therefore, our assessment of the market conditions is that an insufficient number of postcode sectors would comply with the criteria for Area 1 for a separate market to be found to exist in practice. The whole of the UK therefore remains in either Area 2 or Area 3.

86 Given the need for regulatory consistency to facilitate investment by all players in the market, we urge Ofcom not to seek to change the criteria for Area 1 indicated in the WFTMR process. Subject to the definition of the term 'established' as set out

above, the draft WFTMR Area 1 definition is appropriate and is an aspirational target the sector is working towards, and which will, ultimately, deliver true choice to consumers. We also believe that, although it could be tempting to prove progress through the establishment of a sizeable Area 1 market, Ofcom should not seek to interpret its definition of Area 1 in a manner that weakens the definition and allows it to find Area 1 exists in practice. Diluting the threshold for the Area 1 qualification would weaken the prospects for long-term sustainable network competition in as many parts of the country as possible. Additionally, maintaining a consistent definition is vital so that regulation is not seen as a risk which could drive up investors' cost of capital and so reduce network build still further.

5.2.2 Area 2

87 In the WFTMR, Area 2 to was defined as where there is potential for material and sustainable competition to BT. Ofcom described in the WFTMR that this market definition was important because it would identify locations where BT was naturally (through competition) incentivised to deploy new full-fibre infrastructure. The underlying rationale for the geographic sub-market definition was therefore the existence or generation of incentives for network investment, not the more conventional approach of whether BT was likely to have market power and, if so, whether differentiated remedies would be required in order to prevent BT from abusing such market power.

88 It seems that, whilst the more conventional rationale for the definition of geographic submarkets was used for the definition of Area 1, where it is possible that either BT would be found not to have SMP or a reduced set of remedies could be appropriate due to the higher level of competitive intensity, compared to the rest of the country. It was not deployed for the purposes of defining Areas 2 and 3.

- 89 Area 2 was defined as locations where VMO2 and CityFibre had told Ofcom that they planned to deploy full-fibre networks by March 2026.²³ Deployment plans submitted by other existing and prospective network competitors to BT were not considered in this market definition as they were generally considered too uncertain and speculative.
- 90 Ofcom's rationale for this delineation was that the planned presence of these two large rivals would incentivise BT to deploy full-fibre network in those areas as soon as possible. Emphasizing again that the underlying driver was to incentivise full-fibre network deployment, rather a differentiation in remedies required to prevent BT from abusing its market power.
- 91 INCA agrees that the vast majority of locations in Area 2 have the characteristics of potential for material and sustainable competition to BT and that BT has deployed full-fibre at speed in Area 2, but it has become clear during the first three years of the WFTMR period that this is equally true in parts of the UK currently categorised as Area 3. With the benefit of access to actual market data, it will be important to review the Area 2 definition, including providing clarity around how the terms material and sustainable should be interpreted in that context.
- 92 If, for example, the definition of Area 2 is in fact where BT will deploy full-fibre commercially without any need for additional incentives, then INCA believes that there is evidence that large parts of what is currently categorised as Area 3 should be moved into Area 2.
- 93 INCA queries, however, the appropriateness of the focus of incentivising full-fibre investment by BT as the determining factor. If its objective is to ensure that no commercially viable locations are left without FTTP connectivity, then it would be appropriate to identify where no party would deploy commercially without the need for additional incentives. Whether that connectivity is provided by BT or another

²³ WFTMR V2 paragraph 7.4.

provider should not be the determining factor. These points are discussed in more details in the Area 3 section below.

94 At this time, INCA wishes to register that the WFTMR approach to defining Area 2 cannot be appropriate for the TAR. Whether that is achieved through a tighter definition of 3 (with Area 2 being what is left between Area 1 and 3), or a tighter specification of the Area 2 criteria will be a judgement call for Ofcom once it has all the relevant market data necessary to make those decisions.

5.2.3 Area 3

95 Ofcom identified Area 3 as where there is unlikely to be material and sustainable competition to BT. This was, in the WFTMR, interpreted as where VMO2 and CityFibre were planning to deploy full-fibre networks during the WFTMR period (2021-26).

96 The starting point of geographic market analysis is the presence of networks in competition to that of the existing incumbent network and then the extent to which that presence (and the impact of the presence) varies materially, distinctly and in a manner that is stable over time such as to justify the introduction of separate markets.²⁴

97 It is also important to recognise that geographic markets can be necessary and useful even if SMP is found in all of them, as it may be appropriate and proportionate to vary the remedies applied in those different markets to better suit the specific competitive situations observed.

98 However, the observation of differences in competitive conditions, does not always mean that different regulatory objectives or remedies are necessary or even appropriate. That depends on the policy objectives the regulator is trying to achieve.

²⁴ EC SMP Guidelines.

It is therefore important to understand whether the differences observed are material to the achievement of those policy objectives.

99 In summary, INCA understands Ofcom's TAR objectives (aligned to government policy) to be:

- 5) To protect consumers against excessive pricing and poor quality of service;
- 6) To encourage rapid investment in new gigabit-capable (primarily full-fibre) networks across all of the UK; and
- 7) To safeguard downstream competition to offer choice to consumers.

100 There will be other objectives and we do not intend to in any way put words into Ofcom's mouth. These are simply intended to be summary-level indicative objectives for the purposes of our analysis, in order that we can assess the materiality of differences in competition conditions to the achievement of those objectives.

101 The logical question, therefore, appears to be: To what extent does the difference in the level of competition to BT affect what Ofcom would do to achieve its objectives?

102 We therefore discuss the three objectives briefly below.

Consumer protection

103 Given that only Area 1 appears to hold the potential for BT being found to not have SMP, it seems a safe assumption that, unless there is material and established competition to BT (i.e. as would be the case in Area 1), BT would be found to have SMP regardless of what level of competition it faces below the Area 1 threshold.

104 It thus follows that consumer protection measures (such as price and quality of service regulatory remedies) would need to be applied in all markets other than Area 1 (if identified). For the purpose of consumer protection, we have identified no reason for why such remedies should change depending on the level of competition faced by BT.

Incentivise investment

- 105 The UK government policy in the telecoms sector is to encourage private sector investment to deploy full-fibre networks and to provide government subsidies where that is not commercially viable. That policy explicitly targets both BT and potential rivals to BT.
- 106 The question relevant to the TAR is, therefore whether the level of competition faced by BT should cause Ofcom to differentiate its regulatory interventions in order to achieve the investment incentive objective.
- 107 At the time of the WFTMR, there was a considerable amount of uncertainty surrounding the level of full-fibre investment that would materialise through emerging new network competitors to BT. During the WFTMR consultation process, Ofcom therefore expressed concern that there would be insufficient competitive incentive on BT to deploy full-fibre in areas with higher than average cost per premises passed (that is small towns, villages and the country side).
- 108 Ofcom explored a number of options to overcome this potential obstacle to timely full-fibre deployment in those areas, including a separate price control that directly incentivised fibre investment by allowing only low levels of pricing for copper-based broadband services. This issue was ultimately resolved by BT making a commitment to deploy to no less than 3.2m premises in the areas where VMO2 and CityFibre were not planning to deploy during the WFTMR period.
- 109 The Area 3 undertaking by BT removed the need for differentiated wholesale pricing in Area 3 and resulted in near-identical remedies being applied in Areas 2 and 3. However, Ofcom's objectives in the two markets differ markedly. Whereas, in Area 2, Ofcom's objective is to encourage investment by BT and others, in Area 3 the objective is just to encourage investment by BT. Given that BT has already exceeded

its 3.2m commitment in Area 3, with nearly two years left of the WFTMR period,²⁵ it appears that BT needed no encouragement to make such investments over and above those provided via identical regulations to those in Area 2 and the threat of Altnets building full-fibre networks before BT.

110 At the time of writing, the latest data suggests that BT has its deployed FTTP network to approximately 3.7m premises within the 9.2m premises in Area 3.²⁶ Two years remain of the 5-year WFTMR period, and it is unknown how many more premises BT plans to cover with its full-fibre network in that period. It is clear that it has already exceeded its commitment and is likely to cover at least a modest number of additional Area 3 premises in the next two years.

111 For context, by the end of 2023, Altnets are estimated to have deployed full-fibre networks to nearly the same number of premises as BT in Area 3.²⁷ This further highlight that the willingness and ability by Altnets to build competitive fibre networks in what Ofcom defined as Area 3 was significantly stronger than anticipated at the time.

112 For the TAR, the question then remains the same as for the WFTMR. Does the level of competition faced by BT in different locations (given that it will have SMP in both Areas 2 and 3) give Ofcom cause to differentiate its remedies designed to incentivise full-fibre investment? Furthermore, is there any justification for adopting different objectives in those markets?

113 It is evident that the private sector has substantial appetite (subject to favourable regulatory conditions) to invest in rural full-fibre networks. Both the BT and Altnet Area 3 deployment records testify to that.

²⁵ INCA Point Topic report - <https://www.inca.coop/sites/default/files/metrics-for-the-independent-network-sector-2024.pdf>

²⁶ INCA Point Topic report

²⁷ INCA Point Topic report

- 114 Would Ofcom want to differentiate its interventions between rural and urban locations if there was no evidence that rural locations, which are not covered by the government subsidy schemes, would be neglected in the overall full-fibre deployment across the country? (That is, if BT and/or Altnets are deploying commercially without the need for specific obligations, commitments or inducements). If not, what would be the rationale for defining a separate geographic sub-market? We believe this to be a core question for Ofcom to address in the TAR.
- 115 If Ofcom concludes that it needs to define the equivalent of the current Area 3, which criteria would Ofcom use to identify those locations in which a differentiated approach would be necessary or beneficial?? Although the build plans of the two largest network competitors to BT may have been a useful rule of thumb for the WFTMR (when the Altnet sector was in its infancy and the levels of uncertainty were considerably higher than at present), that is unlikely to be a reliable or acceptable measure for the TAR. INCA would be keen to understand whether (and if so how) Ofcom is looking to identify such locations as part of the TAR. INCA will help Ofcom collect relevant data, as well as performing relevant analysis, to help ensure that Ofcom has access to as comprehensive a data set as possible and that it is supplemented with insight into individual Altnets and the sector as a whole.

Downstream competition

- 116 Accepting that BT would likely have SMP unless very strong and established network competition²⁸ was found to be established, it can safely be assumed that regulatory measures to safeguard downstream competition would be applied evenly, regardless of whether a single geographic market is defined for where BT has SMP or whether that market is subdivided. The key question is whether such

²⁸ Competition downstream would be dependent on WLA remedies and therefore not relevant in the assessment of SMP in the WLAM.

interventions need to be differentiated geographically to secure the optimal outcome for consumers.

- 117 INCA has not been able to identify how or why Ofcom would differentiate remedies intending to safeguard downstream competition (such as access obligations, price regulation and quality of service regulation). As mentioned above, Ofcom chose to vary price regulation - not to satisfy this objective, but to incentivise investment.
- 118 In the context of safeguarding downstream competition, therefore, INCA cannot identify a purpose for the identification of a separate geographic market where BT will face reduced network competition.

Conclusion

- 119 Unless we have misunderstood Ofcom's objectives, the economic and competition analysis principles underlying geographic market definition and the government policy guiding Ofcom's objectives, we believe that the only rationale for the definition of the equivalent of the current Area 3 in the TAR would be that Ofcom seeks to differentiate its interventions intended to incentivise full-fibre investment.
- 120 If that is the case, then careful analysis needs to be undertaken to identify the locations for which such differentiated intervention is appropriate, proportionate and justified. INCA and its members are concerned that, unless there is clear rationale and clarity on how and why regulation will differ for such an area, this would cause uncertainty and potentially have the effect of deterring further investment in what is currently known as Area 3.
- 121 Whilst it is not appropriate to discuss remedies at this stage, it is important to highlight that clarity and transparency in regulatory approaches and structures are essential in a market where the objective is to attract substantial private investment. The present situation, where at the surface there is no difference between the remedies applied in the current Areas 2 and 3, but where the regulatory objectives differ substantially, causes confusion and frustration in the investment community.

122 INCA, therefore, seeks clarity from Ofcom at the earliest possible time. The TAR will, rightly, be subject to consultation and no final decisions can be made until that process has been properly concluded, but early consultation on market definition would be extremely helpful and would inform work done by stakeholders in other areas.

6 BCM

123 The WFTMR BCM was defined as a single product market including wholesale leased line segments of all speeds but excluding broadband and Ethernet in the first mile (EFM) connections. Ofcom also excluded inter-exchange connectivity circuits from the BCM. Finally, Ofcom specifically concluded that connectivity for the purposes of mobile backhaul were part of the same single BCM product market as all other leased lines.

124 That single product market was, however, subdivided into five geographic sub-markets. Areas 1, 2 and 3, defined using the same parameters and with the same boundaries as in the WLAM, and two additional geographic submarkets, namely the Central London Area (CLA) and the High Network Reach Area (HNR).

6.1 BCM product market for TAR.

125 INCA considers that the BCM product market remains unchanged.

126 The deployment of FTTP fibre broadband infrastructure is making 1Gbps and above broadband connections available and it should be expected that some users of leased lines will migrate to FTTP connections. That migration is, however, more likely due to the customers having used leased lines until now simply because there were no broadband services available at the speeds they required, not because they need the characteristics of a leased line connection (being a direct, private, uncontended, point-to-point, very high-quality connection).

- 127 INCA has observed no evidence that the emergence of high-speed FTTP broadband connectivity has caused a significant price change in leased lines, in areas where the speeds of the two services overlap. It is our view that a SSNIP test between 1Gbps FTTP connection and a 1Gbps leased lines would cause little or no movement in either direction as a consequence of price changes to either product.
- 128 We concluded in our WLAM analysis that existing customers of broadband services would not switch to leased line products. Now looking at potential substitution in the other direction, whilst there is likely to be some evidence of that customers using low speed leased lines are replacing them with high speed FTTP broadband services, we do not consider this to be an indication that FTTP broadband and leased lines are in the same market. Suggesting that FTTP broadband and leased lines are in the same market could be likened to the impact of improvement in public transport, reducing the number of privately owned vehicles in the relevant areas, but that does not mean that cars and buses/trains are in the same market nor does it change the prices or supply conditions of either. The characteristics of the two products are different and remain substantially so. The use of a specific product due to the lack of availability of a more suitable product in a particular location does not mean that the two products are substitutes in the conventional sense of the SSNIP test.
- 129 Whilst there may be no immediate and material impacts of concluding that broadband services could form part of the BCM, INCA believes that thorough, rigorous and transparent analysis must underpin all market definitions. Only with that as a foundation can future and consequent decisions be made.

6.2 BCM geographic markets for TAR

- 130 We have commented above on the delineation of Areas 1,2 and 3 in the WLAM and we believe the same analysis applies to the BCM. The WFTMR geographic market analysis was conducted using the concept of “multi-service-networks” (MSNs) and it is not clear whether the same approach will be adopted for the TAR. In any case, it is

important to recognise that, with the overall objective of both the WFTMR and the TAR being to encourage commercial full-fibre investment by BT and others in as many parts of the UK as possible, those networks are almost by default MSNs.

- 131 In the WFTMR, Ofcom judged that only the very largest rivals to BT would qualify as MSNs, in retrospect we believe that was an error, as we now see businesses as well as private premises served by large and small Altnets across the country. The consequence of that assumption manifested itself primarily in the mandating of the dark fibre remedy access in Area 3, which had the consequence of weakening the business case for competitive full fibre networks in Area 3. Although the design of remedies is not directly pertinent to the market definition process, such assumptions at the market definition stage clearly has material consequences. INCA urges Ofcom to reconsider the dark fibre remedy if it concludes that there is still a case for defining the equivalent of the current Area 3.

6.2.1 The HNR Area for the TAR

- 132 In addition to MSNs, there are network operators specialising in business connectivity only and which do not, or hardly ever, serve residential properties. The WFTMR identified that separate discrete and sustainable market conditions existed in business districts of large cities. Those locations were defined as the High Network Reach Area and, whilst Ofcom still found BT to have SMP in the HNR Area, it differentiated the remedies applied in order to reflect the higher level of competition to BT from these specialised business connectivity providers.
- 133 INCA does not have access to information about whether the boundaries defined in the WFTMR remain valid, nor of the impact of the reduced regulatory oversight of BT in those areas. INCA does, however, wish to highlight the important role of those competitors in the overall UK telecoms ecosystem. Several of the business providers are also critical wholesale providers of backhaul capacity for Altnets and their continued ability to thrive is important for the sustainability of competition in other

product and geographic markets. INCA, therefore, urges caution against any expansion of the HNR Area and/or further deregulation in that market.

- 134 The businesses cases of Altnets that currently serve both residential and business sectors or that plan to do so during the review period will be impacted by any reduction in regulatory oversight in the HNR Area. It is important that Ofcom considers all aspects of the market when deciding the extent of deregulation that is appropriate in this market.

6.2.2 The CLA for the TAR

- 135 INCA acknowledges that, in the BCM, there are many rivals to BT in the locations included by Ofcom in the CLA market. Given that Ofcom has in the past judged the CLA to be effectively competitive and has, therefore, not applied any remedies on BT in that market, INCA considers that Ofcom should review the approach to defining the CLA, however, to apply a similar approach as that it had proposed for Area 1 in the WFTMR. Thus, not simply counting the presence of networks but considering whether at least two of the rival networks are established.
- 136 As with the HNR Area, it is important to recognise that Altnet business plans in the CLA may be impacted by deregulation.

7 IEC

- 137 The WFTMR found each BT exchange is a separate market (as one is not a substitute for another) and that the IEC market consists of a single product market, including all speeds and lit as well as dark fibre connections.
- 138 As each exchange was defined as a separate market and the number of exchanges is manageable, Ofcom concluded that there was no need to group exchanges into geographic markets.

7.1 IEC market for the TAR

- 139 Since the WFTMR, Openreach has embarked on a process to close more than 80% of its exchanges. This potentially causes significant change to the IEC markets as defined in the WFTMR.
- 140 By 2031 it is expected that a large number of BT exchanges will have closed or will be scheduled for closure in the short term. In principle, that could be interpreted as any current IECs where, at some point, at least one end is no longer an exchange site being removed from the scope of the IEC market. If that were to happen, then any regulation applicable to IECs would be disapplied to connections between such locations.
- 141 INCA and individual Altnets have over the past more than two years expressed deep concerns to Ofcom that the regulated DFX product applied to IECs where one end is a BT-only exchange were introduced because there are no commercial backhaul options from those locations and it would therefore not be viable for Altnets to deploy competitive full-fibre networks in such locations, whereas BT would be able to do so as it already has connectivity.
- 142 BT's ability to use its existing network will not change because of exchange closures, but the exclusion of previous BT-only exchange sites from the IEC market would leave Altnets dependent on commercial BT Leased Lines for backhaul. A cost increase that would render many such deployments unviable. Such a radical change in regulated access would almost certainly increase investor perception of regulatory risk in the UK telecoms market.
- 143 The definition of the IEC market, therefore, represents a significant challenge in the TAR. INCA would welcome the opportunity to discuss this in detail with Ofcom at the earliest possible opportunity and can then provide further inputs for Ofcom's consideration.

8 Conclusion

144 The WFTMR market definition are largely sound and appropriate for the TAR review period. The issues identified above are:

- 1) The geographic sub-markets to the WLAM need careful review. Significant network deployment has happened since 2021 and more is planned by March 2026.
- As Area 1 was not formally defined in the WFTMR, much more clarity needs to be given here. This applies particularly to the definition of the term ‘established’ which formed part of the draft WFTMR Area 1 definition. INCA agrees that that definition could be appropriate for the TAR, but only if the term ‘established’ is interpreted in a manner that does not overestimate the maturity and resilience of the emerging competition in some parts of the WLA
- The Area 2 and 3 boundary needs careful re-evaluation as does the need and justification for defining Area 3.
- Based on INCA’s understanding of the competition conditions and demonstrated investment appetite, it is not clear that any post code sectors (other than potentially those included in government subsidy areas) should be categorised outside Area 2.
- The IECM needs a fundamental review. The planned closure of more than 80% of BT’s exchange sites is creating a significant risk of discontinuity. This needs to be avoided by careful market design.

9 About us

145 The Independent Networks Cooperative Association (INCA) is the leading UK trade association representing organisations deploying independent digital infrastructure.

Founded in 2010, INCA aims to foster a new approach to digital infrastructure, focusing on full fibre (FTTP) and high-quality wireless broadband whilst campaigning for the policy and regulatory support needed to maintain a healthy, competitive market. INCA has over 200 members and represents most of the full fibre infrastructure builders commonly referred to as Altnets. Members include network owners, operators, suppliers, and managers as well as access networks, middle mile networks, network hubs and exchanges, and organisations (including public sector and local authorities) that are developing or promoting independent networks.

Independent Networks Co-operative Association Ltd is an Industrial & Provident Society
Registered Office: c/o McKellens, 11 Riverview, The Embankment Business Park, Vale Road,
Stockport, SK4 3GN
Company Registration Number: IP30852R VAT Number: 987 7013 77
INCA is a and a member of Co-operativesUK

For any queries, please contact:

Liam Sheanon - liam.sheanon@inca.coop

Gita Sorensen - gita@gos-consulting.com