INCA response to Ofcom's Telecoms Access Review Consultation

Independent Networks Cooperative Association

<u>NON-CONFIDENTIAL</u>

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Independent Networks Cooperative Association

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1 Executive Summary

1 The outcome of Ofcom's Telecoms Access Review (TAR) will shape the future of UK digital infrastructure. For alternative network providers (Altnets), the TAR is pivotal in creating the conditions for competition, investment, and innovation.

2 As requested by Ofcom, INCA has submitted specific proposals rather than simply identifying where we disagree with what Ofcom has proposed.

3 INCA urges Ofcom to respond meaningfully to both the concerns and recommendations outlined within this response. We have summarised our core concerns and recommendations below.

Ofcom's objectives

4 Ofcom's regulatory objectives set the tone for its interventions in SMP markets. The basis, however, for some of these objectives remain uncertain, in particular, how they have developed from the WFTMR 2021.

Key Points:

- Lack of transparency in the formation of regulatory objectives.

Recommendations:

- Clarify and justify regulatory objectives, including alternatives considered.

PIA

Key Points:

- Inadequate direction to improve the Physical Infrastructure Access (PIA) product.
- BT has over-recovered c.£1.2bn on PIA assets due to inflation and flawed cost conversions
- Asset lives used in BT's models are understated, inflating PIA prices.

Recommendations:

- Ensure consistent investment incentives across fixed network markets.
- Migrate non-build PIA elements to Equivalence of Inputs by the end of the TAR period.
- Mandate BT to co-develop PIA improvements transparently with customers.
- Adjust PIA asset valuations to prevent double-charging from the FTMR period.
- Extend recovery periods in line with realistic asset lifespans.
- Apply equal charges to internal and external users of PIA assets under 'fair share' rules.

Area 3 Markets

5 Ofcom's approach to defining Area 3 in the Wholesale Local Access (WLA) and Leased Line Access (LLA) markets is flawed. It risks placing rural Altnets at a severe disadvantage.

Key Points:

- Arbitrary definitions that band Altnet-served areas into Area 3.
- Inconsistent methodologies between WLA and LLA definitions.
- No proposed remedies to guard against BT's anticompetitive behaviour.
- Imposition of cost-oriented pricing in LLA Area 3 undermines investment incentives.

Recommendations:

- Reassess and justify the rationale behind WLA Area 3 objectives.
- Redefine or remove Area 3 (that gives preference to BT Openreach) using transparent, rational parameters.
- Collect new data to correct erroneous LLA Area 3 assumptions.
- Promote investment in both WLA and LLA Area 3 to reflect real-world dual-use Altnet networks.
- Remove cost-based charge controls and DFA remedies from LLA Area 3.
- Apply geographic discount restrictions in all Area 3 markets.
- Extend protection from Other Commercial Terms (OCT) to all Altnets, including vertically integrated networks.

- Modify OCT remedies to require BT[1] to prove no harm to Altnets from proposed terms.
- Commit to stakeholder consultation before accepting any OCT-notified terms.

WLA Area 1

6 Altnets must be given time to build resilience before Ofcom declares effective competition and withdraws protections.

Recommendation:

- Ensure no WLA Area 1 location is designated as effectively competitive during the TAR period.

Wholesale Pricing

7 Strong wholesale pricing protections are critical to prevent BT from undermining emerging Altnets.

Key Points:

- Legal instruments lack flexibility to address BT's future commercial tactics.
- Past remedy applications, like Equinox, have created uncertainty.
- BT has over-recovered c.£1.2bn on PIA assets due to inflation and flawed cost conversions.
- Asset lives used in BT's models are understated, inflating PIA prices.
- The current remedy for PIA Ancillary Services pricing has proven ineffective and BT has earned excessive returns.
- Flawed Fibre Cost Model (FCM) assumptions understate Altnet costs:
    - Missing cumulative PIA lead-in costs.
    - Unrealistic network footprint assumptions.

Recommendations:

- Correct PIA lead-in cost errors in the FCM.

[1] In this document, INCA uses the term 'BT' for both BT and Openreach. This is because the SMP findings and remedies are imposed on BT, not separately on Openreach. All access contracts are with BT, even for PIA. INCA, therefore, considers it appropriate to refer to BT throughout unless there is a specific reason why that should not be the case.

- Remodel REO scenarios to reflect viable, real-world footprints.
- Update Altnet WACC assumptions in the FCM.
- Base PIA charges on incremental cost to avoid price squeezes.
- Cost-based price control for PIA ancillary services.
- Adjust brought-forward PIA asset valuations to prevent future over-recovery of costs.
- Extend recovery periods in line with realistic asset lifespans.
- Apply price squeeze tests per product using realistic REO cost assumptions.

IEC Market, Exchange Closures & Copper Retirement

8 Access to backhaul and transition from copper must support Altnet progress, rather than disrupt it.

IEC and Exchange Closure - Recommendations:

- Validate PCO backhaul capacity for Altnets.
- Annually review exchange status to safeguard backhaul continuity.
- Require BT to engage transparently and provide long-term clarity before closures.

Copper Retirement – Key Issues:

- BT could lock in customers via FTTP migration, raising switching barriers.
- ISPs incentivised to stay with BT, undermining Altnet competition.

Copper Retirement – Recommendations:

- Offset copper network dividends against PIA charges.
- Prevent second copper retirement threshold until:
  - 75% Altnet FTTP coverage is reached, or
  - No active Altnet build remains in the area.

2 About INCA

9 The Independent Networks Cooperative Association (INCA)[2] 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 that continues to attract investment to the UK.

10 INCA represents most of the full fibre infrastructure builders in the UK, commonly referred to as Altnets and the wider membership includes network owners, operators, suppliers, and managers as well as access networks, middle mile networks, network hubs and exchanges and organisations (including public sector) that are developing or promoting independent networks.

11 INCA welcomes the opportunity to respond to Ofcom's Telecoms Access Review (TAR) consultation and is pleased to submit this response which we hope will be of assistance to Ofcom in its deliberations.

3 Introduction

12 Since the Government's Future Telecoms Infrastructure Review (FTIR) in 2017[3], and the government's Statement of Strategic Priorities (SSP) for Ofcom[4] the UK fixed telecoms sector has been transformed with more than 100 new market entrants building new competitive full-fibre networks, challenging the BT network monopoly.

13 Altnet coverage has increased by 27% year-on-year to reach 16.4m by the end of 2024

[2] Independent Networks Cooperative Association – supporting the independent digital networks
[3] https://assets.publishing.service.gov.uk/media/5b6aa54d40f0b62ea600fd39/Future_Telecoms_Infrastructure_Review.pdf
[4] https://www.gov.uk/government/publications/statement-of-strategic-priorities

- 3.68m of these premises were in Ofcom's Area 3, meaning that Altnets have delivered connectivity to nearly a third of UK premises in harder to reach rural areas
- Almost three quarters of a million customers switched to an Altnet during 2024 (35% growth year-on-year)
- Altnets committed £5.3 billion to network expansions and operations for 2024/2025.
- The wholesale fixed telecoms market review (WFTMR) in 2021 set out a clear regulatory framework in which Ofcom articulated its strong support for promoting competitive investment in new full-fibre networks, establishing a framework that encouraged both BT and its emerging competitors to deploy full-fibre networks. BT's network competitors have become known as Altnets, and that term will be used throughout this document.
- Whilst government policy and Ofcom's stated WFTMR objectives have succeeded in attracting very large levels of investment in new competitive full-fibre networks, there are aspects of the WFTMR that have struggled to address the real market conditions as they have evolved and also some which were implemented by Ofcom in a manner that was not anticipated and have caused operator and investor concerns and a level of mistrust. We outline some of those below.

3.1 Level and scope of Altnet full-fibre deployment

14 In the WFTMR, Ofcom defined different geographic markets for broadband and leased lines markets based on its forecasts of where it would be viable for Altnets to deploy new full-fibre networks. Ofcom concluded that approximately 30% of the UK would not see material and sustainable competition. To avoid these areas being left behind, Ofcom designed the regulatory framework to promote investment by BT only in those areas.

15 These forecasts massively underestimated the scale and success of Altnet deployment. Altnets have built networks across a much broader range of areas, across all the different economic and demographic segments of the country. Many Altnets have secured

government subsidies, further expanding their presence in locations Ofcom considered Altnet deployment to be unviable or marginal. This divergence between Ofcom's assumptions and market reality resulted in a regulatory framework that often failed to protect fair competition, creating perverse incentives for BT to overbuild in rural and marginally commercial or subsidised locations where Altnets had already invested.

3.2 Regulatory measures to restrict potentially anticompetitive activities by BT

16 In the WFTMR, Ofcom introduced safeguards to prevent BT from engaging in pricing activities that could be harmful to the development of sustainable network competition. This included the prohibition of geographic pricing and restrictions on certain pricing and other commercial terms. Ofcom's foresight in doing so was strongly welcomed by the Altnet community as a clear, unambiguous commitment to competitive neutrality.

17 While these protections may have discouraged some potentially harmful initiatives by BT, it is also clear to INCA that the measures did not prevent some damaging BT offers that the Altnet community and its investors had clearly expected would be prevented. In particular, Ofcom's approval of BT's two Equinox offers surprised and disappointed Altnets and investors alike, who reasonably expected such offers to have been prevented. This had led to concern about the consistency and reliability of Ofcom's regulatory oversight.

3.3 Copper retirement

18 Ofcom designed a regulatory framework to support BT plans to retire its copper network and simultaneously protect consumers and downstream wholesale customers and competitors of BT within that process.

19 INCA voiced strong concerns that Ofcom's copper retirement framework lacked safeguards to prevent BT from leveraging copper retirement to consolidate its market dominance. Although INCA understands the limitations of the SMP framework to prevent BT from using the copper retirement programme to simply migrate (lift and shift) its copper-based customers across to its new FTTP network, and effectively foreclosing

the market to network competition, Ofcom made little effort to identify means of preventing this from happening.

20 BT has now reached the first copper retirement threshold (75% FTTP coverage in an exchange area) and has issued 'stop sell' notices for more than 800 exchange areas. During the first four years of the WFTMR, Altnets have seen the combination of the BT Equinox discount schemes and the advent of the 'All-IP' programme (designed to enable BT to retire its PSTN services, not its copper network) to push customers across to the BT network at a rate that significantly exceeds that of take-up rates of the Altnet full-fibre networks.

21 Altnets do not consider that the WFTMR copper retirement framework (including the framework that allowed the introduction of the Equinox offers) has in reality delivered against Ofcom's main WFTMR objective (other than consumer protection), namely the promotion of FTTP network investment by BT and new market entrants.

3.4 Hand-over from WFTMR to TAR

22 Whilst the WFTMR was largely designed to promote competitive network investment, the above examples highlight where either Ofcom's assumptions or its subsequent implementation of the WFTMR provisions have caused competition and investment challenges. This has resulted in a general hesitancy by investors to invest in Altnet network deployments.[5]

23 In this response, INCA provides a detailed analysis of Ofcom's proposals for the TAR, including for the areas covered above. Where possible, INCA submits constructive, evidence-based recommendations aimed to address challenges and concerns which have emerged since the WFTMR. Across the proposals, INCA puts a strong emphasis on consumer outcomes in the medium- to long-term.

[5] International financial market conditions have also contributed to this, but in the context of this document, it is important to focus on the impact the regulatory framework and its implementation has had.

4 Consistency in sector policy, strategy and implementation

24 The UK policy to promote investment in competitive full-fibre networks has been a resounding success. INCA and its members strongly believe that the TAR represents a crucial opportunity to consolidate these gains and ensure that network competition is embedded, resilient and capable of delivering all the mid- to long-term benefits Ofcom has previously articulated.

25 The FTIR and the following SSP set the direction of travel for the UK fixed telecoms sector, complemented by Ofcom's strategic statements supporting the government's policy.

26 The shift from an emphasis on service competition[6] to a clear focus on network competition with strong incentives for private investment in new competing full-fibre networks marked a significant change to telecoms policy and regulation in the UK, and it has yielded demonstrable results with billions invested in the sector. BT has also shifted from a position of aiming for 20m premises passed with its new FTTP network to now stating ambitions of covering up to 30m premises. This competitive pressure has driven innovation and accelerated the pace of network upgrades across the country.

27 Yet, as highlighted in INCA's 2023 Report "Securing Long term Benefits for Broadband Customers",[7] there remains a disconnect between policy and strategic statements by government and Ofcom and the implementation of regulation by Ofcom. More recently, INCA is pleased to see a stronger commitment by Ofcom to the execution of the relevant policies and strategies. A concern, however, persists that Ofcom appears to treat BT's statements with deference while approaching Altnet statements and intentions with scepticism. This imbalance can easily become a self-fulfilling prophecy; if regulation disproportionately favours BT, market conditions for Altnets deteriorates, increasing the risk of failure or underperformance despite their commitments and capabilities.

[6] That is, encouraging competition at the service level, using the BT network.
[7] https://inca.coop/wp-content/uploads/2025/05/INCA-Policy-Report-Sept2023.pdf

28 INCA has reviewed statements issued by BT or Openreach in recent years relating to their plans, commitments and ambitions for FTTP deployment and has found that they are all conditional on a favourable regulatory framework and/or some specific government or Ofcom action.[8] Nevertheless, they are taken as firm commitments by Ofcom who then proceed to make sure they deliver the favourable regulatory conditions demanded by BT. This is in stark contrast to the strong scepticism shown in relation to Altnet deployment statements.

29 INCA is concerned that Ofcom not only appears to accept BT statements without challenge and scrutiny, but Ofcom also appears to assume that BT will go further than even BT's own statements. For example, Ofcom have on many occasions told INCA and its members that BT will deploy 'everywhere', but even BT's most ambitious statements only go to 30m premises.

30 INCA and its members fully accept that Ofcom's remit is not to protect individual competitors. INCA also recognises that Ofcom has a duty to only impose remedies where those are objectively justifiable and proportionate to the existing or potential harm identified. Within that framework, however, Ofcom exercises significant discretion and INCA is concerned that Ofcom's discretion is primarily used to support BT's positions, with insufficient weight given to the broader benefits of cultivating a diverse, competitive market.

31 One example of how Ofcom proposes to exercise its discretion in the TAR is to adopt a policy of supporting only BT full-fibre deployment in what Ofcom defines as Area 3 in the WLA market. Although Ofcom concludes that there is unlikely to be more than one full-fibre network in those locations[9], INCA fails to understand Ofcom's justification for its presumption that that single network will by default be built and operated by BT. Ofcom has presented no rationale for this position, and this is built on an embedded presumption that BT will deploy full-fibre everywhere and Ofcom therefore uses that

[8] See Annex 3 for an overview of FTTP deployment statements by BT and or Openreach.
[9] We discuss Ofcom's proposed approach to geographic market definition in the WLA in section 8 of this document.

presumption as the base-line, with any Altnet deployment being incremental to that base case.

32 Geographic markets are thus defined based on whether there will be sustainable competition to BT – effectively ignoring the very likely outcome of Altnets being the only full-fibre providers in some locations. We discuss the detailed repercussions of this approach in the relevant section below. INCA considers this near blind reliance on BT statements to represent a material flaw in Ofcom's reasoning and rationale. A flaw that results in a bias in favour of BT delivering on those statements.

33 Ofcom cites its overall objectives in the TAR as being:

"*Our objectives reflect our strategic priorities as set out above. Where network competition is viable, our objectives are:*

- *to promote investment and competition in networks by Openreach and other providers;*
- *to promote upstream access to Openreach's physical infrastructure to drive network competition; and*
- *to seek to protect consumers and competition based on access to Openreach's network whilst network competition develops.*

Where network competition is not viable, our objectives are:

- *to protect consumers and to promote competition based on access to Openreach's network which allows downstream providers to offer consumers a choice of retail services; and*
- *to seek to promote investment by Openreach in gigabit-capable networks in areas that are unlikely to see the emergence of competing networks, so that consumers in these areas can also obtain the benefits of an upgraded network and improved services*."[10]

34 INCA is deeply concerned that Ofcom appears to have concluded that, where there is unlikely to be network competition, it should by default be BT that invests in and builds the gigabit-capable[11] networks. INCA is concerned that this pre-conception is

[10] TAR V1 paragraphs 2.41 and 2.42.
[11] In this document, INCA uses the term full-fibre, but, in many cases, it is interchangeable with gigabit-capable.

influencing Ofcom's perspective on what would be in the best interests of consumers and of the general UK economy.[12]

35 Ofcom's primary focus on network competition is understandable and, to an extent, consistent with government policy of promoting the investment in competing full-fibre networks wherever economically viable. What is less clear is how Ofcom justifies its objectives where it considers that network competition is not viable.

- Firstly, how does Ofcom conclude that the interests of consumers and the economy are best served by promoting investment by BT only, in those locations? INCA has not been able to identify anywhere in the TAR consultation (or in the WFTMR documentation for that matter) where Ofcom considers any alternative objectives for where Ofcom concludes that network competition is not viable. Ofcom must set out clearly what it considers to be the benefits of BT full-fibre coverage in Area 3 over Altnet coverage and explain why it would not serve consumers in those locations to have the benefits of competition **for** the market as BT and/or Altnets seek first-mover advantage.
- Secondly, how can Ofcom feel confident that its definition of Area 3 (where network competition is not viable) is sufficiently robust to not include locations where network competition may be viable? Ofcom's definition of Area 3 in the WFTMR was proven wrong by the much higher levels of investment by Altnets than anticipated by Ofcom. INCA is concerned that Ofcom is, again, trying to second-guess the markets and may in fact unduly stifle commercial investment and network competition.

36 INCA considers that Ofcom's approach, in areas where Ofcom consider that network competition is not viable, is significantly at odds with both the letter and the spirit of government policy. It is clear from government actions, including Project Gigabit (where government funds Altnets to deploy new full-fibre networks in locations where network competition on normal commercial conditions would be extremely unlikely) that government envisages locations in the UK where the only full-fibre provider is somebody other than BT. Ofcom should adjust its approach to accommodate this situation rather than, as INCA has often heard from Ofcom, assume that BT will build everywhere

[12] Annex 3 sets out an overview of BT relevant statements since 2029.

regardless of existing subsidised build or other conditions that would make overbuild unviable by any non-dominant operator.

37 Another example of where INCA considers that Ofcom's underlying assumptions are likely at odds with government policy and Ofcom's public strategy statements is the very narrow interpretation Ofcom uses of the 'fair bet principle'. Ofcom's interpretation of the fair bet principle appears to be limited to allowing BT to keep any over-recovery after complying with any charge controls applied by Ofcom. The SSP,[13] however, clearly refers to a broader fair bet principle according to which any investor in UK infrastructure should have a fair bet to recover its investment and make a return on that investment. This issue was brought up during the WFTMR process and in INCA's Policy Paper, but INCA has seen no sign of Ofcom adopting the broader fair bet principle in the TAR. INCA considers that, were Ofcom to apply the broader fair bet principle, the issues outlined above of Ofcom's presumption that BT will deploy everywhere would not be tenable. Many Altnets build full-fibre networks in locations where BT has shown no interest and where the timing of BT deployment (if any) is very uncertain. Ofcom's regulatory interventions should not presume that BT will overbuild those networks and that it is the Altnet network that is 'dispensable' if a location cannot economically sustain two networks.[14]

5 Consistency in regulatory approach across all fixed markets

38 New full-fibre networks can satisfy the communication needs for a wide range of diverse customer segments from basic voice and internet access to sophisticated large corporate business and public sector users. It is essential that investors in those new networks have access to all those markets to achieve the level of network utilisation necessary to generate returns on those investments.

[13] Although a new SSP was due for consultation late 2024, it has not yet been published. INCA, therefore, refers to the 2019 SSP.

[14] INCA understands that Openreach may be better able to serve potentially stand-alone loss-making locations, but if an Altnet has built its network, then Ofcom's regulatory instruments should not automatically favour Openreach by, for example, allow Openreach to introduce geographic discounts and other commercial terms that are prohibited in other parts of the country.

39 Ofcom's primary rationale for combining the main fixed telecoms markets under a single review process in the WFTMR was to ensure that these markets are addressed consistently and provide consistent make/buy signals to potential new investors and operators of competitive full-fibre networks. In market reviews preceding the WFTMR, Ofcom has sought to promote network competition in the broadband markets, but not in the leased lines markets. The WFTMR was clearly designed to overcome that divergence and was built on the concept of the multi-service networks (MSN) – namely full-fibre networks that can serve both broadband and leased lines markets.

40 To ensure consistent make/buy signals across the fixed telecoms markets, Ofcom ensured in the WFTMR that its objectives and regulatory interventions across broadband and leased lines markets were aligned, resulting in consistent boundaries of geographic markets and objectives for those geographic markets. In the TAR, in contrast, Ofcom proposes to adopt different methodologies for determining geographic markets and different approaches to regulatory remedies within those markets. At a glance, Ofcom's WFTMR and TAR approaches can be summarised as follows:

Table 1 – Overview of Ofcom market definitions and regulatory remedies in the WLA and LLA markets

	Geographic Market Definitions		Regulatory Remedies	
	WFTMR	TAR	WFTMR	TAR
WLA	MSN presence	Gigabit capable broadband network presence Resulting in significant reduction of Area 3	CPI-0% encourage investment in all geo markets	CPI-0% Encourage investment in all geo markets
LLA	MSN presence	Network reach analysis resulting in significant expansion of Area 3	CPI-0% encourage investment in all geo markets	CPI-0% in Area 2 but CPI-X in Area 3 including starting price adjustments

Source: The TAR

41 The table above clearly demonstrates the significant divergence in approach taken by Ofcom in the WLA and LLA markets and the resulting changes to the defined markets. Area 3 in the WLA is reduced from >30% of total premises to around 10%, whilst Area 3 in the LLA has expanded by approximately 46% and Ofcom is proposing to apply

significant price reductions in this market. This is in contrast to the WLA where Ofcom maintains investment incentives both Areas 2 and 3.

42 INCA is very concerned at this volte-face by Ofcom. Many Altnets are part-way through full-fibre network deployments and have relied on Ofcom's promise of consistency and continuity for a 10-year period. This material diversion from the approach in the WFTMR adds further challenges to the already very challenging Altnet business cases. This is discussed further in the LLA market definitions and remedies sections below.

INCA asks that Ofcom ensures consistent investment incentives across fixed markets served by the same networks

6 Ofcom's regulatory objectives

43 Ofcom's regulatory objectives perform a critical role in determining the remedies it proposes in markets where it finds SMP. Yet, despite its criticality, Ofcom has not provided the necessary transparency as to how these objectives are developed, which alternatives were considered and how their impacts are assessed.

44 INCA has considered the impact of Ofcom's regulatory objectives on the outcomes both at the level of regulatory design and the implementation of those designs. Below we highlight some examples.

45 In the TAR consultation and the WFTMR Final Statement, Ofcom quotes its regulatory objectives for the relevant markets identified and in which Ofcom proposes that BT has SMP.[15] Ofcom references these objectives extensively throughout both the TAR consultation and the WFTMR Final Statement.[16] It is apparent that the regulatory objectives play an important role in Ofcom's overall analysis and decision-making.

[15] See Annex 1 for the full table of regulatory objectives.
[16] 78 times in the TAR V4 and 108 times in the WFTMR Final Statement V4.

46 Despite the apparent importance of the regulatory objectives, INCA cannot identify any evidence of which Ofcom offering stakeholders insight into how those objectives are designed, evaluated and selected.

47 The reason INCA is highlighting the significant role that Ofcom's objectives play is that they are used to rationalise and justify the selected remedies for each SMP market. INCA's concern is not theoretical; our experience from the implementation of the WFTMR shows that Ofcom has used its objectives in an individual market to justify the dis-appliance of remedies that were originally applied to that relevant market and accepted to be consistent with the regulatory objective at the time of finalising the WFTMR.

48 INCA wishes to draw Ofcom's attention to two specific examples:

1) Under the WFTMR, Ofcom applied the prohibition of geographic pricing and restrictions on other commercial terms that could act as barriers to competitive network deployment in the WLA Area 3 market. However, when assessing the BT Equinox proposals, Ofcom disapplied those remedies arguing that its regulatory objective for that market was to promote infrastructure investment by BT only.

2) In the TAR, Ofcom is using its objective to "*To promote competition based on access to Openreach's networks and protect consumers*" to justify the imposition of cost-based charges for Ethernet circuits of 1Gbit/s and below and the imposition of the cost-based dark fibre access (DFA) remedy as well, whereas in the WFTMR, Ofcom's objective in that same market was to promote investment by BT and this resulted in a pro-investment charge control of CPI-0%.

49 In neither of the cases outlined above did Ofcom explain the rationale behind the change in approach, and in neither case could investors in competing networks have had any means of anticipating Ofcom's actions and approach.

50 INCA is concerned that the lack of transparency in how Ofcom arrives at its regulatory objectives for each relevant SMP market and the apparent ability to override the application of remedies in SMP markets by reference to those objectives.

51 INCA asks that the TAR Final statement include a full rationale for each regulatory objective, how it was designed, any alternatives considered, and any impact assessment

undertaken. Only through this level of transparency can Ofcom build the regulatory trust and certainty required to sustain long-term competitive investment

INCA asks Ofcom to explain its objectives and which alternatives it has considered

7 The physical infrastructure market

52 Ofcom rightly acknowledges that regulated access to BT's physical infrastructure (PI) is a cornerstone of Altnets' ability to deploy networks at scale. The regulated physical infrastructure access (PIA) product enables efficient market entry and fosters network competition.

53 INCA supports Ofcom's continued commitment to a regulated PIA regime. INCA urges Ofcom to state definitively that, despite ambitions to deregulate some downstream markets, it has no current intentions to deregulate the PI market,

54 Long-term regulatory certainty around PIA is crucial for sustaining investor confidence, particularly as many Altnets' business models are reliant on long-term PIA. INCA appreciates that Ofcom cannot provide guarantees relating to future regulatory actions, but the critical long-term role of PIA can nevertheless be made clear. Ofcom could articulate the kinds of market changes and conditions that would have to prevail for Ofcom to consider the removal or reduction in regulation of PIA.

7.1 PI Market definitions

55 INCA agrees with Ofcom's product market definition for the PI market.

56 Ofcom has provisionally concluded that there is a single product market for the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms

network.[17] Ofcom has provisionally excluded non-telecoms physical infrastructure and wireless technologies from that product market.[18]

57 Ofcom proposes a single national geographic market[19] for wholesale access to telecoms physical infrastructure for deploying a telecoms network.[20] INCA also agrees that the PI market is national (excluding Hull), and that ubiquity is a critical element of the PIA product.

58 Ofcom proposes that a ubiquitous infrastructure is likely to have material advantages over non-ubiquitous infrastructure for access seekers, wherever and however they seek to deploy. By ubiquitous, Ofcom means an infrastructure which provides the ability to connect to any premises or site within a given geographic area, rather than an infrastructure which provides national coverage (although an infrastructure which provides national coverage will also be ubiquitous).[21]

59 Due to the importance of ubiquity, INCA does not consider it probable that competition is likely to emerge in the PI market. Fragmented and localised PI assets by other parties will not represent a viable substitute for the standard access conditions to BT's ubiquitous PI asset base.

7.2 Remedies

7.2.1 Non-price PI remedies

60 INCA acknowledges and welcomes the improvements made to the PIA product since 2019. The PIA product has developed well and it can now be consumed at scale. The introduction of increased automation, including the developing of APIs, have greatly contributed towards the current level of useability of the product.

61 It is INCA's experience, however, that the developments and improvements have materialised at a very slow pace, although many were day one requirements from CPs

[17] TAR, Volume 2, Para. 3.30.
[18] TAR, Volume 2, Para. 3.31.
[19] References to a 'national' geographic market in this section exclude the Hull Area.
[20] TAR, Volume 3, Para. 3.32.
[21] TAR, Volume 3, Para. 3.37.

wanting to use the product. Additionally, BT only involves its external customers, the Altnets, at a relatively late stage of the development process, when the opportunity to input constructively to the scope and design of the changes are minimal at best.

62 Product changes resulting from BT's internal systems and process changes directly impact Altnets, however Altnets are only advised of such changes late in the process. It is important that transparency of the PIA product development process is improved and that BT includes its external PIA customers from inception. Such late engagement is against the principle set out in the WFTMR that "… *As progress continues with development of API tools for PIA, we expect Openreach to work with telecoms providers as these systems are launched, recognising PIA users need to contribute requirements and feedback in a timely manner to assist with implementation*."[22]

63 PIA is not a commercial product. Its purpose is to ensure that Altnets can access the PI in a non-discriminatory manner and compete equally with BT. The current product improvement process imposes a level of uncertainty and unpredictability on PIA CPs that results in them being at a competitive disadvantage against BT itself. INCA does not consider this to be NUD-compliant.

64 Functionally, the PIA product has evolved but remains operationally cumbersome and expensive for Altnets to consume. To avoid any undue discrimination in the medium to long-term, additional improvements are required to reduce Altnet's cost of consumption to provide equality with the cost of consumption for BT internally.

65 INCA has collected data from its members on the administrative resources required to consume the PIA product (a significant part of which is to communicate to BT when its PI data is inaccurate and for which the PIA customer would be financially penalised if it does not provide the data corrections to BT). A survey of INCA members shows an average administrative cost of 20.49 hours per kilometre of PIA. To put it another way, Altnets spend an average of 22.90 hours of administration per thousand-pound of PIA spend. This is a significant and material additional cost that Altnets incur to consume the

[22] WFTMR 2021-2026, Volume 3, Para. 4.100.

PIA product. This additional administrative cost is incurred due to the poor design of the PIA product which does not sufficiently consider how Altnets consume the product.

66 In its July 2024 Report, "*PIA requirements for the Telecoms Access Review*",[23] INCA argued that BT had not provided new processes and systems on the basis of EOI and that Ofcom had not enforced this obligation on BT. INCA included the following PIA requirements for inclusion in the TAR:

- EOI
  - Gradual introduction of EOI in operational PIA systems and processes and tight monitoring of NUD and EOI compliance.
- Strengthened regulatory oversight
- PIA product improvements
  - Specify that an improved PIA product must address the issues raised by INCA and others within the first 24 months of the TAR period.

INCA's requests for improvements to the PIA product

67 Following its review of the TAR, INCA is disappointed and concerned that Ofcom has not addressed many of the concerns highlighted in INCA's pre-consultation submission. Whilst INCA does not expect Ofcom to specify detailed PIA product changes and improvements, INCA does expect Ofcom to highlight the areas of functionality that PIA customers have highlighted as needing urgent attention.

68 INCA summarises below the areas of improvement it is asking Ofcom to identify for priority attention.

Defined framework for BT's compliance

69 INCA asks Ofcom to take a more proactive approach in ensuring that the PIA product is fit for purpose. The current approach taken by Ofcom is loose and generic and does not

[23] INCA report is published by Ofcom at: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-pia-paper-for-the-tar.pdf?v=392833

provide BT with a framework of principles for compliance. BT should be subject to stricter monitoring against priority areas and enforcement by Ofcom and/or the OTA2.

70 To be clear, this does not require Ofcom to micro-manage the PIA process. Instead, INCA asks that Ofcom sets out a clearly defined framework for improvements including clearly stating those areas that BT need to improve.

Enhanced monitoring of BT's compliance with EOI obligation

71 INCA asks that Ofcom expands the remit of the OTA2. Currently the OTA2 is not required or empowered to validate whether a new or improved system should be provided in compliance with the EOI obligation. To the best of INCA's knowledge, there is no process for BT to pre-notify Ofcom or the OTA2 of planned changes/new systems including a rationale for why such changes and developments should or should not be subject to the EOI requirement.

Involvement of PIA customers at early stages of product enhancements

72 BT fails to engage with PIA users at an early stage of specification for PIA products, processes and systems. It is very important that Altnets are involved at the very early stage of any enhancements. BT does not regularly and proactively seek to understand how PIA users consume the PIA product and therefore cannot understand their needs. This results in PIA users being presented with products, processes and systems which do not meet their needs, but are required to accept that situation as a '*fait accompli*', often with significant impacts on the operations of the Altnet. Such impacts do not affect the way BT consumes its PI assets but contributes to the extensive administrative burden on consumers of PIA.

Lack of transparency for Altnets

73 The lack of transparency is critical for Altnets. Whilst INCA is appreciative of the work that has been delivered to improve the PIA product, the manner in which the improvements are carried out is neither transparent nor helpful for Altnets. BT should consult with its customers from the start of the specification process. INCA considers that by not doing so is against the spirit of the TAR.

74 BT needs to treat Altnets in the same way as it treats its own internal customers. Currently there is no equivalence in the process for specifying product enhancements. Either a Statement of Requirements (SOR) is provided by an Altnet, or an internal requirement is provided to meet BT's internal needs. One solution would be that BT follows the same SOR process as has to be followed by BT's external PIA product customers.

Introduction of Quality of Service (QoS) parameters for PIA

75 INCA is disappointed that Ofcom has not used the TAR as an opportunity to introduce QoS measures for the PIA product. INCA agreed that, for the WFTMR, the PIA product was not sufficiently mature for meaningful QoS measures to be defined or imposed, but the product has now been in scale use for several years and is conspicuous amongst the regulated remedies imposed by Ofcom for not being subject to QoS measures.

Planned PIA product enhancements for 2025/26

76 INCA appreciates that the TAR takes effect in April 2026, that is after the expiry of the 2025/26 financial year and the period for the BT PIA Product Enhancement Roadmap, recently disclosed by BT. INCA, however, considers it worthwhile reviewing this roadmap against the issues raised by INCA in its two pre-consultation PIA product submissions.[24] In particular, INCA has compared the BT PIA product enhancement plan with the short-term improvements requested by INCA and which Ofcom verbally assured INCA during meetings in the 2nd half of 2024 were being considered and reflected in the TAR.

77 BT presented its Product Enhancement Roadmap for 2025/26 to the PIA Product and Commercial Group in April 2025 (see Figure 1). Whilst INCA welcomes the development

[24] Short-term requirements for improvements to the PIA remedy under the WFTMR, INCA, June 2024, published by Ofcom at: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-report-on-short-term-pia-improvement-requirements.pdf?v=392835 and PIA requirements for the Telecoms Access Review, INCA, July 2024, published by Ofcom at: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-pia-paper-for-the-tar.pdf?v=392833

of this roadmap, it has been necessary to request clarification from BT as to the scope of the enhancements listed.

78 It is not clear whether this roadmap is in part the result of discussions with Ofcom reflecting inputs from INCA and others or this was developed entirely separately by BT. INCA is disappointed that its concerns and request have not been reflected in the TAR. Throughout 2024, Ofcom had clearly and repeatedly communicated to INCA that short-term improvements were a priority for implementation before the commencement of the TAR period and would be set out in the TAR.

79 PIA customers need clarity and transparency regarding Ofcom's instructions to BT. It is not sufficient that BT happens to address some points raised with Ofcom and INCA is concerned that a large number of its requested changes appear to not be addressed in the 2025/26 PIA product enhancement roadmap.

80 The Openreach PIA product enhancement roadmap is copied below:[25]

Figure 1: Openreach's PIA Product Enhancement Roadmap 2025/26 – IN COMMERCIAL CONFIDENCE

✂

Source: PIA Product and Commercial Group, April 2025 - **IN COMMERCIAL CONFIDENCE**

[25] Please note that INCA has gained approval from Openreach to include this diagram in its submission, provided that it is redacted from the non-confidential version to be published on Ofcom's website in due course.

81 INCA has checked the improvements requested in its pre-consultation submissions to Ofcom[26] against the above plan from BT and found that almost none of its priorities are included within planned upgrades for this 25/26 financial year.[27] Combined with the fact that Ofcom has not called out INCA's PIA improvement priorities (or indeed those of others), to be addressed during the TAR period, this is very disappointing.

82 Ofcom has, on a number of occasions, stated that PIA users should state explicitly the changes they want to see. That is often not a realistic ask because PIA users cannot know the internal restrictions that may apply in specific areas. The best approach is for Ofcom to call out the area of concern and require BT to collaborate with its customers to find suitable solutions.

83 It is evident from the roadmap above that the vast majority of PIA issues raised with Ofcom are not scheduled for short-term improvements by BT, nor has Ofcom indicated in the TAR that they should be.

84 Whilst INCA understands that some of the improvements requested are not individual product enhancements, but improvements to the way the product is managed. INCA is disappointed that Ofcom did not consider it appropriate to identify in the TAR that these are priority concerns of PIA customers. Ofcom has stated that it wants specific suggestion and proposals for enhancements, but it does not seem that the suggestions provided by INCA have been actively considered.

INCA asks that non-build related aspects of the PIA product be migrated to Equivalence of Inputs by the end of the TAR period

INCA asks that Ofcom mandate that BT work with its PIA customers from inception to design changes and improvements to PIA

[26] As set out in Short-term requirements for improvements to the PIA remedy under the WFTMR, INCA, June 2024, published by Ofcom at: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-report-on-short-term-pia-improvement-requirements.pdf?v=392835

[27] See Annex 2 for the comparison table.

7.2.2 Price-related PI remedies

85 As Altnets approach completion of their network deployment projects, ongoing PIA charges become a material operational expense, and it is essential that those rental prices do not disadvantage Altnets relative to BT when competing for business across the different downstream markets.

86 INCA appreciates that Ofcom's approach to setting PIA prices as a proportion of PIA asset cost (the 'fair share' assumption) and then allocating all remaining costs to BT, was designed to meet potentially conflicting objectives (fair and stable prices and full cost recovery) at a time when BT's network was undergoing significant change. It is important that Ofcom updates its fair share assumptions where necessary to reflect how PIA is being used in practice to ensure price stability is not inadvertently prioritised over fairness.

87 INCA therefore welcomes Ofcom's adjustments to the fair share assumptions used to determine PIA rental charges for pole attachments and lead-in and single-bore ducts to better reflect expected use. Other changes are needed to the fair share assumptions to reflect actual PIA use – for example to address situations where Altnets have had to install multiple sub-ducts in single-bore ducts and so are paying multiples of the 'fair share' price for no additional benefit.

88 In this section INCA highlights both cost and price-related issues that have been identified and, where possible, specific actions which Ofcom should implement to overcome these issues.

89 PIA pricing is the sum output of two separate activities:

- Calculation of the relevant costs of the PIA product, and
- Design of cost-recovery through a pricing structure.

Calculating the costs of PIA

90 As explained above, over time, PIA rental charges will become one of the most significant operating costs for Altnets. The level of rental costs is important for two reasons:

- The amounts of rental Altnets will have to pay in the long term, and

- The relative costs incurred by BT to use the same PI assets.

91 INCA considers that there are two major adjustments needed in order to ensure that BT's accounting costs used to calculate PIA prices are fair and cost reflective.

92 Firstly, the FTMR period saw exceptional and unexpected high levels of inflation. The way that current cost accounting is used to revalue assets and calculate depreciation in BT's Regulatory Financial Statements ('RFS) and used to set prices means that, in effect, **Altnets will be paying twice for assets consumed during the TAR period**. The same does not apply to BT's internal users of PIA because of the different approach used to calculate internal PIA charges. This is manifestly wrong and unfair, and INCA considers that the simplest way to correct this is to reduce the value of the PIA assets brought forward in the charge control model by the amount of unexpected holding gains in the WFTMR period.

93 Secondly, INCA considers that the rollout of FTTP networks by BT and Altnets will significantly lengthen the remaining economic life of BT's existing duct and pole infrastructure. INCA proposes that rather than depreciating these PIA assets over the remaining accounting life (which could be just a couple of years) in its charge control model, the remaining asset life of all BT PIA assets is extended to 40 years from the start of BT's national FTTP program (2017) to reflect the extended economic life of the PIA assets resulting from the deployment of the FTTP network.

Adjustment for Over-recovery of PIA Costs in WFTMR Period

94 In its pre-consultation submission, INCA requested Ofcom to make an adjustment to the brought-forward value of PIA assets to reflect the over-recovery of PIA costs in the WFTMR period which resulted from (a) higher than expected inflation rates and (b) applying a different approach to pricing for internal and external users of PIA assets.[28] INCA calculated that an average PIA price reduction of at least 34% would be needed over the TAR period to compensate external PIA users for this over-recovery.[29]

[28] INCA, PIA Costing submission July 2024, section 4.3.
[29] INCA, PIA Costing submission July 2024, paragraph 54.

95 While inflation rates have reduced to more normal levels, and the actual PI costs for 2023-24 are now closer to the forecasts Ofcom used to set the prices, this is not sufficient to counteract the over-recovery which occurred earlier in the WFTMR period. It remains the case that the cumulative discrepancy between actual PI costs and Ofcom's forecast is around £1.2 billion, and it seems unlikely that this will reduce substantially before the end of the WFTMR period; indeed, it may well increase if inflation increases again. INCA's calculation of the PIA price reduction needed over the TAR period to compensate for this over-recovery remains at 34%.

96 In the event that a future period of high deflation resulted in holding losses, this could result in an increase in costs over the relevant regulatory review period; INCA accepts that this would result in the need for an adjustment to the PI cost base and hence prices to compensate BT for its unforeseen loss. However, under Ofcom's proposal to fix the asset inflation measure used in the CCA revaluation, such adjustments in either direction should not be needed in the future.

97 In the TAR Consultation, Ofcom responded to stakeholders' arguments for an adjustment to prices in the TAR to compensate for historical over-recovery as follows:

> *"We consider it inappropriate to undermine these [investment] incentives by offsetting historical revenue against costs in future charge controls. This view is consistent with our previous decisions on charge controls and the overarching legal framework"*[30]

98 INCA agrees that the charge control regime should allow BT to recover its efficiently incurred costs, and it should be incentivised to improve efficiency by enabling it to retain cost savings over and above those set in the charge control. However, **the over-recovery of costs resulting from holding gains does not represent efficiency savings**.

99 In the case of PIA assets, Ofcom's different basis for cost recovery for internal and external PIA users has meant that the high inflation during the WFTMR period has led to different outcomes for internal and external users.

[30] Ofcom TAR Consultation Vol 4, Paragraph 4.19.

100 For BT's own use of PI assets, the prices paid are based on the actual costs shown in the RFS:

- During the WFTMR period, internal prices were reduced from the assumptions used in PIA charge control forecast, driven by holding gains due to high inflation. This also drives a higher asset value which increases costs, but in the short term this is not sufficient to counterbalance the reduction from the holding gains.
- During the TAR period, costs (and hence internal prices) will be higher than they would have been absent the high level of inflation in the WFTMR period due to the higher asset value resulting from the holding gains in the WFTMR period.
- So, in the longer term, the additional asset value compensates for the reduced costs due to the holding gains, and cost recovery is neutral for internal users.

101 For BT's external PIA customers, prices are based on costs from Ofcom's charge control model which is updated at five-year intervals:

- During the WFTMR period, regulated PIA prices were significantly higher than cost because of the unexpected holding gains – resulting in cost over-recovery by BT.
- During the TAR, under Ofcom's proposed approach, external PIA prices will be increased to recover the higher asset value resulting from those higher than expected holding gains incurred during the WFTMR period.
- The net effect of this, over both periods, is that the external PIA customers will have paid well in excess of the actual asset costs due to the unexpected holding gains.

102 It is clear that Ofcom's proposed approach is discriminatory; while it ensures neutral cost recovery for BT's internal customers over the long term, it results in external customers over-paying: firstly, due to prices being above costs in the short term, and secondly due to the enduring increase in asset value.

103 INCA requests Ofcom to change its proposed approach to setting prices and to reduce the brought forward value of PIA assets by the amount of holding gains created by the higher than forecast levels of inflation on asset values in the WFTMR price control model.

PIA Asset life assumptions

104 In its pre-consultation submission, INCA explained why it considers that fibre networks being rolled out by BT and Altnets have extended the remaining useful life of BT's existing PIA assets and that this should be reflected in resetting the remaining useful asset lives for the purpose of calculating depreciation. INCA proposed that the remaining asset lives for all duct assets should be reset to 40 years to reflect the assumption that the fibre network will be in use for 40 years (as per Ofcom's cost recovery model).

105 INCA is unaware as to whether Ofcom has considered INCA's proposal or the evidence on actual PIA asset lives and whether the roll-out of fibre will extend them.

106 Although in line with the minimum recommended by the European Commission (EC), the assumption for average duct life of 40 years is conservative and does not reflect the actual life of these assets, as acknowledged by the EC when it stated, "*This is normally **not less** [emphasis added] than 40 years in the case of ducts*."[31] Evidence supporting a longer life includes:[32]

- The French regulator assumes a life of 50 years[33]
- In a report for Nkom in Norway, Analysys Mason assumed an asset life of 50 years for duct, based on data received from Telenor on the average age of its assets34
- Europacable, an industry association representing European wire and cable manufacturers, suggest that the expected lifetime of duct assets is 50-60 years.[35]

107 The case for extending the life of duct infrastructure is even clearer when looked at from an asset lifecycle management perspective. Presuming that BT is managing its own network efficiently, it will consider the remaining life of existing duct when installing new subducts and fibre.

[31] European Commission 2013 recommendation on costing methodologies 2013/466/EU, paragraph 36
[32] https://gos-consulting.com/wp-content/uploads/2025/05/GOS-Consulting-review-of-the-use-of-asset-lives-in-regulatory-cost-modelling-22nd-April-2025.pdf
[33] Best practice for passive infrastructure access, WIK-Consult 2017 Table 2-1
[34] Modelling the costs of copper networks in the Norwegian context, Report for Nkom, Analysys Mason 15 December 2017, page 17
[35] Europacable-Guide-Expected-Life-Time-of-Passive-Optical-Infrastructure-21-Oct-2020, page 4

108 If the existing duct has a life of less than the life of the new infrastructure it is installing in that duct it would be economically rational to replace the main duct whilst installing new assets, rather than face replacement of both the existing and new assets before the end of the life of the new assets.

109 The fact that this is not happening demonstrates that the economic lives of the ducts are either substantially longer than Ofcom assumes or that the repairs effected when installing the new cables or subducts effectively extend the lives of those ducts.

110 INCA proposes that Ofcom seeks clarification from BT on its asset lifecycle planning for ducts. Ofcom should ask BT to confirm that it would not install new subducts for its own use or allow Altnets to install their own ducts and fibre in existing main duct that have a shorter life than the new assets being installed in that main duct.

111 INCA would expect BT to apply the same consideration of remaining asset life when selling PIA capacity to Altnets – it should ensure the main duct has a remaining life at least equal to the life of the fibre and subducts being installed – at least 40 years.

112 INCA therefore proposes that, rather than depreciating these PIA assets over the remaining accounting life (which could be just a couple of years) in its charge control model, the remaining asset life of all BT PIA assets is extended to 40 years from the start of BT's national FTTP program (2017) to reflect the extended economic life of the PIA assets resulting from the deployment of the FTTP network.

113 This will significantly reduce PIA costs, for example, duct installed 25 years ago currently has 15 years remaining. **Resetting this remaining life to 40 years will reduce depreciation charge for that asset by 62.5%.**

114 For pole assets, INCA recognises that, physically, poles can deteriorate and have a finite life in the way that properly maintained duct assets do not. However, INCA considers that the average remaining useful life of poles is likely to be significantly higher than the remaining asset life of pole assets in BT's fixed asset register. INCA would not expect BT to install its own cables, or allow Altnets to install their cables, on poles with a useful life of less than the life of the cable (at least 20 years) as this would imply the costly reinstallation of cables in the short term.

115 INCA therefore proposes that Ofcom requires BT to provide evidence from BT's asset management system on the remaining useful life of its poles. Ofcom should then reset remaining pole asset lives to align with data on actual expected remaining pole life. This is likely to significantly reduce pole attachment costs (for example a pole with an existing remaining accounting life of 8 years but an economic life of 20 years would mean the depreciation cost would be reduced by 60%). As INCA proposed for ducts, Ofcom should consider if BT's provision of pole PIA products with a shorter asset life than that of cable is fit for purpose and confirm that the costs of reinstalling Altnets' cables would be BT's responsibility.

INCA asks that the value of BT's PIA assets brought forward from the WFTMR period be reduced to ensure Altnets do not pay twice for assets as a result of unexpected and exceptional inflationary increases.

INCA asks that the period over which the remaining value of BT's PIA assets is recovered be extended to reflect the extension of the economic lives of those assets resulting from their re-use to support FTTP networks.

7.2.3 Designing the most appropriate PIA pricing structure

A simplified approach to PIA pricing

116 In its pre-consultation submission, INCA proposed a much simpler set of PIA products to those which are currently mandated by Ofcom: to consolidate various pole related prices into a single price and to consolidate spine duct, manhole and junction box prices into a single charge.[36]

[36] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraphs 30-51.

117 Ofcom is now proposing some simplification of charges – an aggregation of pole top equipment and 'cable up a pole' charges into the two pole attachment charges.[37] INCA supports this approach.

118 For the reasons set out in out pre-consultation submission, INCA considers that there are benefits to further simplification of PIA pricing, and requests that Ofcom considers whether further simplification could help reduce the reliance on arbitrary assumptions, simplify costing calculations and reduce processing, billing and administration costs for all parties.

Approach to calculating 'fair share' assumptions

Lead-in duct

119 In its pre-consultation Submission, INCA said that Ofcom's current fair share assumption for the benefits of using of lead-in duct of 90% was unfair because it failed to address the risk of over-recovery of costs in the event of customer churn. INCA proposed that the simplest way to address this would be to only charge CPs for Lead-in duct for customers to which they provided a service.[38]

120 Altnets are charged for lead-in ducts irrespective of whether or not they have a paying customer using that lead-in duct (i.e. when a connected customer churns off the Altnet's network). An Altnet can remove its lead-in cable to avoid paying for the lead-in duct, but that is prohibitively expensive, and so, in practice, Altnets are leaving their cables in and paying for the lead-in duct even when the customer churns off the network. The previous 'fair share' of 90% was based on expected churn over 2021-26. Ofcom is now proposing to base its fair share assumption "*using a long-term forward-looking approach*" which results in a fair share of 46%.[39] Ofcom has not explained the underlying churn assumptions of this calculation. The lack of transparency is troublesome - INCA requests that Ofcom publishes those details to enable stakeholders to comment.

[37] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.36.
[38] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraph 54.
[39] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.56.

121 INCA remains of the view that a simpler and more transparent approach to addressing churn and potential over-recovery of costs is simply not to charge Altnets for lead-in ducts which are not being used to serve customers.

Single bore duct and single pole attachment

122 In the WFTMR, Ofcom set the price for single bore spine duct at 50% of unit cost on the basis that only one Altnet is likely to share that duct with BT.

123 In its pre-consultation submission, INCA said that the take-up assumption for single-bore spine duct in a benefits-based approach should be set at the average market share expected by users of the duct based on evidence from PIA users' business plans. [40] INCA also noted that Ofcom's assumption of 50% was inconsistent with its assumption of long-term take-up of 33% using its assessment of Altnet viability. [41]

124 Ofcom is now proposing to update its fair share calculation based on Altnet's current network build plans which Ofcom states suggest that +/-24% of single bore duct will have more than one Altnet using that duct (and so would have a 33% fair share) and a very small number of cases of more than two Altnets using the same duct). Applying a weighted average of the fair shares and assumed network build, Ofcom calculate a fair share of "c.46%" which it proposes to apply. [42]

125 Ofcom is also proposing to use this same fair share assumption for single-end -user pole attachments on the basis that "*the same rationale applies*"[43]

126 INCA is pleased that Ofcom has updated its approach to calculating the fair share on single bore duct to reflect expected Altnet build. However, in some cases, due to there only being a 25mm subduct product option for PIA users, Altnets have had to install multiple sub-ducts in a single bore duct so are paying multiples of the fair share price for no additional benefit. This also means that BT will be over-recovering the costs for these

[40] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraph 67.
[41] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraph 63.
[42] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.53.
[43] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.58.

ducts and so INCA proposes that where this is the case, Altnets should only be charged for a single sub-duct installed in a single bore duct.

Multi-bore duct, Joint Boxes and Manholes

127 Ofcom is not proposing to change its fair share assumptions for multi-bore ducts - an approach which INCA supports (as stated in its pre-consultation submission).[44,45]

Pricing equivalence between BT and Altnets

128 In its pre-consultation submission, INCA argued that the current approach to PIA pricing (which resulted in BT's internal use of PIA being priced on a different basis to third parties) was discriminatory and inconsistent with Ofcom's stated aims of creating a level playing field.[46] Ofcom's approach had the perverse effect of generating negative charges for BT's own use of PIA inputs in FY23 in BT's RFS (because of the impact of current cost accounting adjustments, as explained above in the PIA costing section).

129 INCA proposed that Ofcom change its approach to ensure that BT's internal customers paid the same price as Altnets.

130 In the TAR Consultation, Ofcom disagrees with this proposal on the basis that such an approach would not enable BT to recover its costs where infrastructure is not shared.[47]

131 Ofcom argues that if BT were to pay PIA prices for infrastructure assets which are not shared it would not recover its own costs. It follows, therefore, that it would be reasonable for BT to pay the same prices as external users where the asset is shared.

132 For shared assets, INCA proposes that Ofcom requires BT to apply the same price for internal and external PIA use. INCA accepts that this approach could mean that there was a notional under-recovery of costs of shared assets in the RFS to the extent that there was a difference between Ofcom's actual and long-term assumptions for Altnet roll-out.[48] This can however easily be addressed by setting the volume of BT's internal

[44] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.48.
[45] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraph 70.
[46] INCA, PIA Pricing Submission to Ofcom, July 2024, Paragraph 73.
[47] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 4.3.
[48] It is notional because BT has sufficient pricing flexibility to ensure full cost recovery of PIA costs across its portfolio irrespective of any cost allocation issues in the RFS

use for shared assets to a level such that the total internal and external volumes match Ofcom's fair share assumptions (e.g. if Ofcom's FCM modelling implies that there would be 6 Altnets using a 3+ bore duct (and so paying 6 X 10% shares), then BT's volume would be assumed to be 4 X 10% shares)..

133 For assets that are not shared, Ofcom's approach of setting an internal price to reflect actual costs plus a return on capital provides no information on BT's actual profitability or actual recovery of costs – the reported return is simply a balancing item. INCA notes that the practice of setting notional internal prices to generate a particular level in regulatory financial accounts was criticised by Ofcom when it updated the regulatory financial reporting statements for KCOM:

> *The Return on Capital employed (ROCE) % is 13% on MCE and has been since 2005. This is because the internal revenue figure is fixed to achieve 13% rather than KCOM recording the actual volumes and revenues of services sold internally.* ***The returns and internal revenue are therefore neither reliable or transparent.*** *Therefore, we do not consider that the schedule in its current form is relevant as it* ***does not give a true reflection of the returns KCOM is making*** *[emphasis added].*[49]

134 The same criticism applies to the current approach to reporting returns on BT's PIA products: it is "*neither reliable nor transparent*".

135 In INCA's view, a better approach would be for BT to charge internal users a cost-based price determined by Ofcom as part of the charge control using the same cost model as used to determine prices for internal and external users of shared assets. This would then allow for full cost recovery for assets which are not shared. The RFS should show revenues and costs for shared and non-shared assets separately to provide transparency around BT's cost recovery and profitability of PIA.

136 INCA considers that Ofcom's argument that its approach is necessary to ensure that BT is allowed to recover its costs is not correct. Ofcom could instead calculate cost-based prices for the period of the charge control for BT's internal consumption of PIA assets

[49] Ofcom, 7 August 2018, *Consultation on proposed regulatory financial reporting directions for KCOM*, paragraph 4.46

not shared with third parties using the same cost model as used to determine prices for shared assets.

137 In summary, INCA remains concerned that Ofcom's approach to applying different bases for cost recovery and pricing between internal and external users is discriminatory and lacks transparency. INCA therefore proposes that Ofcom requires BT to apply a two-part approach to pricing for BT's own use of PIA inputs:

- For shared PIA assets used by both BT and a third-party, BT are charged the same price (calculated in line with Ofcom's proposed 'fair share' approach).
- For PIA assets used exclusively by BT, a regulated cost-based price determined by Ofcom is applied for the period of the charge control using the same cost model as used to determine prices for shared assets.

138 This approach has the following benefits:

- It directly addresses the issue of discriminatory pricing between BT and Altnets for using the same asset.
- Prices can readily be forecast using Ofcom's cost model.
- It provides for full cost recovery by BT.
- It can readily be incorporated into BT's RFS to provide stakeholders with transparency around BT's costs and financial performance in the PIA market.

INCA asks that internal and external users pay the same price for using any shared PIA assets, using Ofcom's 'fair share' assumptions. Ofcom should then use its forecast model to calculate a different price for assets that are not shared to enable cost recovery.

External PIA prices should be discounted to reflect cost of consuming PIA

139 In its pre-consultation submission, INCA proposed that BT should provide a discount to Altnets in the event it fails to meet operational performance metrics.[50]

[50] INCA, PIA Pricing Submission to Ofcom, July 2024, Section 1.6.

140 We describe these in section 7.2.1 of this document.

141 The high level of costs Altnets incur in managing PIA procurement and ongoing consumption is a direct result of the operational difficulties and very high levels of administration they have to deal with in consuming PIA. These costs are not incurred by BT's own downstream businesses and therefore contribute to an unlevel playing field.

142 INCA has surveyed its members' costs of managing PIA procurement and found that the cost of managing PIA procurement across 14 Altnets with a total annual PIA bill of £34m was 16% (on a weighted average basis) of direct PIA costs

143 Approximately 50% of admin time spent by Altnets on PIA procurement management related to new build and initial orders. This burden should reduce over time as the level of network roll-out reduces. However, unless BT significantly improves its processes, Altnets will continue to suffer a cost disadvantage resulting from the costs of dealing with managing rental payments and new connections. INCA therefore proposes that Ofcom applies a discount of 8% (i.e. 50% of 16%) to BT's PIA rental charges to ensure Altnets are not disadvantaged by the high costs of managing PIA procurement and to incentivise BT to improve its processes.

Applying copper dividend to reduce PIA costs

144 Press commentary has suggested that BT may recover up to £1bn from sale of scrap copper.[51] In INCA's pre-consultation submission, we proposed that any net profit from the sale of scrap copper should be distributed to consumers (who have already 'paid' for this copper) and not returned to BT shareholders as a 'windfall gain' and that this should be done by lowering the cost of PIA asset components which are used across all of BT's network services.[52]

145 In the TAR Consultation, Ofcom explains that it has reduced forecasted costs for copper legacy products by BT's forecasts of the expected net benefit of the sale of scrap copper.[53] The amount of net proceeds from the sale of scrap copper in Ofcom's model

[51] **How BT is set to pocket £1bn from the copper wire in landlines when they switch us to digital phones** 18October 2023 This is money.co.uk website.
[52] INCA, *PIA Pricing* Submission to Ofcom, July 2024, Section 1.7.
[53] Ofcom, TAR Consultation, 20 March 2025, Annexes A14.144.

is redacted in the consultation and so it is not possible for stakeholders to consider whether BT's forecast is reasonable or not.

146 INCA notes that in its base case cost recovery forecasts for copper line services (i.e. MPF and WLR) including the proceeds of scrap copper, Ofcom forecasts that BT will over-recover costs (including cost of capital) by £296m over the charge control period.[54]

147 It is therefore clear that Ofcom forecasts that BT will retain up to £296m of windfall gains from the sale of scrap copper. This is clearly unfair to consumers and only serves to strengthen the financial advantages enjoyed by BT across many downstream markets.

148 If Ofcom were to pass the copper dividend on to consumers by reducing the wholesale price of legacy copper products, this would weaken the case for investment by BT and Altnets in fibre and ultimately deliver worse outcomes for consumers. Also, consumers who had previously bought copper services but migrated to fibre would not benefit from lower copper product prices.

149 A much fairer outcome is that proposed by INCA in our pre-Consultation submission - the net proceeds of copper recovery are passed on to all consumers via lower PIA prices (paid by BT's downstream business and Altnets).

INCA asks that Ofcom offset the expected copper dividend against PIA asset costs. This will distribute the copper dividend across all consumers.

BT's RFS

150 In INCA's pre-consultation submission, we requested Ofcom to address problems of transparency in the RFS reports for the PIA markets, primarily resulting from the different approaches to pricing of PIA services for internal and external use. [55]

151 INCA is pleased that Ofcom is proposing to require BT to publish additional information on the attribution of BT's own consumption of PIA costs. [56] However, as explained above,

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[54] TAR Consultation, Annexes 1-22, Table A14.6 (Base Case over-recovery of MPF/SMPF (Area 2: -£43m+ Area 3:-£4m = -£36m plus WLR (Area2: £269m + Area £:£63m = £332m), Total = £296m

[55] INCA, *PIA Pricing* Submission to Ofcom, July 2024, Section 1.10.

[56] Ofcom, TAR Consultation, 20 March 2025, Vol 6 Paragraph 4.75.

we consider that a non-discriminatory approach to pricing of the use of shared PIA assets, and a price control for non-shared assets would be less discriminatory and provide for greater transparency in the RFS.

Ancillary Services

152 PIA Ancillary services include power, accommodation at BT's exchanges and a database containing details of OR's physical infrastructure. They represent a significant proportion of Altnet's total PIA spend (19% in 2023/24).

153 During the FTMR period, Ofcom applied a basis of charges obligation on BT which required that:

> *"the price for each PIA ancillary service should reflect any incremental external charges paid by BT (e.g. the cost of external labour used to provide the ancillary). The price can also include an allowance for any incremental costs incurred by BT when providing ancillaries (e.g. BT's internal labour and planning costs relating to PIA ancillaries), including an appropriate mark-up for common costs (e.g. general overheads) and a return on capital employed (where applicable)."*[57]

and

> *"To ensure that prices reflect the cost of provision, we consider that total costs associated with PIA ancillary services under the basis of charges obligation should be consistent with the operating and capital costs associated with the relevant PIA ancillaries, i.e. we expect prices for PIA ancillaries to be similar to FAC."*[58]

154 BT's actual returns for its PIA ancillary services during the FTMR have been significantly higher to the extent that it can in no way be seen as 'similar to FAC', as shown below.

[57] WFTMR Vol 4, Paragraph 5.13
[58] WFTMR Vol 4, Paragraph 5.14

BT's PIA Ancillary Servies Returns

Ancillary Service £m	2022/23	2022/23 (Restated)	2023/24
Revenues	1.5	3.5	6.1
Costs	0.8	1.2	2.0
MCE	0.2	-4.6	-4.2
WACC	7.0%	6.8%	6.8%
ROCE	0.0	-0.3	-0.3
FAC Cost	0.8	0.9	1.7
Excess of Revenue over FAC	0.7	2.6	4.4
Excess of Revenue over FAC (%)	88%	289%	259%

Source: BT's RFS

155 In the WFTMR Ofcom said:

> *"For compliance monitoring purposes, we will review this information to ensure that charges are aligned to costs and monitor trends in cost. Where we observe large and/or unexpected variances or movements, we will investigate as appropriate and if we find that BT is in breach of the basis of charges obligation, we will consider what enforcement action to take."*[59]

156 Given the returns BT has made on its PIA ancillary services it is clear that neither it nor Ofcom have taken these remedies seriously, and as a result, Altnets have been materially overcharged for ancillary services.

157 In the TAR, Ofcom is proposing the same ineffective remedy, without suggesting an approach to compliance monitoring.[60]

158 In justifying its approach Ofcom said: "*a basis of charges obligation is more appropriate and proportionate than a charge control given the current and expected future size of these*

[59] WFTMR Vol 4, Paragraph 5.18
[60] Ofcom, TAR Consultation, 20 March 2025, Vol 4 Paragraph 5.11.

ancillary charges." INCA strongly disagrees with this: In 2023/23, PIA ancillary services comprised 19% of Altnet's total PIA spend – a significant proportion.

159 INCA considers that the returns BT has earned on its PIA ancillary represent a fundamental failure on the part of BT to ensure it complies with its regulatory obligations and on the part of Ofcom to monitor and enforce its remedies.

160 For the TAR Period, INCA proposes that Ofcom applies a charge control for PIA ancillary services with an immediate reduction in prices to FAC levels.

INCA asks that Ofcom imposes a price control on BT's PIA Ancillary Services with a starting price adjustment down to FAC levels.

BT's RFS

161 In its pre-consultation submission, INCA requested Ofcom to address problems of transparency in the RFS reports for the PIA markets, primarily resulting from the different approach es to pricing of PIA serves for internal and external use. [61]

162 INCA is pleased that that Ofcom is proposing to require BT to publish additional information on the attribution of BT's own consumption of PIA costs. [62] However, INCA considers that a non-discriminatory approach to pricing of the use of shared PIA assets, and a price control for non-shared assets would be less discriminatory and provide for greater transparency in the RFS.

8 The wholesale local access market

163 INCA supports Ofcom's overall approach to the WLA market. During the WFTMR period, Altnets demonstrated that there is considerable scope for network competition across the WLA market and Ofcom's overall approach is supportive of that position.

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[61] INCA, *PIA Pricing* Submission to Ofcom, July 2024, Section 1.10.
[62] Ofcom, TAR Consultation, 20 March 2025, Vol 6 Paragraph 4.75.

164 INCA supports Ofcom's conclusion that there is not sufficiently established network competition to BT at this time (or likely during the TAR period) to define an WLA Area 1 market.

165 INCA is, however, very concerned about how Ofcom proposes to define and regulate the WLA Area 3 market. INCA considers that Ofcom's approach to defining and regulation in this market is arbitrary and will have material negative unintended consequences.

8.1 WLA market definitions

166 The wholesale local access (WLA) product market covers both copper- and fibre-based wholesale broadband access products. INCA agrees with Ofcom's definition of the WLA market as summarised below:

167 The wholesale local access market includes:

a) all fixed networks;

b) all speeds; and

c) residential and business services.

But excludes services in the LLA market, and wireless services

168 INCA's reasoning for agreeing with Ofcom's product market definition is set out in its pre-consultation submission on relevant markets.[63] To reflect different competitive conditions in the WLA market in different parts of the UK, Ofcom has sought to identify sub-national geographic markets within the WLA market. They are:

- WLA Area 1 – to include locations where BT is facing effective competition by two or more established providers;
- 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

[63] https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-2026_tar-market-definitions.pdf?v=392831

- 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.

8.1.1 Area 1

169 Ofcom found that no locations qualified to be included in Area 1. INCA agrees with that conclusion. INCA agrees that Area 1 should be defined based on **existing** and not prospective or planned network and market presence.[64] Further, as set out in INCA's pre-consultation submission on market definitions,[65] there must be **at least** two rival and well-established networks.

170 INCA further supports Ofcom's view that rival network presence alone is not sufficient to conclude that a location is subject to material and sustainable competition. For competition to be genuinely material, competitors must have become commercially established with sufficient market presence and take-up across their network coverage to be able to compete robustly against an unregulated incumbent.

171 Ofcom's market share analysis, which shows BT still exceeding 50%[66], clearly supports the conclusion that no Area 1 market exists today, and that such a market is unlikely to emerge in the near future. INCA considers, however, that it is important for Ofcom to offer some transparency as to what it considers to be the criteria to be applied to identify locations that form part of the Area 1 market.

172 INCA is concerned that the definition applied when the Central London Area (CLA) in the LLA (then BCMR) was first deregulated (primarily the presence of networks, with little or no regard as to whether those network operators had sufficient market share to effect a competitive constraint on BT and/or were sufficiently established to be able to withstand aggressive and targeted price competition by BT) should not be applied again in any market.

[64] TAR V2 Paragraph 4.94 and 4.96.
[65] https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-2026_tar-market-definitions.pdf?v=392831
[66] TAR V2 Paragraph 4.100 – 4.102.

173 For defining Area 1 in the WLA, Ofcom has indicated that it is looking for at least two network operators the be 'present' and 'established' but has offered no indication as to how it would interpret the term 'established'.

174 Regulatory transparency is a critical element in a market where investors can have confidence that they can anticipate the market conditions that will apply where new network investments are made. For investment in new full-fibre broadband (and leased lines) networks to flourish, investors must be able to anticipate when regulatory constraints may be removed from the incumbent market player – that is when the regulator determines that the incumbent no longer holds a position of significant market power (SMP) or dominance.

175 Whilst it is fully understood and respected that Ofcom cannot provide specific measures that would qualify an area as Area 1, INCA considers it important that Ofcom provides transparency on the parameters it plans to consider and also Ofcom's view on the thresholds set by regulators in other countries[67]. The complete absence of transparency regarding the measures to be applied to identify a location as Area 1 is extremely unhelpful to Altnets and their investors and contributes to regulatory uncertainty in the market.

8.1.2 Areas 2 and 3

Ofcom's objectives for Areas 2 and 3

176 Before designing its Area 2 and Area 3 criteria for the WLA, Ofcom has set out its objectives for these two markets. In summary these are

- to promote investment in full-fibre networks by BT and others in Area 2 and
- to promote investment in full-fibre networks by BT only and protect consumers in Area 3.[68]

[67] See the BT TAR pre-consultation submission paragraph 4.13: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/bt-group.pdf?v=392822

[68] TAR V1 Paragraphs 2.41 and 2.42.

177 As set out above, INCA fundamentally disagrees with Ofcom's proposed objective for the WLA Area 3 market and considers that it is not based on transparent evaluation of other potential objectives and how they could best enable Ofcom to protect the interests of consumers and the UK economy. This will be addressed in more details in the remedies section of this paper.

INCA asks that Ofcom explains the rationale behind its regulatory objective for WLA Area 3 and what alternatives were considered.

Defining the boundary between Areas 2 and 3

178 INCA does not believe that it is appropriate to consider Ofcom's analysis and proposed boundaries for Areas 2 and 3 separately. This is because they are clearly inter-linked through the fact that Ofcom appears to consider the definition of Area 3 to be simply 'what is not included in Area 2' (as no locations qualify as Area 1). INCA considers this to be insufficient for the purpose of identifying enduring geographic markets and that Ofcom needs to clearly define the characteristics of Area 3 locations, so that these characteristics can be used to determine the objectives and remedies that may be appropriate and proportionate in that market.

179 Geographic markets are defined to provide the regulator the opportunity to undertake separate SMP analysis and (if SMP is found in some or all of the geographic markets identified) impose different remedies in areas which are (within the boundaries of each geographic market) sufficiently homogenous in terms of competition and, which (between the different geographic markets) present enduring and materially different competitive conditions.

180 In defining Areas 2 and 3, Ofcom has based its approach on the likelihood of the emergence of material and sustainable competition to BT. INCA, however, challenged this criterion in its responses to the WFTMR, arguing that it is not the appropriate basis for delineating geographic markets. While INCA fully acknowledges that the ultimate purpose of market definition is to assess SMP and, where necessary, to impose proportionate remedies to prevent its abuse, it does not agree that markets should be

defined with reference to the incumbent provider. Instead, INCA advocated - both during the WFTMR and now - for a market definition rooted in economic analysis that identifies where network competition is likely to be economically viable. Under such an approach, regulation could be tailored to promote infrastructure-based competition where it is sustainable, and competition **for** the market where it is not. This would incentivise early deployment by operators in single-network areas, benefitting consumers through first-mover advantages.

181 Were Ofcom to adjust its approach to the definition/regulation of the WLA Area 3 market to reflect the above, then, and subject to a further review and assessment of Ofcom's proposals, INCA would be, in principle, content to support this. Were Ofcom not to modify their approach, then its response directly engages with the specific criteria and remedies Ofcom has proposed. Nonetheless, INCA maintains that Ofcom's current approach unduly favours BT and ultimately does not serve the best interests of UK consumers. In the remainder of this response, INCA assumes that Ofcom has not modified its approach and sets out its proposals accordingly.

182 Whilst promoting network competition was also the general objective in the WFTMR, Ofcom has departed from the approach to geographic market definition taken in the WFTMR, where Ofcom looked for the presence (or forecast presence during the WFTMR period) of multi-service-networks (MSNs) of a sufficient size to be likely to exercise competitive constraints on BT.

183 Although Ofcom seeks to achieve the same outcome in the TAR (identifying where there is likely to be material and sustainable competition to BT), it has sought to anticipate the impact of consolidation in the Altnet sector and set the market boundary in accordance with its expectation of which Altnets would be likely to become part of larger consolidated entities.

184 It is INCA's understanding that, given the likely consolidation process in the Altnet sector in the coming years, Ofcom has sought to take a forward-looking view of how Altnets, that Ofcom might today consider to be too small to (on their own) exercise effective a competitive constraint on BT's behaviour, may do so as part of larger future consolidated entities. Ofcom has set the delineator at providers that have funded plans to build

network passing 50,000 or more premises, stating that smaller operators are unlikely to be attractive M&A targets (due to cost of acquisition) and therefore less likely to become parts of larger consolidated entities.

185 Whilst INCA agrees with Ofcom that it would be wrong and short-sighted to not acknowledge the collective impact Altnets have on BT, the approach chosen by Ofcom appears to be overly arbitrary. Ofcom's approach fails to account for:

- Altnets that are below 50,00 premises, but are nevertheless attractive acquisition targets
- Potential mergers between smaller Altnets forming credible competitors
- The role of aggregation platforms, amplifying the market presence of smaller networks.

186 INCA considers that using the size of an operator as the most important assessment criteria for M&A assessment is wrong and considers that the following criteria are of equal, and sometimes greater, importance:

- Proximity of network assets to existing network of the acquirer,
- Synergies with BDUK contracts,
- Common suppliers across a range of aspects including network elements and OSS/BSS systems,
- Commonality in investors,
- Complementarity of business models,
- Opportunity for new geographic or product market entry

187 Further, INCA considers the 50,000 premises threshold to be unscientific and arbitrary to the point of being inappropriate and misleading. It is also not clear how Ofcom is applying this threshold. Does it include all planned build of operators that will reach or surpass 50,000 premises by end of March 2031, or only those deployment plans that are presently fully funded (six years in advance of the cut-off date)? If the latter, then it is clear that Ofcom will exclude deployments by some Altnets that will be raising financing during the TAR period or even between now and when the TAR takes effect.

188 Detailed analysis of Ofcom's postcode sector listings for Areas 2 and 3 can help individual operator understand which of their planned builds Ofcom has included, and which have

been excluded. This may be a reasonable approach to be expected by large operators, but significantly less so by small providers for whom Ofcom's TAR proposals are largely impenetrable. It is, therefore, unlikely that individual smaller Altnets will correct Ofcom's assumptions of whether their deployment plans would qualify for inclusion in the WLA Area 2 market.

189 When assessing Altnet build plans for the allocation of operators and their current versus future coverage between Areas 2 and 3, it is critical that Ofcom applies the same criteria to the Altnet plans as when assessing the planned coverage of BT.

190 INCA is concerned that it has on many occasions heard Ofcom state that Altnets need to accept that BT will build full-fibre everywhere. It is not clear how Ofcom has gained that certainty. All statements INCA is aware of from BT caveat its build ambitions with the need for favourable regulatory conditions. It seems to INCA that Altnets have to overcome an inherent distrust and scepticism from Ofcom whereas BT benefits from almost blind trust, even when based on heavily caveated statements about build ambitions.

191 Based on our review of Ofcom's threshold for separating Area 2 and 3, where Ofcom will either promote investment by BT and others or by BT only respectively, and in light of the margin by which Ofcom now acknowledges that it misjudged the Area 2 and 3 boundary in the WFTMR, INCA has profound concerns that Ofcom's approach is arbitrary and inappropriate.

Area 2 and 3 boundary relationship with BDUK funded network build

192 INCA notes that the BDUK-funded network build is distributed across Areas 2 and 3. This is a direct consequence of Ofcom's choice of boundary definition but does not appear to reflect the assessment leading to the public funding award, namely that the BDUK build areas are unlikely to be able to financially support network competition and may not even be economically viable for a single full-network deployment. This apparent lack of consistency between Ofcom and government assessments and interventions serves to further underline the likely inappropriateness of Ofcom's arbitrary choice of boundary definition.

INCA's assessment of Ofcom's Area 2 market definition

193 INCA does not believe that Ofcom's proposed boundary definition between areas 2 and 3 can deliver clearly distinct areas that comply with the need for geographic markets to reflect enduring and material differences between competition conditions in different locations, nor the need for homogeneity within each geographic market.

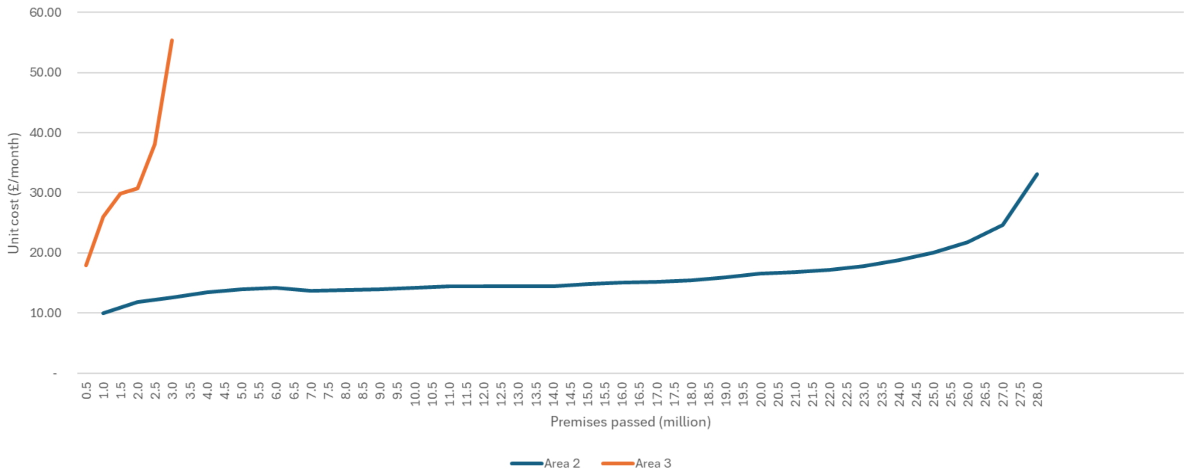
194 Altnets have demonstrated consistently for more than five years that they are willing and able to build out full-fibre networks in rural and other less economically attractive locations. Many such Altnets have grass-root origins and have been created to meet the needs of the local communities not being adequately served by existing providers. Some such Altnets may remain small and local, others may merge between them to create larger operators specialising in specific kinds of demographics, whilst yet others will likely become absorbed into larger national or regional operations.

195 INCA does not believe that there is evidence to support Ofcom's proposed boundary definition between operators that are likely to be absorbed into larger operations and those that are not. Instead, INCA believes that Ofcom should promote investment by all providers in all parts of the country and, where necessary, design remedies that enable sufficient flexibility for the SMP provider to not be subject to regulatory intervention where it faces competition.

196 Ofcom's starkly different objectives for Areas 2 and 3 amplify the impact of the proposed arbitrary boundary definition. INCA strongly urges Ofcom to reconsider the justification for defining a market for Area 3 and, if concluding that Area 3 is necessary, review its Area 3 objective to avoid the cliff-edge effect currently proposed between the two markets.

197 As part of reviewing Ofcom's fibre costing model (FCM), INCA has reviewed the cost outputs from that model in Areas 2 and 3. The diagram below shows the outcome:

Figure 2: Variation in unit cost over the WLA Area 2 and 3 postcode sequences[69]



Source: Analysis by INCA of Ofcom's fibre costing model.

198 As can be seen from the graph above, around 2m premises currently categorised as WLA Area 3 (where Ofcom promotes investment by BT only) are within the same cost range as the nearly 28m premises Ofcom has categorised as WLA Area 2. This further emphasises that Ofcom's approach to defining the WLA Area 2 market (and by default the WLA Area 3 market) is arbitrary and does not stand up to any form of rational scrutiny.

INCA asks that Ofcom either:

- **Redefine WLA Area 3 based on rational and transparent parameters, for example where the economics cannot support more than one network., or**
- **Remove the WLA Area 3 market (that gives preference to BT Openreach)**

[69] Analysis performed using Ofcom's targeted REO scenario with premises deployed set to 500k (Area 3) or 1m (Area 2)

8.2 WLA remedies

199 This section addresses the WLA-specific remedies proposed by Ofcom in the consultation and other remedies INCA recommends that Ofcom consider in order to rectify or prevent abuse of market power in this market.

200 Ofcom's proposals in relation to geographic discounts and other commercial terms that could deter build or take-up of competitive fibre networks are applicable across the WLA and LLA markets. These proposals are addressed separately later in this document.

8.2.1 WLA non-price remedies

201 INCA is in general agreement with Ofcom's proposals for access and non-discrimination remedies in the WLA markets.

202 INCA addresses copper retirement and the treatment of geographic discounts and other commercial terms separately later in this document.

8.2.2 WLA price-related remedies

203 INCA agrees with Ofcom's broad approach in proposing pricing continuity and with the proposed retention of the ban on geographic price discounts, extended to apply to rental and connection charges and to retail inducements.

204 INCA welcomes Ofcom's recognition of the risks of BT enacting a price squeeze between its PIA prices and the FTTP prices, and the proposed regulations to address this.

205 In summary, Ofcom's proposed pricing remedies in the WLA market are:

- Flat prices in real terms for the MPF and FTTC anchor product (80/20 Mbps), and for the FTTP anchor product (also 80/20 Mbps) in areas where copper is not available.
- Starting prices for the anchor to be based on BT's discounted prices at the start of the TAR period.
- A fair and reasonable pricing obligation on all WLA product speeds, with guidance that this means that BT should not set prices which equate to a price squeeze between the weighted average FTTP price and the PIA prices, assessed against REO costs. Ofcom's

Fibre Costing Model (FCM) is one of the indicators that Ofcom would use in this price squeeze assessment.

Fibre costing model

206 The Fibre Costing Model (FCM) is an important part of Ofcom's toolbox in setting price-related remedies for the WLA markets.

207 As in the WFTMR, Ofcom has used its FCM to estimate the costs of an entrant deploying a fibre network in WLA Area 2. The resulting unit costs are to be used to check that the proposed charge control provides a set of prices which allow a reasonably efficient operator to profitably offer a range of full-fibre services to the market. The model provides a reference for assessing BT's price levels against the fair and reasonable pricing obligation, including the level of discounts offered and the potential for price squeeze.

208 For the TAR, certain elements of the FCM have been updated. These include:

- network element unit costs, opex costs;
- WACC assumptions from 2026 onwards; and
- connection charge assumptions and the Area 2/Area 3 definitions.

Apart from these changes, the FCM used for the TAR is broadly unchanged from that used for the WFTMR.

PIA lead-in costs

209 The FCM has been updated to reflect the proposed changes to the PIA pricing regime; this includes the lead-in ducts where the price has been reduced to reflect the fact that an Altnet is likely to continue paying the rental charge after a customer churns off its network.[70] In the WFTMR, Ofcom used a cost per metre to determine the costs of lead-in duct in the FCM, but for the TAR model it has changed the approach to use the PIA rental price directly, calculating the total cost from the number of connections. This now aligns with the BT's current pricing structure for the simplified lead-in duct which came into effect in 2020.

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[70] TAR, Volume 4, Paragraph 4.54.

210 INCA has identified an error in Ofcom's approach; the FCM multiplies the number of new connections in a particular year by the rental price to determine the annual cost. This materially understates the true cost of lead-in duct to Altnets, as they are required to pay an annual rental to BT, rather than a single one-off charge for each new connection.

211 To determine the impact of this error, INCA has made a correction to the FCM, whereby the cumulative total of new lines is used to determine the costs. The table below shows the impact of this correction on the final outputs of the model.

Table 2: Impact of correcting lead-in duct assumptions on FCM unit costs (£/month)

	FCM original (from non-confidential FCM)	FCM original (from confidential FCM)	FCM corrected (from non-confidential FCM)	FCM corrected (implied result from confidential FCM)
Entrant (Base case)	£14.15	£14.49	£14.67	£15.02
Entrant (Targeted)	£10.20	£11.22	£10.75	£11.82
Entrant (Large scale)	£16.75	£17.03	£17.24	£17.53

Source: FCM, INCA analysis

212 As INCA does not have access to the confidential version of the FCM, which was used to generate the unit costs quoted in the TAR, this correction has been made in the published, non-confidential version of the FCM which includes some randomised inputs. These results have therefore been scaled proportionally by the ratio of the confidential to non-confidential results to give an indication of the likely final impact.

213 INCA suggests that Ofcom should adopt this correction to the FCM so that the PIA opex reflects the realistic lead-in costs incurred by Altnets; this is especially important given the FCM's role in assessing fair and reasonable pricing through the assessment of a potential price squeeze between the PIA cost and the price charges by BT for downstream products. In its further analyses described below INCA has assumed this correction as a starting point.

INCA Independent Networks Cooperative Association

INCA asks that Ofcom correct the error in PIA Lead-in costs in the FCM.

Geographic footprint

214 In its pre-consultation submission on the FCM structure,[71] INCA noted that the assumed geographic network footprint is an important parameter, and that new entrant build profiles would not generally follow the pattern of BT's exchange areas as assumed in the FCM. INCA suggested that the FCM model for the TAR should adopt an improved methodology in this respect, and that historical deployments to date should be included using actual data from operator footprints.

215 Despite the concerns raised by INCA and other stakeholders, Ofcom does not propose to alter its approach to modelling the geographical footprint of entrant operators, arguing that entrants adopt a variety of different network and business models, and that the aim of its modelling is to reflect the costs of a reasonably efficient hypothetical operator (REO).

216 INCA agrees with Ofcom that the FCM should model the costs of representative hypothetical REOs rather than adopting an approach which is specific to any individual operator. However, it remains vitally important that the hypothetical models are chosen to reflect plausible scenarios in which entrant operators are able to provide competitive networks across WLA Area 2.

Ofcom's approach to defining a REO footprint

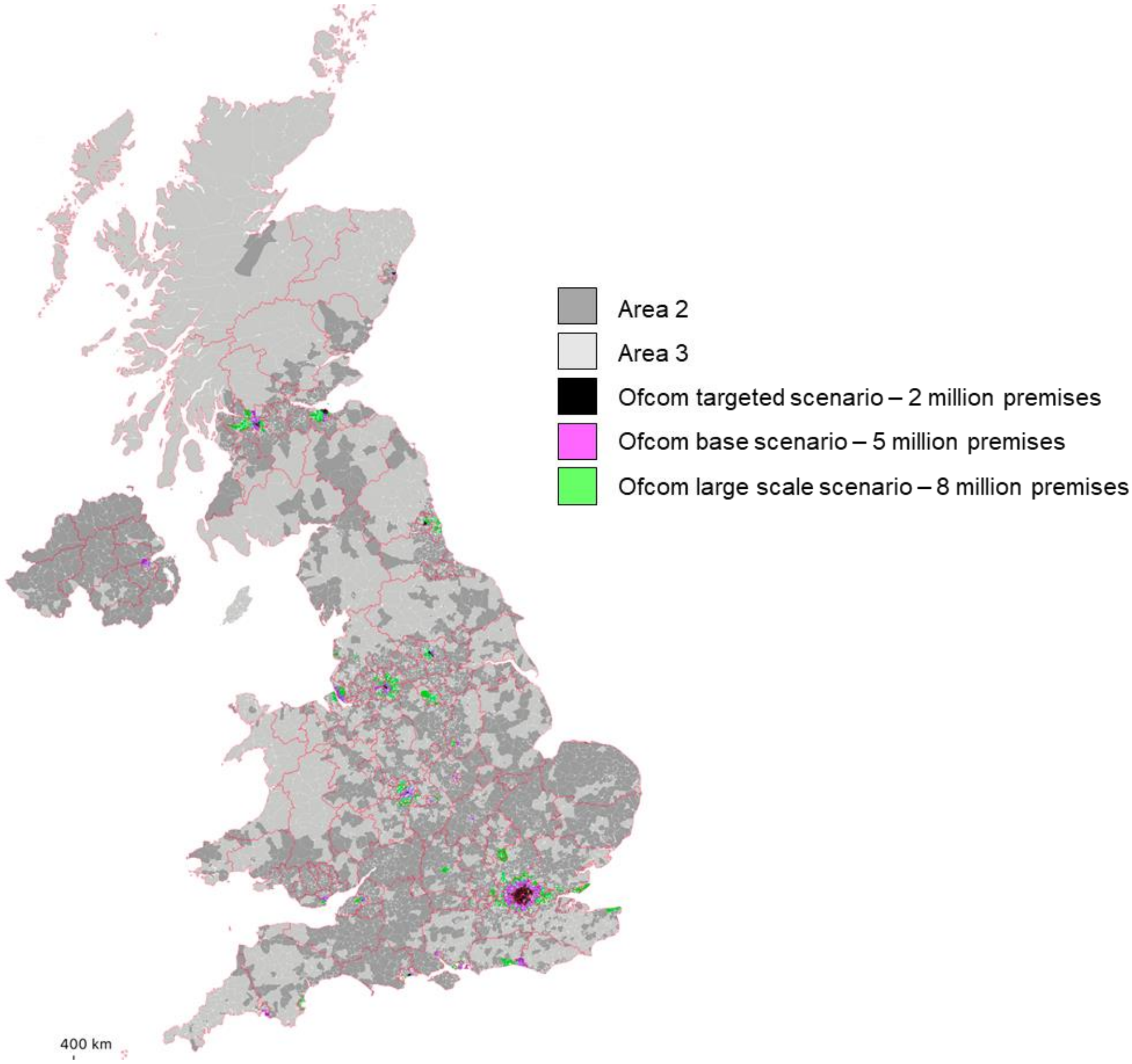
217 The WLA Area 2, as defined in the TAR, comprises almost 28 million premises, for which Ofcom assumes that competitive network build could present material and sustainable competition to BT. Ofcom's approach to selecting the relevant geographical areas to be modelled in the FCM is to order the exchange areas in ascending cost order, using a

[71] INCA – FCM structure submission June 2024, para 43. https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca---fcm-structure.pdf?v=392830

proxy for network build cost, and to assume that the entrant operator will build its network in sequence starting with the least costly exchange areas.

218 In the following diagram, INCA has plotted the postcode sectors used in Ofcom's REO entrant scenarios, along with the Area 2 and Area 3 definitions.

Figure 3: Geographic footprints of Ofcom's REO entrant scenarios



Source: Ofcom WLA Area definitions, FCM, INCA analysis

219 The diagram shows that, for Ofcom's targeted scenario, which assumes a network build to 2 million premises (the locations shown in black on the map above), the vast majority of the build is in postcode sectors in central London, but it also includes small numbers of postcode sectors in other cities across the country – an extremely unlikely deployment approach for an Altnet. Ofcom's base case scenario (5 million premises – the locations

shown in black and lilac above) extends the targeted scenario into Greater London and more disconnected parts of the country. As the sequence remains in order of ascending cost, the build remains focused on low-cost areas.

220 In the case of the large-scale entrant scenario, the REO operator is assumed to build network to 8 million premises (the locations shown in black, lilac and green above); Again, the geographical footprint comprises the least costly 8 million premises. As can be seen above, the large-scale entrant would have to deploy across a scattering of postcode sectors across the country to achieve the cost of deployment calculated by Ofcom. This is again an extremely unlikely deployment pattern for a rational operator.

221 INCA considers that Ofcom's deployment assumptions are in fact a direct contradiction to the principle of modelling an REO, as it would be inefficient in the extreme to deploy as required under all three of Ofcom's REO scenarios. However, as Ofcom is not prepared to alter its fundamental approach to REO modelling, INCA has considered whether there are pragmatic ways in which the FCM may be adjusted to better reflect the cost profiles of REOs with realistic footprints in WLA Area 2.

222 Large areas of Area 2 are excluded from all of the scenarios; these comprise the 19.7 million premises which are in higher cost areas (i.e., 71% of the premises in Area 2). This approach to modelling the costs is inconsistent with Ofcom's geographical market definition for WLA Area 2, the whole of which is considered to be prospectively competitive.

223 INCA understands that Ofcom may not wish to adopt scenarios in the FCM which reflect the highest-cost premises on a standalone basis, as that could imply high prices which may be against consumer interests. However, if a hypothetical competitor were to cover all of the WLA Area 2 premises, that would provide the maximum opportunity to average out the unit costs over higher and lower-cost areas; prices set at the FCM output for such a scenario should enable such a competitor to deliver service to all of the premises.

224 The proposed charge control takes BT's current prices as its starting point; BT provides services across the whole of WLA Area 2 and it therefore seems perverse to provide a cross-check for the charge control which considers only the areas at the lower end of the cost-range. **This error leads to a significant bias in the entrant cross-check scenarios**

used in the FCM, and the potential for a material understatement of the calculated unit costs.

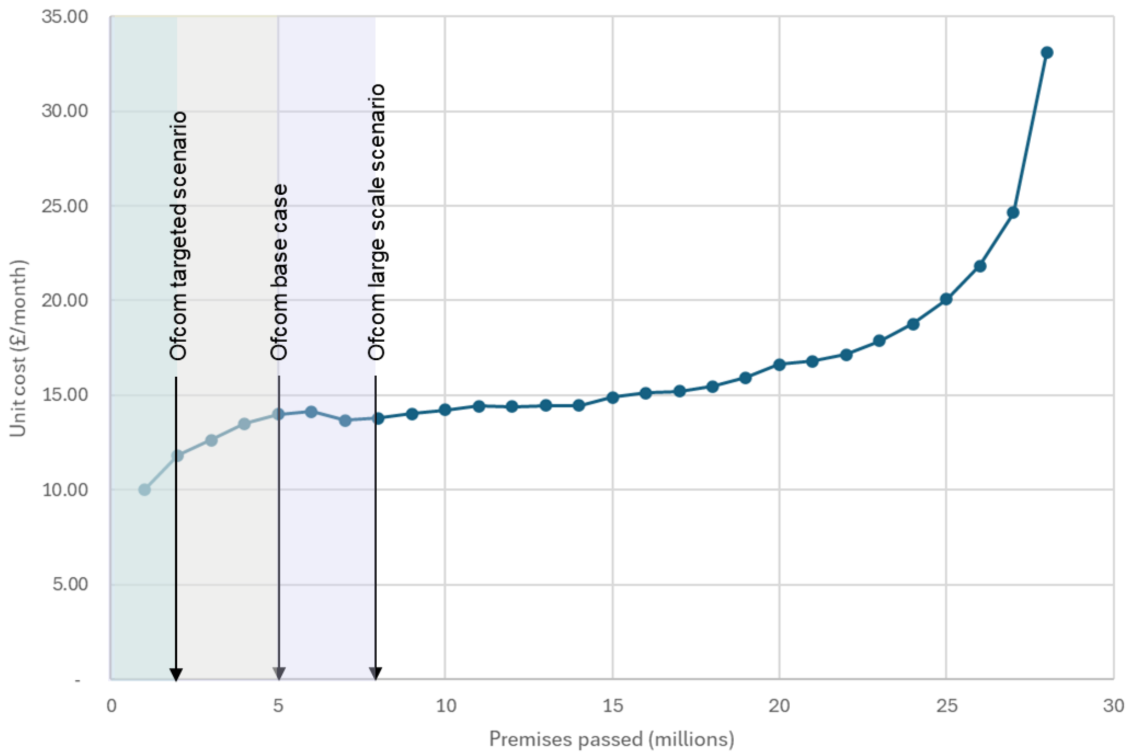
INCA's proposals

225 In order to estimate the impact of this error, INCA has analysed the profile of costs across the whole of WLA Area 2, considering the changes that would occur if, rather than simply taking the lowest cost geographic areas for each scenario, the build was started at later points in the sequence.[72]

226 As a first step, INCA has looked at the profile of unit costs calculated by the FCM for segments of 1 million premises deployed at different points in Ofcom's build sequence. This is illustrated in the chart below.

[72] This approach is much more likely to reflect a realistic REO deployment.

Figure 4: Unit costs calculated by the FCM for segments of 1 million premises across all of Area 2[73]



Source: FCM, INCA analysis

227 In this analysis, INCA has used the same Area 2 postcode sector list in the same order as used by Ofcom, but the deployment start point in the sequence is adjusted by increments of 1 million premises.

228 INCA understands that the postcode sequence used by Ofcom is grouped by BT exchange areas, and that some higher cost postcodes are already included across the whole sequence, but the chart shows that there remain very material differences in costs across the sequence of 28 million premises.

229 **All three of Ofcom's entrant scenarios select areas which include only the lowest cost premises, and the costs in the remaining, excluded, parts of Area 2 are materially higher.**

230 To represent a realistic REO, the entrant scenarios used in the FCM should include areas which are more broadly representative of the costs across Area 2, and hence more

[73] These calculations have been made using Ofcom's targeted entry scenario, but with the deployed volumes adjusted to 1 million and starting at different points in the postcode sequence

representative of the costs faced by a realistic REO and Altnets operating in the real world.

231 INCA understands that Area 2 contains some high-cost areas (some of which will be subject to BDUK subsidies), and indeed the chart shows a sharp increase in unit costs at the high-cost end of the build sequence. Ofcom may wish to avoid unduly biasing the costs for its representative scenarios by excluding these areas.

232 In defining a more representative approach, INCA, therefore, considers that it would be reasonable to limit the scope of Area 2 to only the lowest 26 million premises, and to exclude the 1.7 million highest cost areas.[74]

233 INCA has adjusted Ofcom's entrant scenarios in the FCM so that the same total number of premises is covered in each scenario, but with alternative starting points for the model build sequence within the reduced scope of 26 million. These starting points have been selected to represent:

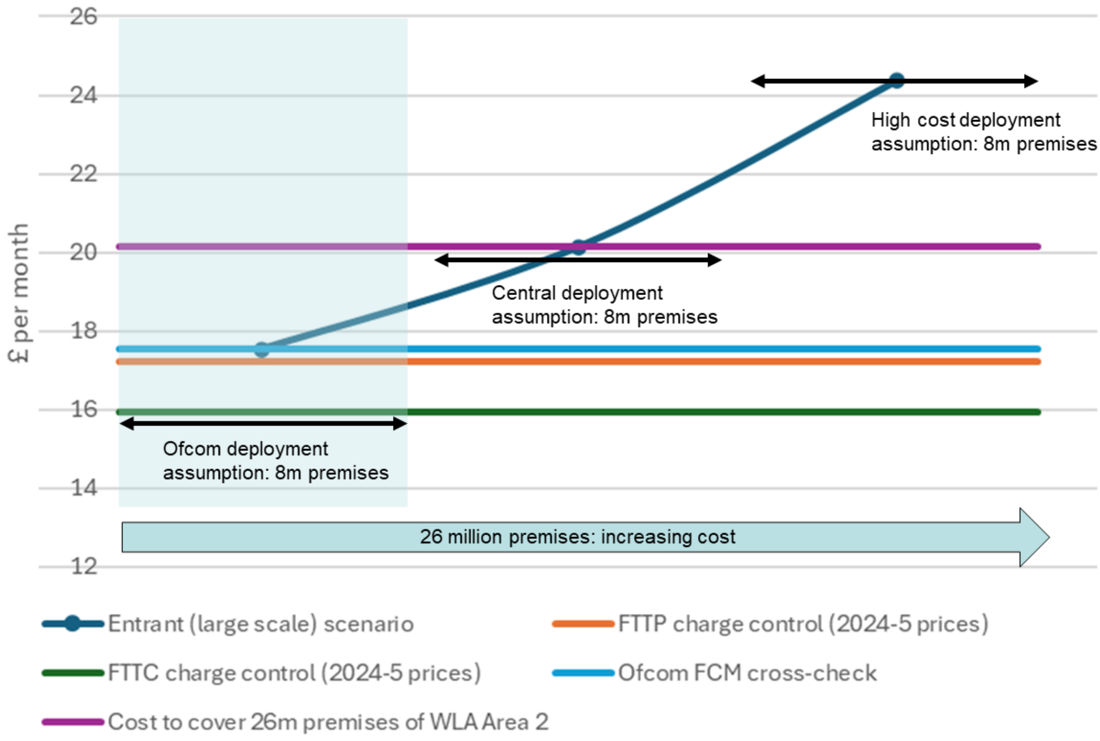
- a central deployment using postcode sectors from the middle of the sequence[75], and
- a high-cost deployment using postcode sectors from the highest-cost end of the sequence.

234 INCA has also run a scenario where network is built to all the 26 million premises in Area 2, rather than only 8 million.[76]

235 The results of these analyses for the large-scale entrant scenario are shown in the chart below.

[74] One reason for doing so is that a high proportion of those premises are likely to be subject to government subsidies, so the high costs indicated would not be representative of the actual costs incurred by the Altnet.
[75] For example, in the case of deployment to 8 million premises, the central deployment is defined such that the 9 million premises in the least cost areas and the 9 million premises in the highest cost areas are excluded, with the 8 million in the middle being included.
[76] In this scenario, the rate of network build is scaled up to result in 26 million premises being covered, all other assumptions remaining the same as for Ofcom's large scale entrant scenario.

Figure 5: Large scale entrant, unit costs of alternative geographic footprints in Area 2, 2024-25 prices



Source: FCM, INCA analysis

236 Ofcom's cross-check unit cost for the large-scale entrant is £17.53 per month, which is the cost calculated by the FCM for a deployment to the 8m least-cost premises[77]. Of Ofcom's three scenarios, the 8m footprint is[78] the most relevant scenario for a REO given Ofcom's assumption of significant consolidation resulting in larger Altnets. INCA's analysis suggests that, if the 8m premises were selected from higher up the cost-ranking of postcode sectors, then the resulting unit costs would be much higher[79], and would materially exceed the proposed charge controls for both the FTTP and FTTC in the TAR.

[77] Including the correction INCA has made for lead-in duct

[78] Please note, however, that INCA disagrees that the 8m lowest cost postcode sectors is a reasonable representation of an RTEO.

[79] It should be noted that INCA's analysis is made using the non-confidential version of the FCM, which gives different results to the confidential version used by Ofcom to generate its numbers. To allow for this, INCA's analysis applies an adjustment factor to the results which reflects the proportionate difference between the non-confidential FCM results and Ofcom's stated results.

237 For example, if the large-scale entrant were to build its network in geographical areas in the central range according to cost (i.e., still covering 8 million premises but selected from the central segment in Ofcom's ranking), then the unit cost would be £20.14 per month, 15% higher than Ofcom's calculation and 17% higher than Ofcom's proposed FTTP charge control.

238 If the 8 million lines were towards the top end of the Area 2 ranking, then the unit cost would be £24.36 per month, 39% higher than Ofcom's calculation and 42% higher than the proposed charge control. While this example may represent an extreme case, the most-costly 1.7 million premises are already excluded from the analysis, and all of these Area 2 premises are, by definition, in prospectively competitive areas where Ofcom expects Altnets to build in competition with BT.

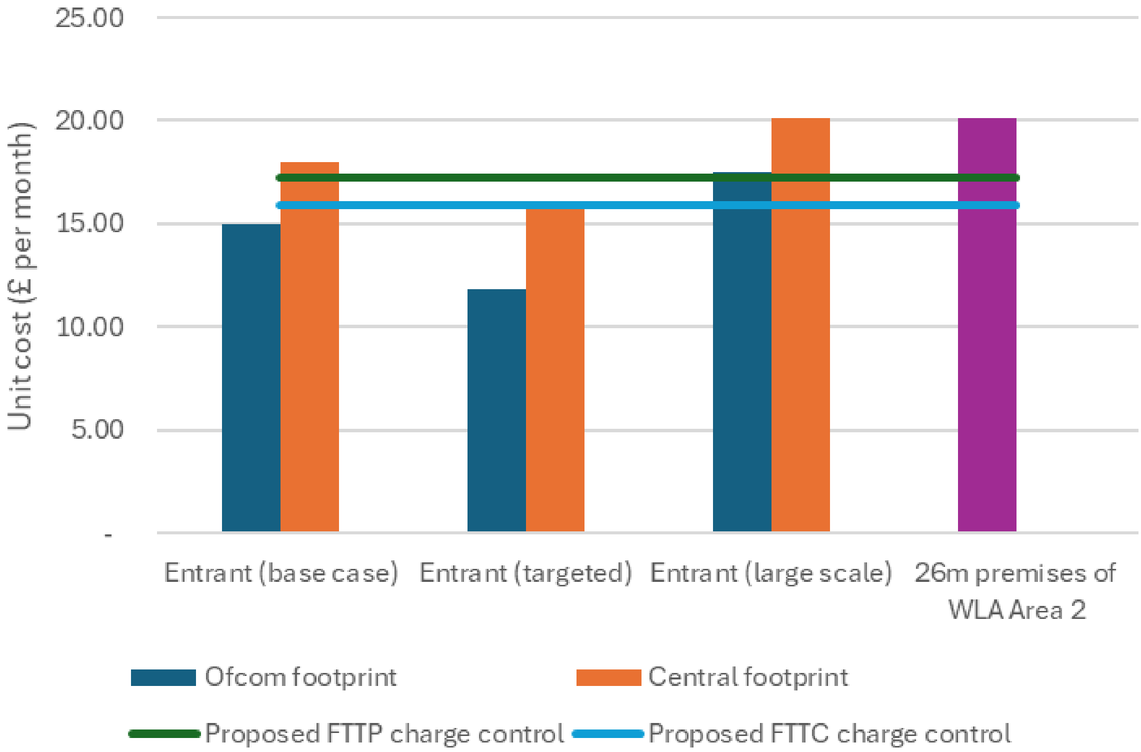
239 In the scenario where competitive networks are built to the 26 million least-cost premises in Area 2, the calculated unit cost is £20.13 per month. As might be expected, this is in line with the unit cost for the central scenario (£20.14), suggesting that both the central scenario of 8 million lines and the full 26 million Area 2 deployment scenarios reflect a reasonable average unit cost for Area 2.

240 Ofcom's modelling of the other two entrant scenarios (base case and targeted) is afflicted with the same problem; the geographic footprints are biased to the lowest cost postcode sectors in Area 2.

241 INCA believes it is essential that Ofcom ensures that the scenarios it uses as a basis for the entrant cross-check are selected to reflect the costs of realistic geographical footprints across Area 2. If Ofcom is not prepared to use actual data from operators to inform this analysis, then at the very least, the footprints should be adjusted to reflect average conditions across the whole competitive area.

242 The chart below indicates the likely impact on the FCM model outputs of Ofcom moving its REO scenarios to geographical footprints which are more representative of Area 2. In these examples, the postcode sectors in the middle of Ofcom's ranking are used.

Figure 6: Ofcom entrant scenarios compared to more representative geographic footprints, 2024-25 prices



Source: FCM, INCA analysis

243 In the more reasonable central footprint shown in the chart, the unit costs of two of the entrant scenarios are at or above the proposed FTTP charge control, and significantly above the FTTC control (which is and is likely to remain for the TAR period the relevant control in the large parts of WLA Area 2, where copper is not yet withdrawn). The scenario covering the whole of WLA Area 2 has an even higher unit cost. INCA does not have confidence that, even if BT were to maintain prices at the maximum allowed by these controls, sufficient economic headroom will be available to allow reasonably efficient competition to survive and thrive across WLA Area 2. The proposed fair and reasonable pricing, and associated price squeeze assessment, will therefore be of critical importance; this is discussed below in the section on price squeeze.

244 In summary, it is clear that none of the three entrant scenarios, as modelled by Ofcom in the FCM, are representative examples of a REO; they are all constrained to operate in the lowest cost parts of Area 2. Of the 27.7 million premises in Area 2, 19.7 million premises in the higher cost areas (71% of Area 2) are left unaddressed by any of the

entrant scenarios. The fact that Altnets have already covered more the 16 million premises[80] is clear evidence that Ofcom's scenarios do not reflect current reality, let alone future Altnet expansion.

245 INCA strongly recommends that Ofcom must revise the FCM to correct for the error in calculating lead-in costs and also reflect more representative geographic deployment scenarios either by using a central footprint as described above, or by calculating the costs to deploy to the entirety of Area 2.

246 Having done that, Ofcom must assess the revised unit cost outputs from the FCM against the WLA charge controls and the input PIA pricing regime to ensure that these do not result in potential price squeezes for competing operators.

INCA asks that Ofcom remodel the REO scenarios to be representative of a realistic network footprint across the WLA Area 2 market.

WACC

247 In its pre-consultation submission,[81] INCA noted that Altnets carry higher risk levels than incumbent operators, and that these risks carry through to the cost of capital. The WACC calculations used in the FCM should therefore reflect current and developing conditions in the market, the costs of capital across debt and equity markets, and the levels of risk borne by operators.

248 INCA welcomes Ofcom's recognition of this, and its adoption of increased WACC levels of 0.5 percentage points for the entrant base case and 1 percentage point for the large-scale entrant. However, the TAR documentation does not make clear any rationale for the scale of these uplifts.

249 Given the current caution of investors providing Altnet funding, and increasing levels of perceived risk, INCA suggests that Ofcom should conduct a more thorough assessment

[80] https://inca.coop/uk-altnets-delivering-affordable-high-speed-connectivity-with-unmatched-customer-satisfaction/15/
[81] Assumptions for Fibre Cost Model, INCA submission for Ofcom TAR 2026-31, June 2024, section 3.3.12

of the cost of capital experienced by entrant operators; in particular, the increased risk profile and elevated interest rates which have made debt financing significantly more expensive. It is important that the entrant WACC calculation is based on the costs actually faced by operators, rather than an arbitrary uplift on the BT OUKT WACC.

INCA asks that Ofcom update the FCM to reflect a realistic Altnet WACC.

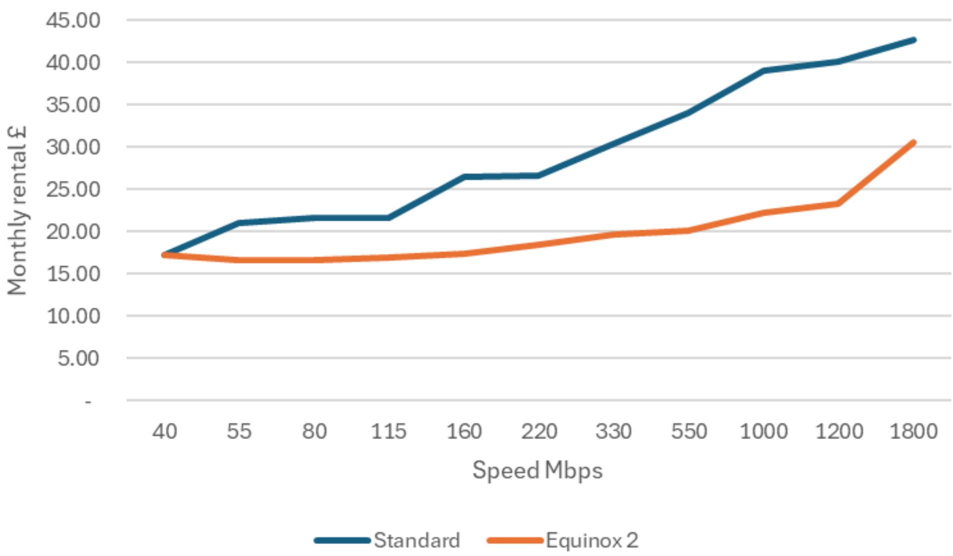
Anchor pricing

250 INCA considered the effectiveness of the anchor pricing approach in its pre-consultation submission on VULA pricing.[82] In the WFTMR, Ofcom introduced anchor pricing on the 40/10 VULA product with the intention of providing a constraint on the maximum amount BT can charge for products with speeds higher than the anchor product, based on the limit to consumers' willingness to pay for such extra functionality.

251 So far, after 4 years of the WFTMR, BT has increased the standard rental prices of FTTP speeds by the maximum allowed under the CPI-0% formula, such that the price-speed gradient has remained the same for the standard prices. However, the Equinox discount schemes have resulted in a considerable flattening of the gradient, with higher speeds generally receiving bigger percentage discounts. As the majority of ISPs are using Equinox rather than standard pricing, these discounted prices are the relevant references for actual market pricing.

[82] VULA pricing: INCA Submission to the Ofcom TAR 2026-31, July 2024

Figure 7: BT standard and Equinox 2 rental prices from 1 April 2025



Source: Openreach pricelists

252 This suggests that BT has prioritised the migration of customers from copper to fibre, and from lower speeds to higher speeds, rather than maximising short-term profit. This approach is also likely to incentivise ISPs to remain with the BT network rather than switch to competing Altnets.

253 It, therefore, seems that the competitive threat from Altnets has been the main factor in constraining VULA prices, rather than the price ceiling specified for the anchor product. It would be entirely rational for BT to adopt pricing strategies which, in the short to medium term, cause reduced Altnet margins and investment incentives, followed by price rises at a later date once BT's dominant position is reinforced.

254 The price cap on the anchor product does nothing to address this issue; the threat to the development of sustained competition is from price reductions rather than price increases. While INCA understands that Ofcom wishes to retain the anchor pricing approach to provide a safeguard price ceiling to protect consumers, and to provide continuity with the WFTMR, other measures are needed to address the possibility of anti-competitive pricing by BT.

255 Ofcom's proposed fair and reasonable pricing, and the associated margin squeeze test provide a remedy which seeks to address this issue, and this is discussed in the following section; but INCA believes that Ofcom will also need to address the likelihood that the REO costs of a representative operator are above the anchor price cap by reconsidering the approach to PIA pricing.

256 In its pre-consultation submission on PIA pricing,[83] INCA raised the possibility of changing the approach of setting PIA prices from a fully allocated cost to an incremental approach, whereby the common costs (for example, BT's corporate overheads) would be recovered from other regulated and unregulated markets.

257 Such an approach may allow Ofcom to better balance its conflicting objectives:

- to incentivise competitive investment,
- allow BT to earn a fair bet return on its investments and recover efficiently incurred costs,
- support a competitive ISP retail market and
- minimise long-run prices for consumers.

258 Using this approach could deliver the following benefits:

- BT would retain the opportunity to recover all of its efficient costs.
- PIA prices would be reduced, reducing the unit costs faced by Altnets and increasing the economic headroom beneath the anchor price constraint.
- Given the small scale of the external PIA market as a proportion of BT's other markets, any negative impact on consumers due to price increases in these other markets would be minor, and temporary as they would be offset by the dynamic advantages of increased network competition.

259 INCA requests that Ofcom considers the approach described above. INCA considers it would help it to better achieve Ofcom's overall objectives of supporting investment, competition and consumer welfare.

[83] INCA – TAR submission on PIA pricing, July 2024, section 1.11 https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-tar-submission-on-pia-pricing.pdf?v=392839

INCA asks that Ofcom set PIA charges based on incremental costs. This would alleviate the obvious tension between keeping the current anchor price and still ensuring that there is no price squeeze between the anchor price and the PIA costs for a REO.

Price Squeeze

260 In the TAR Consultation, Ofcom recognises that there is a risk of BT acting anti-competitively by operating a margin squeeze between the PIA and WLA markets.[84] As Ofcom explains:

> *"stakeholders have raised concerns that there is a risk that Openreach could set FTTP prices in the WLA market that result in a price squeeze between Openreach's PIA prices and FTTP prices. That is, Openreach's FTTP prices leave insufficient margin for a reasonably efficient operator (which uses PIA) to compete"* [85]

261 Ofcom is therefore proposing to apply a 'fair and reasonable' obligation on regulated prices and that this will include a requirement for BT not to set prices that equate to a price squeeze.[86]

262 Ofcom explains that it will interpret this meaning that *"Openreach should not set prices that leave an insufficient margin between its weighted average FTTP price and PIA prices."*[87] Ofcom also states that it will assess the margin on the basis of the costs of a reasonably efficient operator *(REO) as calculated using the FCM.* [88]

263 INCA welcomes Ofcom's recognition of a potential price squeeze in the WLA market but has two concerns relating to Ofcom's proposed approach.

264 Firstly, Ofcom's proposal to test for a price squeeze on the basis of average margins provides scope for anti-competitive pricing at an individual service level. For example, using an aggregated approach enables BT to price one headline product as a 'loss-leader'

[84] Ofcom TAR Consultation Volume 3, Paragraph 4.21.
[85] Ofcom TAR Consultation Volume 3, Paragraph 4.21.
[86] Ofcom TAR Consultation Volume 3, Paragraph 4.27.
[87] Ofcom TAR Consultation Volume 3, Paragraph 4.28.
[88] Ofcom TAR Consultation Volume 3, Paragraph 4.28.

whilst still recovering aggregated costs across all products. Such an approach pressurises Altnets into adopting a similar pricing structure in order to compete. For this reason, INCA requests Ofcom to apply the price squeeze test on an individual product basis.

265 INCA accepts that allowing some flexibility of pricing can be helpful and provide for greater levels of consumer choice. However, it is important that Ofcom recognises the critical stage of market development in the TAR period and sets its remedies accordingly. A key point in the market will come when BT withdraws its copper services and customers migrate to FTTP. BT will be highly incentivised to retain its customers at this ‘tipping point’ and can be expected to set prices in a way that prioritises customer retention over short term profit. INCA therefore proposes that Ofcom provides the additional security offered by a product-level price squeeze test during this critical period of market development to help ensure the market remains competitive in the longer term.

INCA asks that Ofcom change its approach and commit to applying the price squeeze test on a per individual product basis and using the FCM outputs for a realistic REO footprint.

9 The leased lines access market

266 Alongside residential broadband connections, business connectivity is a significant potential revenue source for operators of full-fibre networks. With the deployment of modern fibre technologies such as XGS-PON and point-to-point fibre, many Altnets have networks which are technically capable of delivering services equivalent to traditional Ethernet leased lines.

267 Although most Altnets have had to initially focus on serving the residential broadband mass-market, many or even most have plans to address the business connectivity market once their network build phases have completed.

268 Although it is now technically possible to service the business connectivity market with full-fibre broadband networks, there are other components that are critical to successful entry into that market. These include:

- dedicated B-2-B sales resources,
- high-quality service wraps include service level agreements and service level guarantees and
- operational and technical staffing at different levels and at times than required for the residential broadband market.

269 Many Altnets have deliberately phased their commercial rollout to align with operational maturity; once network deployment stabilises and residential revenue streams are secured, providers do intend to scale into business connectivity.

270 Additionally, it is common that financial covenants require the Altnet to build network to pass specific numbers of premises and achieve specified penetration levels in the residential broadband market. Those same investors have invested in a business plan that includes business connectivity revenues, but at a later date. The fact that the short-term covenants focus on residential deployment and take-up is simply because that is the largest and most accessible market at this early stage of the Altnet businesses.

271 It has become apparent that Ofcom's s.135 information requests regarding the LLA may have:

- Failed to reach a significant number of Altnets; and
- Used ambiguous language which led recipients to exclude data for leased line equivalents in their responses.

272 As a result, the true level of Altnet activity and capability in offering leased lines may have been significantly underreported. A substantial number of Altnets already offer business connectivity services using full-fibre technology and many others have represented clearly to INCA that they have plans to enter the business connectivity market once their main broadband deployments have concluded.

273 INCA considers that Ofcom may have:

1) Relied on inaccurate data submissions from Altnets (due to the way those requests were formulated), and
2) Misinterpreted the phased market entry approach favoured by many Altnets and have instead understood it to be that most Altnets would not enter the business connectivity market.

These are significant misunderstandings that have most likely resulted in Ofcom underestimating the current and prospective level of competition in the LLA in future years.

9.1 LLA market definitions

9.1.1 The LLA Product market

274 Ofcom proposes the following LLA product market definition:

"a) all wholesale fibre-based Ethernet and Wavelength Division Multiplexing (WDM) services, at all bandwidths;

b) leased line equivalent services delivered over symmetric PON (e.g. XGS-PON);[89] and

c) dark fibre used to supply or self-supply leased line services.

The product market excludes:

a) broadband services;

b) wireless technologies (including FWA, satellite and point-to-point wireless links (such as microwave links) used to provide mobile backhaul); and

c) IEC services between BT exchanges."

275 INCA generally agrees with Ofcom's LLA product market definition. In particular, INCA agrees that the LLA product market should exclude broadband services and FWA services. INCA's rationale for this position is set out in its pre-consultation submission on remedies.[90]

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[89] INCA notes that Ofcom has not included point-to-point (P2P) networks in its leased liens equivalent product description. INCA considers this to be an error. P2P network can deliver equivalent and higher performing leased line equivalent services compared to XGS-PON networks. INCA urges Ofcom to amend its LLA product market definition.

[90] https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-2026_tar-market-definitions.pdf?v=392831

276 INCA does not agree that dark fibre should be part of the LLA product market definition. This is because INCA's experience is that many consumers of end-customer connection leased lines do not have the internal competences to consume dark fibre instead of active Ethernet connections and INCA does not believe that a SSNIP test would prove that a 5-10% non-transitory increase in Ethernet pricing would cause sufficient switching to dark fibre to render that price increase non-profitable.

9.1.2 The LLA geographic markets

277 Ofcom proposes the following geographic submarkets within the LLA product market:

- The Central London Area (CLA) area;
- the High Network Reach (HNR) area: postcode sectors where, due to presence of at least two current material and sustainable competitors, there is sufficiently well-established competition to BT in the commercial deployment of competing networks;
- LLA 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
- LLA 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.

278 To identify locations that fall into each of these geographic markets, Ofcom applies a method it calls the Network Reach Analysis (NRA). The results from that analysis are:

Overview of changes in distribution of postcode sectors between the WFTMR and the TASR

	HNR Area		Area 2		Area 3	
	WFTMR	TAR	WFTMR	TAR	WFTMR	TAR
Postcode sectors (% of UK excl. Hull)	5%	9% = 80% increase	54%	42% = 14% reduction	38%	46% = 21% increase
Demand sites (% of UK excl. Hull)	6%	12% = 100% increase	64%	45% = 30% reduction	27%	38% = 41% increase

Source: TAR V2 Tables 5.1 and 5.2.

279 The above table shows that Ofcom has found a **significant reduction in competition in the LLA market since the WFTMR took effect in 2021** (shown by the significant increase in the size of LLA Area 3). This is at odds with several Ofcom statements in the TAR consultation including:

"Since 2021, we have seen LL-only providers further expanding their networks and selling increasing leased lines volumes, as well as additional LL-only providers entering the market.

For example, ITS entered the market, growing to [✂] leased line access circuits as of March 2024.ITS has proven successful with telecoms providers, having won a contract with Sky to provide Ethernet services, and with PlatformX also currently taking leased line circuits from ITS. [✂] states that it is purchasing more circuits from ITS than [✂]."[91]

"In addition to market entry, we have seen existing LL-only providers expand their networks. This expansion, as well as their ability to win increasing shares of leased lines business, indicates that they are providing increased competition across the LLA markets."[92]

"Since 2021, as outlined in Volume 1, we have seen substantial FTTP network build by altnets, while CityFibre and VMO2 have continued to operate in both the WLA and LLA markets.

Many of the altnets that have entered the WLA market have chosen not to provide leased lines to date. Some altnets – such as Zzoomm, Netomnia, brsk and AllPoints – that initially focussed on serving residential premises, have started to offer leased lines, but the volume of circuits supplied have so far been limited."[93]

280 In light of these statements, INCA is concerned that Ofcom has found a reduction in competition in the LLA market. **The outcome is counter-intuitive and suggests that the increase in competition described by Ofcom has, in fact, not happened**.

281 Although Ofcom has changed its approach to assessing where material and sustainable competition may develop, it still relies effectively on the presence of the two main

[91] TAR V2 paragraphs 5.60 and 5.61.
[92] TAR V2 paragraph 5.62.
[93] TAR V2 paragraphs 5.64 and 5.65.

competitive networks (VMO2[94] and CityFibre) and in addition Ofcom is recognising that some other Altnets have already entered the leased lines market.

282 It is also **important to recognise that Ofcom has expanded the scope of the LLA product market to include 'leased lines equivalent' services**,[95] a move which should bring into scope several more Altnet networks than for the conventional (mainly Ethernet) leased lines market. INCA understands that Ofcom has not made the scope of its LLA product definition clear when issuing s.135 data requests to Altnets. INCA understands that Altnets have responded based on the LLA covering Ethernet services, not PON-based and point-to-point broadband network-based symmetrical business connections. **INCA considers this to be a material flaw in Ofcom's market definition process and strongly urges Ofcom to collect new inputs from Altnets as soon as possible.**

283 Once the appropriate data is collected Ofcom must reassess the LLA geographic market definitions and issue a revised consultation on this matter. INCA is confident that the outcome will be materially different.

284 Given the issues highlighted above, INCA is deeply concerned that the outcome of Ofcom's market definition analysis is strongly counter-intuitive. It is simply illogical that the use of an increased network footprint (compared to that used for the WFTMR) would result in a significant expansion in locations where material and sustainable competition is unlikely to develop.

285 It is difficult to picture a scenario where the presence of just Virgin Media and CityFibre in 2021 (plus the then existing leased lines-only providers) would present a higher level of existing and prospective competition compared to the situation in 2025. The market entry of more leased lines-only providers, the growth of Virgin Media and CityFibre's networks and the entry into the market of additional smaller MSN operators suggest this cannot be the case. **INCA urges Ofcom to reassess its analysis in this area.**

[94] Including Nexfibre.

[95] Which Ofcom defines as symmetrical PON-based (e.g. XGS-PON) high quality connections, but which INCA argues must also include symmetrical high quality connections over point-to-point broadband networks (of which there are several across the UK).

286 With regards to Ofcom's application of the NRA to assess LLA competition, INCA queries the validity of the 50m build distance for LLA providers using MSNs. The incremental cost of extending MSNs is likely to be materially lower than for individual point-to-point ethernet circuits and it is also more likely that such extensions can assist in serving additional residential and business customer premises. INCA questions the appropriateness and value of the NRA assessment approach for MSNs and would recommend that Ofcom revert to the same approach in the WFTMR, and as adopted in the TAR WLA analysis, and simply add the leased lines-only providers when assessing the level of network competition available in the LLA as opposed to the WLA.

287 It is also important for Ofcom to recognise that many Altnets are planning to enter the leased lines market over the TAR review period or shortly thereafter. The LLA Area 3 market should therefore be characterised as locations where material and sustainable competition may not materialise over the TAR review period AND where this is also unlikely to happen in the next review period. It is important that Ofcom's analysis and actions are not designed in an environment that ignores likely future developments.

288 Finally, in the WLA market, Ofcom has defined WLA Area 2 based on anticipated consolidation and has included locations in the WLA Area 2 market that are covered by Altnets of a size that Ofcom does not consider able to exercise effective competitive constraint on BT on a stand-alone basis, but which Ofcom anticipates may become part of larger operators as the result of M&A activity. Those same Altnets would also add to the ability of the larger providers to compete effectively with BT in the LLA market.

289 **Ofcom's approach to market definition in the WLA and the LLA are at odds with each other** and this results in the two product markets being subject to very different types and levels of regulation in the same locations. INCA urges Ofcom to review this inconsistency and inform stakeholders of the changes as soon as possible.

290 The consequences of the divergence in approach used and the errors Ofcom has made in collecting the appropriate information are material to both the LLA and WLA markets. This is mostly due to Ofcom's proposed approach to remedies in the LLA Area 3 market. We address those issues in the relevant remedies sections of this response document.

INCA asks that Ofcom collect new data and reassess the definition of the LLA Area 3 market. Ofcom's proposals will reduce the viability of existing and planned Altnet network deployment and reduce investor confidence.

9.1.3 Defining the CLA market

291 Ofcom has undertaken reassessment of and proposes changes to the HNR area, Area 2 and Area 3, but has performed no assessment of the CLA. This suggests that Ofcom does not consider it possible that the level of competition in the CLA could change over time or that the CLA boundary could change as competition increases or reduces. INCA considers it essential that Ofcom's decisions are transparent and fact-based. Simply carrying forward a market definition with no apparent attempt to assess whether the competitive conditions have changed is therefore a cause for concern. INCA urges Ofcom to present analysis in its TAR Statement that offers sufficient insight into the CLA market for stakeholders to have confidence that the CLA boundary remains relevant and that there is no reason why regulation should be re-introduced into the CLA market.

9.1.4 Defining the HNR Area

292 Ofcom's approach to defining the HNR Area appears consistent with the approach taken in the WFTMR. INCA notes, however, that some postcode sectors have moved from the LLA HNR market in the WFTMR to LLA Area 3 in the TAR. As the NRA approach was used in the WFTMR with, as far as INCA can ascertain, the same parameters applied. INCA queries how this change can have come about. This puts a further significant question mark over Ofcom's geographic market analysis in the LLA.

9.2 LLA remedies

9.2.1 Ofcom's regulatory objectives in the LLA

293 Ofcom proposes the following the following remedies for the LLA market:

- *"Retain the requirement for Openreach to offer active leased lines (Ethernet and WDM at all bandwidths) in LLA Area 2, LLA Area 3 and the HNR Area.*

- *Retain the requirement for Openreach to publish a Reference Offer for Ethernet services and introduce a requirement for Openreach to publish a Reference Offer for WDM services.*
- *Retain the requirement for Openreach to offer dark fibre access (DFA) at cost in LLA Area 3 and maintain our position that Openreach should not be required to offer DFA in LLA Area 2 or the HNR Area.*
- *Maintain our position that we will not interpret a request for leased lines or DFA for the purpose of FTTP aggregation to be a reasonable request for network access.*
- *Relevant proposals on charge controls in LLA Area 2, LLA Area 3 and HNR Area are discussed in Volume 4."*[96]

9.2.2 LLA non-price remedies

294 INCA does not agree with Ofcom's proposal to continue the obligation on BT to offer cost-based dark fibre access (DFA) in the LLA Area 3 market, nor with the transitional obligation to continue to offer DFA in postcode sectors that were previously in Area 3 but are now either Area 2 or the HNR Area.

295 INCA considers that mandating DFA provision serves as a direct disincentive to competing full-fibre network builders and operators to enter the LLA market.

296 INCA considers that Ofcom has made material errors when defining the LLA geographic markets and, as a result, has materially underestimated existing and prospective competition in the LLA market.

297 Ofcom acknowledges in the WLA market definition section that the Altnet sector is likely to experience a series of M&A activities which will result in a smaller number of larger Altnets. Those larger Altnets will all be in a stronger competitive position vis-à-vis BT than the individual parts are today.

298 M&A, however, depends on the parties being able to agree on critical issues including either absolute or relative valuation of the relevant parties. The existence of a DFA obligation on BT in the location covered by an Altnet directly devalues that asset due to it limiting the addressable market for that network operator. INCA considers the

[96] TAR V3 Paragraph 7.4.

mandating of the DFA remedy both unnecessary for the purpose of consumer protection and directly damaging to the investment in and deployment of competing full fibre networks. As Ofcom is proposing to significantly expand the LLA Area 3 market, this makes this concern even greater.

299 Ofcom expresses concern at the limited take-up of the DFA remedy during the WFTMR period.[97] INCA does not consider it appropriate to expand the geographic footprint for where the DFA remedy is available to be a responsible 'experiment' by Ofcom. The risk of harm to Altnet investment and the ability for investors to recoup their investment through ongoing operations and M&A is material and must not be underestimated.

300 INCA is not aware that LLA customers (and downstream retail leased lines customers) are suffering harm resulting from absence of DFA in the many locations that are today categorised as Area 2 or HNR, which (under Ofcom's current proposals) would become LLA Area 3. Nor is INCA aware of harm suffered in the current Area 3 locations due to lack of take-up of DFA. The low take-up of DFA should, in fact, make it very low risk for Ofcom to withdraw that remedy all together and perhaps mandate grandfathering of existing DFA contracts for a period of time.

301 It is INCA's view that the continued application of the DFA remedy is directly detrimental to Altnet investment and that the potential risk of consumer harm from withdrawing this remedy would be very low.

302 INCA also has strong concerns that Ofcom proposes to *"not interpret a request for leased lines or DFA for the purpose of FTTP aggregation to be a reasonable request for network access".*[98]

303 Ofcom has expressed in discussions that it is concerned that, although the availability of leased lines or DFA[99] for FTTP aggregation would be helpful in locations where PIA is not an economically viable alternative, there are risks that it could disincentivise investment in self-supply of FTTP aggregation (using PIA) in areas where that is viable.

[97] TAR V3 Paragraph 7.49.
[98] TAR V3 Paragraph 7.4.
[99] Although INCA opposes the imposition of the DFA remedy, INCA considers that if imposed as a remedy, it should be available for FTTP aggregation as well as for other purposes.

304 INCA has previously submitted to Ofcom that the restriction of EAD use cases results in some rural communities getting full-fibre internet access much later than could otherwise be the case. Additionally, by allowing Openreach to not allow its DFA product to be used for FTTP aggregation, Altnets building in the Area 3 markets are hit by the simultaneous challenge of being foreclosed from using this cost-effective product for backhaul to at least partially overcome the impact of reduced or no revenues in the leased lines market.

305 INCA considers that the benefits of network competition would not be reduced if Altnets relied on the BT network for traffic aggregation. In fact, it is possible that network replication for aggregation purposes may be inefficient and adds no incremental benefits to consumers. INCA, therefore, does not understand Ofcom's concerns and rationale for the exclusion of Altnet use of regulated leased lines and/or DFA for FTTP aggregation purposes. It is INCA's strongly held view that Ofcom's position in this regard is to the direct detriment of the development of sustainable network competition and, therefore, to the detriment of the interest of consumers.

INCA asks that:

- **Ofcom withdraw the DFA remedy from the LLA Area 3 market and that**
- **Ofcom should not extend the DFA remedy to the postcode areas no longer classified as LLA Area 3.**

9.2.3 LLA price-related remedies

306 INCA agrees with Ofcom's overall objective in the TAR of promoting network investment and competition[100] and considers it essential that this objective is applied consistently across both the WLA and the LLA. INCA has concerns that Ofcom's approach to the application of remedies in the LLA appears to be at odds with that objective and believes that Ofcom's proposed remedies for the LLA Area 3 market have the potential to reduce

[100] Alongside protecting the interests of consumers.

network investment and competition across both the WLA and the LLA markets. Ofcom states its objectives for the LLA markets as follows:

307 LLA Area 2: "*to promote investment and competition in networks that offer LLA services by Openreach and other communications providers. We also seek to protect consumers and competition based on access to Openreach's networks as network competition develops*." [101]

308 In the LLA Area 3 market, however, Ofcom states the following objective:

309 "*to promote competition based on access to Openreach's networks and to protect consumers*."[102]

310 Ofcom quotes the following purposes for setting the SMP conditions proposed in the LLA:

"a) Promoting efficiency;

b) Promoting sustainable competition;

c) Conferring the greatest possible benefits on end users of public electronic communications services, having regard, where relevant to the market analysis, to the long-term interests of end-user in the use of next general[103] networks;

d) Promoting the availability and use of new and enhanced networks."[104]

Ofcom also quotes the following considerations: "a) the extent of the investment in the matters to which the condition relates of the person to whom it is to apply; and

b) the benefits of predictable and stable wholesale prices in ensuring efficient market entry and sufficient incentives for all undertakings to bring into operation new and enhanced networks."[105]

311 We revert to these purposes and considerations in our analysis below.

[101] TAR V4 Paragraph 2.5.
[102] TAR V4 Paragraph 2.52.
[103] INCA assumes this was meant to read 'generation'.
[104] TAR V4 Paragraph 2.39.
[105] TAR V4 Paragraph 2.40.

312 Ofcom states that its **favoured approach to price regulation in the LLA is one of pricing continuity,**[106] **but this is contradicted by the severe price control imposed in the LLA Area 3 market**. This is discussed in more detail below.

Pricing remedies in the LLA CLA Market

313 Ofcom deregulated the CLA market in 2019, reviewed and [adjusted the geographic boundary of CLA] in the WFTMR, but has performed no review of competition conditions of the CLA as part of the TAR process.

314 INCA considers that the lack of scrutiny of the competition conditions in the CLA represents both a procedural and a substantive flaw in Ofcom's approach to the TAR and would urge Ofcom to remedy that as soon as possible.

315 If Ofcom's review of the CLA confirms its current geographic boundary and that it remains effectively competitive, then INCA agrees that Ofcom should not apply any remedies in this market.

Pricing remedies in the LLA HNR Area Market

316 Ofcom's stated objective for its remedies in the LLA HNR Area market is: "*to promote investment and competition in networks that offer LLA services by Openreach and other communications providers*."[107] INCA agrees that this is an appropriate objective for this market.

317 Ofcom proposes to impose a 'fair and reasonable' price regulation in the LLA HNR market. Ofcom characterises this regulation as 'not constituting a price squeeze'.[108]

318 Ofcom does not propose to apply any protection in this market against geographic pricing by BT.

319 For the fair and reasonable price remedy to be effective (enabling BT's competitors to understand when a price squeeze may have taken place), it is important that Ofcom sets out transparent rules for this test. Ofcom provides no such transparency. INCA notes

[106] TAR V4 Paragraph 2.31 onwards.
[107] TAR V4 Paragraph 2.119.
[108] TAR V4 Paragraph 4.120.

that Ofcom proposes that the price squeeze test should be conducted using incremental retail costs and based on an Equally Efficient Operator (EEO) test.[109] INCA disagrees that an EEO-based price squeeze is the appropriate approach. Like Ofcom has recognised in the WLA markets, whilst competition is emerging it is appropriate to apply an REO-based price squeeze test. Not doing so would be inconsistent with the objective of promoting investment by both BT and its network competitors.

Pricing remedies in the LLA Area 2 market

320 For the LLA Area 2 market, Ofcom's chosen objectives are:

- "*to promote investment and competition in networks that offer LLA services by Openreach and other communications providers.*
- *Ofcom also seeks to protect consumers and competition based on access to Openreach's networks as network competition develops*."[110]

321 To deliver on those objectives Ofcom proposes an approach of price continuity – proposing a charge control of CPI-0%.

322 INCA supports the proposed CPI-0% charge control and the continued application of protection against geographic and other commercial terms pricing initiatives from BT.

323 The CPI-0% charge control provides a safeguard for consumer protection whilst also allowing headroom for competitive investment. As set out in INCA's analysis of Ofcom's proposed remedies in the LLA Area 3 market, many Altnets are starting, or planning, to offer high quality business connections using a variety of XGS-PON, Point-to-Point broadband and Ethernet technologies. Ofcom has recognised that these technologies all offer the equivalent of conventional (typically Ethernet) leased lines for the majority of business needs.

324 Many Altnet market entry plans envisage a phased market entry which first addresses the (larger and less specialised) residential broadband market and subsequently moves on to address the business connectivity market. In the WFTMR, Ofcom recognised the

[109] TAR V4 footnote 100.
[110] TAR V4 Paragraph 2.5.

economies of scope across the WLA and LLA markets for Altnets, a benefit that BT already enjoys, and which Ofcom must recognise as important for Altnets to have a fair bet at competing with BT on a level playing field.

Pricing remedies in the LLA Area 3 market

325 Ofcom expresses its competition concern in this market as "*BT would have the incentive and ability to fix and maintain wholesale prices at an excessively high level and/or impose a price squeeze…*"[111] in the LLA Area 3 market. **Ofcom does not express any concern that BT would have the incentive to squeeze out any existing or emerging competition to BT at the network level.** It is not clear why that is the case as there is evidence of significant Altnet full-fibre deployment in the proposed LLA Area 3 market, some offering high quality business connections today, others with plans to do so later once their residential deployment programmes have been concluded.

326 For the LLA Area 3 market, Ofcom's objective differs markedly from the rest of the LLA market:

> "to promote competition based on access to Openreach's networks and to protect consumers."[112]

327 INCA strongly disagrees with Ofcom's objective for this market and is deeply concerned that Ofcom can select an objective for a sub-market that differs so fundamentally from that of the overall market and that Ofcom provides neither rationale nor justification for doing so.

INCA asks that Ofcom revise its objective for the LLA Area 3 market to promote investment and network competition that reflects the market realities.

328 Based on its competition concern and to implement its stated objective for this market, Ofcom proposes the following remedies in this market:

[111] TAR V4 paragraph 2.50.
[112] TAR V4 Paragraph 2.52

"a) On leased line access services at bandwidths above 1Gbit/s (including WDM services) maintain stable prices (in real terms) through a CPI inflation-adjusted (CPI-0%) charge control; and

b) On leased line access services at bandwidths up to and including 1Gbit/s set a cost-based charge control."[113]

329 Additionally, Ofcom proposes to retain "*a cost-based charge control on DFA services*."[114]

330 Ofcom proposes a significant reduction in the WFTMR DFA connection charge and a correspondingly significant increase in the DFA rental price. INCA considers that the DFA remedy causes harm to network competition and the reduction of the connection charge is likely to make it even harder for Altnets to compete in that market.

331 Ofcom proposes to introduce a basket charge control on Ethernet circuits of 1Gbit/s and below, with a CPI-X control using X-values ranging between 4.75% and 8.50%. This is a material change in approach from the WFTMR, where Ofcom applied a charge control of CPI-0 across the board. **INCA considers that it will constitute a strong disincentive for Altnets to enter the business connectivity market and will deprive Altnets from access to this revenue source and, therefore, placing Altnets at a competitive disadvantage to BT.**

332 As Ofcom has itself pointed out, Altnets are increasingly starting to offer leased line-equivalent services across point-to-point or XSG-PON fibre networks[115]. These services are part of the revenue streams built into investment and business plans at a time when Ofcom pledged pro-investment regulation and consistency and continuity for a 10-year period. As set out earlier in this document, Ofcom's volte-face on price regulation in the LLA Area 3 market will result in a reduction in value of Altnets which were networks built in good faith either when the build was in the LLA Area 2 (under the WFTMR) or already in LLA Area 3, but with a CPI-0 charge control applied supported with a pledge of consistency and continuity for at least 10 years.

[113] TAR V4 Paragraph 2.53.
[114] STET.
[115] And P2P broadband networks, which can equal or exceed service grades than XGS-PON networks.

333 INCA considers Ofcom's proposed objectives and remedies for the LLA Area 3 market to be based on flawed market analysis and in direct contradiction to Ofcom's commitment to Altnet investors. The WFTMR clearly recognised the economies of scope of new full-fibre networks across the WLA and LLA sets of markets and created clear and legitimate expectations for Altnet investors that Ofcom would promote investment across the two sets of markets.

INCA asks that Ofcom:

- **remove its proposed active leased lines cost-based charge control from the LLA Area 3 market, and**
- **remove its proposed DFA remedy from the LLA Area 3 market.**

No protection against geographic pricing from BT

334 Ofcom proposes that its pro-competitive framework, which prohibits geographic pricing and restricts the application of other commercial terms that BT can offer, should not be applied in the LLA Area 3 market. To avoid repetition, INCA refers Ofcom to the analysis of this approach in the WLA Area 3 market section of this response, which is equally applicable in the LLA Area 3 market.

Assessment of the fair bet principle for Altnets

335 INCA has received data from some Altnets that demonstrates how network investments in the current LLA Area 2 in the WFTMR will fall into the proposed TAR LLA Area 3 market whilst remaining in the WLA Area 2 market (in which Ofcom promotes competitive network investment).

336 INCA encourages Ofcom to assess the impact on such investment of Ofcom's proposed LLA Area 3 remedies and consider whether those investors and operators benefit from the fair bet principle.

10 The inter-exchange market

10.1 IEC market definitions

337 Ofcom proposes to define the IEC product market as follows:

338 IEC services which:

a) includes active services at all bandwidths provided between BT exchanges;

b) includes dark fibre between BT exchanges;

c) excludes leased line access services; and

d) excludes all trunk services that do not connect between BT exchanges.

339 INCA agrees with this definition.

340 Ofcom does not propose to define geographic sub-markets for the IEC market, rather it proposes that each exchange is a distinct market. INCA also agrees with this proposal.

341 Ofcom then groups the exchanges into three categories,[116] for the purpose of designing appropriate and proportionate remedies:

- BT-only exchanges
- BT+1 exchanges, and
- BT+2 exchanges

342 INCA welcomes Ofcom's review of Principal Core Operators (PCOs) and agrees with the proposed list.[117] It is important that PCOs only include providers that are present in BT exchanges and that offer commercial backhaul services.

343 INCA is, however, concerned that the presence of PCOs does not necessarily equate to there being commercial backhaul services available to the near-by exchanges an Altnet needs to connect to. **INCA suggests that Ofcom needs to go beyond simply checking**

[116] These three categories refer to the number of Principal Core Operators (PCOs) that are present in a BT exchanges.
[117] These three categories refers to the number of Principal Core Operators (PCOs) that are present in a BT exchanges. Ofcom proposes that the PCOs at this time are: Neos Networks (previously SSE), VMO2, Vodafone and Zayo.

presence in an exchange to also ascertaining what connectivity the PCO can offer from that exchange. INCA further suggests that, in cases where neither of the two PCOs present at an exchange can offer the connectivity required by Altnets, that exchange should be designated BT only.

344 INCA, however, has concerns that this categorisation is not stable due to the effect of planned exchange closures during and after the TAR period. It is likely that PCOs will exit exchanges significantly in advance of some closure dates and this could change a BT+2 exchange to either a BT+1 or a BT-only exchange.

345 Ofcom concludes that BT holds SMP in the market for access to BT-only and BT+1 exchanges. INCA agrees with this but is concerned that the likelihood of PCOs leaving exchanges will mean that some current BT+2 exchanges needing to be re-categorised within the TAR period.

346 INCA considers that the principles of continuity and consistency are important in this context. If Altnets have invested in building new full-fibre networks based on the knowledge that there will be either commercial or regulated backhaul from a specific location, then it is important that such backhaul provision is maintained. If commercial backhaul providers exit exchanges, then they need to be replaced by regulated backhaul provision. To do otherwise could result in some full-fibre deployments becoming unviable due to the extremely high BT unregulated commercial inter-exchange backhaul prices.

347 INCA does not consider this to constitute Ofcom changing market definitions during the TAR period, but simply reflecting physical changes to the conditions in individual exchanges in order to deliver against its principles of continuity and consistency.

INCA asks that Ofcom:

- **Validate whether PCOs can offer the backhaul required by Altnets, and**
- **Review the status of exchanges on an annual basis to ensure that there is continuous backhaul available for Altnets.**

10.2 IEC remedies

348 Ofcom proposes the following remedies in exchanges where BT has been found to have SMP:

- Retain the requirement on Openreach to offer active IEC services at all regulated BT exchanges.
- Retain the CPI-0% charge control on active IEC services at all regulated BT exchanges.
- Retain a requirement on Openreach to offer DFX, and extend it to all regulated exchanges.
- Retain the same design elements of DFX as well as QoS and Reference Offer requirements as we set in WFTMR21.
- Retain the cost-based charge control on DFX with some amendments.
- Retain our approach to transitional arrangements for active IEC services, and propose new transitional arrangements for DFX where exchanges are deregulated

349 INCA agrees that those remedies remain appropriate and proportionate and welcomes Ofcom's move to extend the DFX remedy to all regulated exchanges. The availability of DFX is a core building block for the development of network competition across the country, not just in urban centres.

350 INCA has, over several years, explained to Ofcom that some Altnets are very concerned that BT will withdraw the DFX product when exchanges close. INCA has discussed this with BT who has confirmed that it intends to discontinue DFX services once an exchange is closed. As explained above, the availability of cost-effective backhaul is essential to full-fibre deployments outside main towns and cities and INCA therefore welcomes Ofcom's proposal that Openreach's obligation to provide DFX at an exchange until all telecoms providers have exited under commercial terms agreed with Openreach.[118]

[118] TAR V3 Paragraphs 3.53 and 3.54.

351 INCA's members are committed to entering constructive negotiations with Openreach to identify commercial solutions to meet their needs and to enable Openreach to progress with its exchange closure programme.

10.3 Exchange closures

352 Although some Altnets may not be direct consumers of BT exchange services, they could still depend on providers offering services from BT exchanges e.g. they may receive backhaul services from CPs operating in BT exchanges, via cablelinks into the exchange. In these instances, without a suitable Openreach solution, the assets of the indirect customer will effectively be stranded unless the customer invests in costly rerouting of their network to the nearest enduring exchange. This has been set out above. The same is the case for PIA users, although they do not all directly consume BT exchange services, their ability to build using PIA will be indirectly (but materially) impacted by the planned exchange closure programme. INCA is disappointed that Ofcom is proposing a largely 'hands-off' approach to the exchange closure programme during the TAR. INCA encourages Ofcom to take a more active role and to, amongst other things, as set out in INCA's pre-consultation submission, ensure that Openreach is instructed to engage with both direct and indirect consumers of its exchanges and services from those exchanges.

353 We note that there are remedies that Openreach could adopt as part of its programme of exchange exit to effectively make whole the investment that these parties have made, including:

- Installing a cabinet mounted Optical Distribution Frame (ODF), with connectivity to an enduring receiving exchange, outside of each of the exchanges that they plan to exit which would allow CPs to establish dark fibre connectivity to support existing assets.
- Reimbursing CPs for the costs they will face due to the necessary changes they will be required to make to their network architecture to allow for existing dark fibre installations to connect to an enduring receiving exchange.

354 For the reasons set out above, without regulation we do not think Openreach will have sufficient commercial incentives to enter into meaningful negotiations with some customers. Recognising this market failure, we think Ofcom should establish a set of

principles that Openreach will be expected / mandated to comply with as part of the exchange exit programme. These principles should not set out the specific solutions that Openreach must deploy but should provide a framework for Openreach to operate within that will help to level the playing field between the former-monopoly and new entrants to the market. This is particularly important recognising the relative immaturity of the competitive market and that some new entrants are direct competitors to the BT Group.

INCA asks that Ofcom require BT to engage proactively with all segments of the market and provide longer-term clarity and certainty for exchange closure conditions.

11 Geographic discounts and other commercial terms

355 INCA welcomes Ofcom's recognition that it is essential to impose restriction on BT's freedom to design and engage in pricing structures (permanent or temporary) that could deter investment in, or take-up of, new competitive full-fibre networks.

11.1 Geographic discounts

356 INCA welcomes Ofcom's proposal to extend the scope of the geographic pricing prohibition to include connection charges and also any retail inducements BT may seek to introduce. INCA also agrees with Ofcom's proposed product scope for this remedy.

357 INCA has consistently highlighted to Ofcom the importance of connection charges, both to providers and to consumers. The waiving of connection charges by BT (which has established revenue streams across a large product portfolio) may force Altnets to do the same. This can cause significant cashflow impacts on Altnets that do not yet have established revenues streams for a full product portfolio. This applies across both the WLA and LLA markets.

358 INCA brought to Ofcom's attention during the summer of 2024 that Openreach had launched a trial of offering retail vouchers to end consumers that adopted an FTTP

connection from an ISP using the Openreach network. At the time it became clear that Ofcom did not consider it had the powers to intervene; INCA is encouraged that Ofcom is now seeking to ensure that it can do so once the TAR takes effect.

359 INCA is concerned that the legal instruments designed by Ofcom must provide Ofcom the necessary flexibility to encompass new creative geographic pricing structures and that the definition of 'geographic pricing' is sufficiently flexible to not exclude pricing that by its nature affects only where BT faces network competition but may not explicitly define a geographic scope of the pricing initiative.

360 INCA agrees that it is important that there is a consent mechanism for BT to submit to Ofcom where it considers that geographic pricing initiatives may be in the overall long-term interest of consumers. INCA considers, however, that the consent process should include stakeholder consultation in order that Ofcom can ensure that it understands the full potential impact of such pricing.

11.1.1 The purpose and application of geographic pricing prohibition

361 INCA notes that Ofcom proposes to not apply this geographic pricing prohibition in the WLA Area 3 and LLA Area 3 markets. The rationale for that decision is not clear. **Although Ofcom has set objectives for those markets that do not include the promotion of competitive network investment, Ofcom does not have an objective to actively deter such investment**. For Ofcom to do so seems perverse as several Altnets are currently deploying full-fibre networks in those markets, several of which did so with government subsidies.

362 INCA considers that **Ofcom needs to distinguish clearly between pro-investment regulation (setting charge controls to provide investment incentives and headroom) and the prevention of abuse of market power.** INCA cannot support an Ofcom approach that considers it appropriate to allow BT to abuse its market power in locations where Ofcom has decided to not promote competitive investment. INCA also considers this to be contrary to government policy.

363 INCA considers that **Ofcom must recognise the legitimacy of Altnet investments in the two 'Area 3' markets** and that BT should not be given the green light to potentially make

those investments unviable. One example of a possible initiative by BT in an area with an Altnet's existing or planned investment could be to significantly reduce FTTC pricing to deter take-up of the Altnet's services. BT could do this in collaboration with its downstream ISP customers who would benefit by not losing customers to the Altnet.

364 INCA recognises that there may be locations where BT would have legitimate reasons for offering geographic discounts. This is accommodated by the existing consent process and INCA therefore considers that the application of the geographic pricing restriction in the 'Area 3' markets would be both proportionate and appropriate to the competition concerns that arise in those markets.

365 INCA urges Ofcom to change its approach to where it applies the geographic pricing prohibition.

INCA asks that Ofcom change its proposals and apply the geographic discounting restrictions in WLA Area 3 and LLA Area 3.

11.2 Other commercial terms

366 INCA welcomes Ofcom's proposal to retain restrictions on commercial terms that could deter Altnet investment or take-up of Altnet services. INCA also welcomes that Ofcom has expanded that scope of other commercial terms (OCTs) to include connection charges and any other contractual conditions relevant to network access,[119] the extension of the consultation period for (OCTs) from 90 days to 120 days, and Ofcom's extended guidance.

367 INCA also welcomes that Ofcom has recognised competition concerns arising from commercial terms that significantly accelerate migration to FTTP and that Ofcom intends to apply the restrictions in the Area 3 markets.

[119] Which INCA understand would also include retail inducements if they affect network access conditions, directly or indirectly.

368 INCA, however, retains material concerns with the scope, definition and processes applicable to the OCT restrictions, those concerns include:

- Ofcom's primary concern seems to remain the creation of obstacles to ISPs taking up Altnet services, not acknowledging that vertically integrated Altnets are also delivering network competition;
- Ofcom refers to nascent network competition and nascent network competitors,[120] but in the Equinox assessments, Ofcom considered only the impact on the very largest network competitors;
- Ofcom applies the OCT remedy to the 'Area 3' markets, but may not intend to apply it fully;
- Despite recognising the importance of connection charges in geographic discounts, Ofcom continues to exclude them from the scope of the OCT restrictions;
- Although Ofcom expresses concern about a range of potentially anticompetitive pricing behaviours[121], the legal remedy proposed by Ofcom applies to pricing and/or services conditioned pricing only;
- Ofcom does not require Openreach to submit justification for why the proposed terms satisfy the criteria presented by Ofcom for assessment of OCTs; and
- Ofcom proposes to continue its recommendation that Openreach contact Ofcom informally to discuss potential commercial terms prior to making a formal notification.
- Ofcom will not always consult when notified by Openreach.

369 INCA considers it vital that Ofcom provide clarity about its approach to the application of the OCT restrictions remedy. Altnets' experiences in how Ofcom applied the WFTMR remedy to the two Equinox offers was largely one of surprise and disbelief, having read Ofcom's WFTMR remedy description.

[120] TAR V4 Paragraph 9.77.
[121] Including terms that have a signalling effect and terms that give preferential treatment to some telecoms provides.

11.2.1 Defining the harms and consequences of anti-competitive commercial terms

370 Ofcom's refers repeatedly to Openreach offering commercial terms that prevent ISPs from taking up Altnet wholesale services. INCA agrees with Ofcom that this is a significant potential harm arising from the use of conditional OCTs.

371 In addition to those harms, though, Altnets that do not offer external wholesale access (vertically integrated providers) are equally exposed to the consequences of Openreach's OCTs if those flow through to end-consumer pricing and other terms. Ofcom appears to not consider these harms, yet it considers that VMO2 (a vertically integrated provider) to exert the most material competitive constraint on BT.

372 Ofcom, rightly, recognises that it needs to identify pricing or other terms offered by BT which deter investment in competitive FTTP networks AND/OR deter take-up of Altnet services. That take-up needs to incorporate both end-customers contracted via external ISPs and end-customers contracted by the Altnet's internal retail business.

373 It is inconsistent and inappropriate for Ofcom to recognise the competitive constraint exerted on Openreach by VMO2 and, at the same time, not consider the impact on other vertically integrated network competitors.

374 INCA asks that Ofcom explicitly expand the scope of potential harm arising from OCTs to include harm of vertically integrated network competitors.

INCA asks that Ofcom clarify that the OCT concerns and potential harm applies to vertically integrated network operators as well as wholesale operators.

11.2.2 Preventing harm to nascent competitors and nascent competition

375 Despite several references to nascent competition and nascent competitors in the WFTMR, Ofcom's approach in the Equinox assessments was to not consider the impact of the Equinox offers on any Altnet except the two or three largest. Whilst those competitors could not be considered established (with the possible exception of VMO2), INCA also does not consider that they could be described as nascent.

376 INCA asks that Ofcom is sincere from the outset about how it intends to apply the OCT remedy. This does not require detailed descriptions, as that would be inappropriate and limit Ofcom's legitimate discretion, but on core matters such as whether the remedy is intended to provide any form of protection against potentially anticompetitive terms for mid-sized and smaller Altnets, INCA considers it critical that Ofcom makes its position clear.

INCA asks that Ofcom clarify its references to nascent competitors and competition and that Ofcom confirms that the OCT remedy is intended to offer protection to the full range of Altnets.

11.2.3 Application of the OCT remedy in WLA Area 3 and LLA Area 3

377 Ofcom proposes to apply the OCT remedy to the Area 3 markets but describes its motivation for doing so as an effort to prevent terms offered in an Area 3 market having an anticompetitive effect in other markets, where Ofcom's stated objectives include the promotion of investment in full-fibre networks by both Openreach and its competitors.

378 In the Equinox assessment, Ofcom declined to apply the OCT remedy to WLA Area 3 arguing that its objective in that market was to only promote investment by Openreach. Under the TAR, would Ofcom apply the OCT remedy to the Area 3 markets in the form of assessing the impact on Altnets in an Area 3 market? Like for other points raised in this section, INCA is asking Ofcom for clarity. It is critical for investors that they have confidence in the regulatory framework and that requires transparency and consistency from Ofcom.

INCA asks that Ofcom make it clear that the OCT remedy is fully applicable to the Area 3 markets.

11.2.4 Scope of legal remedies

379 INCA is concerned that the full scope of potential competition concerns described under the Other Commercial terms heading in the TAR consultation are not, in fact, within the scope of the legal remedy proposed by Ofcom.

380 The scope of the relevant legal remedy requiring notification by Openreach is clearly limited to offers where there is a conditionality relating to volume or range of services purchased:

> "In the case of an Access Change involving new or existing network access where the price or other contractual conditions are conditional on the volume and/or range of services purchased, the Access Change Notice must be sent." [122]

381 INCA is concerned that the other powers referred to by Ofcom[123] are unlikely to provide a sufficiently robust and effective framework to function as an effective deterrent from experimentation with such terms by Openreach.

382 INCA asks that the legal remedy be changed to increase the scope of Ofcom's powers to require notification of and investigate OCTs representing the scope of concerns set out by Ofcom.

INCA asks that Ofcom ensure that the full scope of its concerns in relation to OCTs can be addressed under the relevant legal instrument.

11.2.5 Burden of proof

383 For the Access Change Notification, Ofcom requires Openreach to provide:

"i) the services included in the offer; and

ii) the prices, terms and conditions that would apply."[124]

384 Ofcom does not require Openreach to provide data and analysis to substantiate why it considers that the proposed OCT is compliant with the OCT rules set out by Ofcom.

[122] TAR V7 condition 8.6.
[123] TAR V3 Paragraph 9.94.
[124] TAR V3 Paragraph 9.95.

385 If Ofcom required that data up-front, then it would be able to present Openreach's main arguments to stakeholders as part of the public consultation process. It is INCA's view that this would significantly improve the overall OCT assessment process and enable stakeholders to make better informed submissions. Ofcom can, naturally, at any time request additional data from Openreach to assist its assessment.

386 INCA considers that this process would enable Ofcom to perform its assessment within the allocated 120 days and ensure that the inputs received from all parties would be better informed.

387 INCA asks that Ofcom require Openreach to submit data and analysis to explain why it considers the proposed OCT to be compliant with the OCT remedy as part of the Access Change Notification.

INCA asks that Ofcom modify the OCT remedy to require Openreach as part of its notification to present its analysis for why a proposed OCT does not harm deployment or take up of Altnet networks.

11.2.6 Recommended informal consultation with Ofcom

388 Ofcom recommends that Openreach bring its OCT proposals to Ofcom for informal discussion in advance of making the formal notification.

389 INCA understands that Ofcom considers that this initial informal consultation prevents the notification of OCTs that Ofcom would almost certainly consider in violation of the OCT remedy, but it is INCA's belief that the unintended consequences of that informal consultation process almost unavoidably generates a level of 'buy in' by Ofcom of the OCTs that are then subsequently formally notified.

390 INCA does not believe that it is Ofcom's intention to introduce the potential of bias into its formal assessment of OCT notifications but considers it likely that this may indeed be the outcome.

INCA asks that Ofcom remove the recommendation of informal consultation with Ofcom and that it treats any approaches from Openreach with extreme care.

11.2.7 Commitment to consult

391 INCA notes that it is up to Ofcom's discretion whether it chooses to consult[125] on the OCT notification.

392 Whilst INCA believes that the relevant experts within Ofcom have a good understanding of the section, it does not believe that Ofcom is likely to be able to assess whether a proposed OCT could or would potentially deter further Altnet investment and/or reduce take-up of Altnet services (whether retail or wholesale).

INCA, therefore, asks that Ofcom make a commitment to always consult stakeholders on its assessment of terms that have been notified under the OCT remedy

12 Copper retirement

393 As set out in INCA's pre-consultation submission on copper retirement,[126] INCA considers that Ofcom's existing framework is suitable for safeguarding the interests of consumers (including vulnerable consumers) and BT's downstream wholesale customers and competitors. INCA's remaining main concern is therefore safeguarding the legitimate interest of BT's network competitors, the Altnets.

394 INCA has reviewed Ofcom's proposals and its assessments of proposals made by INCA and others and understands the limitations of the TAR scope and process in relation to what can be achieved to prevent the copper retirement process from strengthening

[125] STET.
[126] https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/consultation-telecoms-access-review-2026-31/preconsultation-submissions/inca-tar-submission-on-strengthening-infrastructure-competition-by-addressing-barriers-to-exp.pdf?v=392840

Openreach's stronghold in the local access market and transferring Openreach's dominance from the copper network market (where Openreach was the de-facto monopolist (facing competition from VMO2 only, using a coax network)) to the FTTH network market[127] where Ofcom is actively promoting the introduction of competition.

395 INCA understands that, even if Ofcom formally stated that Altnet FTTP coverage would count towards the achievement of the first threshold, BT could choose to not issue a stop sell notice in exchange areas where it does not itself have at least 75% FTTP coverage. It would instead be necessary to design a framework in which BT was incentivised to recognise Altnet FTTP coverage and issue stop sell notices where the collective BT and Altnet coverage represent at least 75% of premises in the relevant exchange area.

396 Ofcom is planning to consult separately on the definition of the second threshold (100% coverage less excluded premises) and INCA notes that BT has itself suggested here that Altnet FTTP coverage should count towards the 100% coverage target.[128] INCA agrees that it would not be desirable for BT to use Altnet coverage against the second threshold only, as this could result in effectively forcing many customers of copper-based services across to Openreach FTTP potentially before Altnets are ready to offer real competition in that exchange area.

397 It is a problem, however, if Ofcom were to effectively force BT to overbuild Altnet networks in order to reach the second threshold. INCA would wish to seek a solution that avoids that situation from occurring.

398 INCA invites Ofcom to consider whether it could be possible to link the two thresholds in manner that, where Openreach recognises Altnet coverage towards the first threshold (and that Altnet coverage represents no less than 30% of the FTTP coverage in that exchange area)[129], BT would also be allowed to count Altnet FTTP coverage toward the achievement of the second threshold. INCA considers that this could potentially provide

[127] INCA is aware that there are no separately defined relevant markets for copper and fibre-based services, the term market is used in a more general sense in this context.
[128] Annex 12 Paragraph A12.4.
[129] Including any overbuild.

the appropriate balance of incentives for BT and could help overcome at least some of the potential harm to network competition arising from the current copper retirement process.

399 An alternative option could be that BT is able to count Altnet FTTP coverage towards the second threshold (even without doing for the first threshold, but only where there is Altnet coverage of at least 75% of the premises in the relevant exchange.

400 With regards to Ofcom's forthcoming consultation on how to define the second threshold, INCA believes firmly that, unless BT concedes pro-competitive measures as illustrated above, the threshold must be set at a limit that requires very close to 100% FTTP coverage by BT and that Ofcom must keep front of mind the likely impact on network competition, were BT to be able to significantly increase prices of copper based services before Altnets are sufficiently able to offer a viable alternative to BT in at least 75% of the country.

401 INCA considers that, regardless of counting Altnet FTTP coverage towards either of the two thresholds, Ofcom should consider not allowing the 2nd threshold to be reached until either:

- There is at least 75% Altnet FTTP coverage in the relevant exchange, or
- There is no Altnet build planned or under way in the relevant exchange.

402 With regards to ensuring that copper retirement is not used to entrench and strengthen BT's market power, INCA is committed to working with Ofcom and government to design changes to the General Conditions of Entitlement (the GCs) for this purpose.

403 INCA consider that government policy (in the SSP) should be designed to provide Ofcom with the requisite powers to introduce new GCs for this purpose.

INCA Independent Networks Cooperative Association

Annex 1 - Table of WFTMR and TAR objectives

Relevant market	TAR objectives	WFTMR objectives
WLA Area 2	To promote investment and competition in gigabit-capable networks by Openreach and other communications providers. Ofcom also seeks to protect consumers and competition based on access to Openreach's networks as network competition develops. [130]	To promote competition and investment in gigabit-capable networks by Openreach and other network operators, and To protect consumers and existing models of downstream competition in the short term.[131]
WLA Area 3	To promote investment in gigabit-capable networks by Openreach; and To promote competition based on access to Openreach's networks, and protect consumers.[132]	To promote investment in gigabit-capable networks by Openreach; and To promote competition based on access to Openreach's networks, and to protect consumers.[133]
LLA HNR Area	To promote investment and competition in networks that offer LLA services by Openreach and other communications providers. As network competition develops, Ofcom also seeks to protect consumers and competition based on access to Openreach's networks.[134]	No explicit objective articulated but: Ofcom seeks to promote competition and investment in gigabit-capable networks, by Openreach and other operators. Ofcom also seek to protect consumers and existing models of downstream competition in the short term.[135]
LLA Area 2	To promote investment and competition in networks that offer LLA services by Openreach and other communications providers.	To promote competition and investment in gigabit-capable networks by Openreach and other operators, and To protect consumers and existing models of downstream competition in the short term.[137]

[130] TAR V4 Paragraph 1.4.
[131] WFTMR V4 Paragraph 1.14.
[132] TAR V4 Paragraph 1.107.
[133] WFTMR V4 paragraph 2.7.
[134] TAR V4 Paragraph 2.119.
[135] WFTMR V4 Paragraph 1.202.
[137] WFTMR V4 Paragraph 1.137.

	Ofcom also seeks to protect consumers and competition based on access to Openreach's networks as network competition develops.[136]	
LLA Area 3	To promote competition based on access to Openreach's networks and to protect consumers.[138]	To promote investment in gigabit-capable networks by Openreach, promote competition based on access to Openreach's networks and protect consumers.[139]
IEC	To promote competition based on access to Openreach's network and to protect consumers.[140]	For BT+1 Exchanges To provide access seekers with incentives to build competing IEC leased lines themselves and/or enter into commercial arrangements with alternative network builders as opposed to overly relying on buying regulated wholesale services from Openreach, as well as providing Openreach with the incentive to invest; and To protect customers and maintain retail competition in the short term while competition in IEC networks develops.[141] For BT only exchanges To ensure that customers are protected including through a weakening of retail competition. To ensure that telecoms providers that rely on access to BT's network have access to IEC leased lines at a fair price and are encouraged to invest as deep into the network as possible. To promote Openreach's investment in IEC.[142]
PIA	To promote network competition based on access to Openreach's physical infrastructure.[143]	To promote competition and investment in gigabit-capable networks by Openreach and other telecoms providers.[144]

[136] TAR V4 Paragraph 2.5.
[138] TAR V4 Paragraph 2.52.
[139] WFTMR V4 Paragraph 2.94
[140] TAR V4 Paragraph 3.5.
[141] EFTMR V4 Paragraph 3.9
[142] WFTMR V4 Parapgaph 3.29.
[143] TAR V4 paragraph 4.13.
[144] WFTMR V4 Paragraph 4.11.

Annex 2 – INCA's analysis of PIA improvements planned compared to issues raised

INCA 'asks' from pre-consultation reports	Planned PIA enhancements and Ofcom TAR requirements
Short-term requirements for improvements to the PIA remedy under the WFTMR (June 2024)	
PIA Products	
• Un-bundling of PIA products	
• Provision of below 25mm duct space	
PIA process and systems	
• General systems related issues	
• Implementation of APIs	
• Processes for PIA users not using APIs	
• IT support provided by Openreach	
• Access to duct and pole maps	
• Service restoration for vulnerable customers	
Network Adjustments	
• Network adjustment process	Some improvements are planned
• Customer Committed Date (CCD)	
• A1024 process	Some improvements are planned
• D-pole process	
• Closing NOIs	
Claims and damages	
• Management of damage claims	
• Damage to PIA users' assets	

INCA 'asks' from pre-consultation reports	Planned PIA enhancements and Ofcom TAR requirements
• Dispute resolution for damage claims	
• Invoicing of damage claims by Openreach	
• The risk of contract suspension	
Billing for PIA products	Some improvements are planned
Equivalence of Inputs	
Expand the scope of the Openreach Monitoring Unit	
PIA requirements for the Telecoms Access Review (July 2024)	
Equivalence of Inputs (EOI)	
• Introducing EOI through the TAR	
• Monitoring of EOI and NUD compliance	
Regulatory Oversight	
Changes to PIA product	
• Recovery of copper cables by Openreach	
• Limited duration of the minimum PIA licence term	*Ofcom has indicated in the TAR that Openreach considering longer PIA licence, but Ofcom has not stated that this is a requirement*
• Wayleave information	
• Novation process	Some improvements are planned

Source: INCA

Annex 3 – BT and Openreach FTTP statements

404 INCA has reviewed BT and Openreach statements relating to their FTTP deployment plans and ambitions. Below we list key announcements and highlight their scope, and the conditions and caveats clearly applied to the targets set out.

- In its financial results 2019, BT stated that it had increased its FTTP build targets from 10m to 15m premises. Importantly, the statement included the following wording:*" if the conditions are right – especially the regulatory and Government's policy enablers, including support for wayleaves and extension of business rate relief."* [145]
- In its financial results for 2020, BT increased its FTTP target to 20m premises, but again included qualifiers and conditions: "*Subject to the successful resolution of a number of critical enablers, BT will support the investment to reach 20 million premises by the mid- to late-2020s. These critical enablers include extending the enablers across the whole of the UK, being able to sign acceptable deals with customers, agreeing the details of the fair bet, understanding how Government funding will be applied to rural areas, and getting Cumulo rates relief*." [146]
- In its Annual Report 2021, BT stated that it would accelerate its FTTP deployment to 20m premises and increase its FTTP build plan to cover 25m premises, "*subject to critical enablers being resolved*" [147]
- Openreach's website currently states that: "*We intend to keep building after that - to as many as 30 million premises by the end of the decade – assuming the conditions for investment are still supportive.*" [148]

405 Nowhere has BT ever made an unconditional commitment to FTTP deployment and nowhere has BT committed to deploy FTTP '*everywhere*' as is often stated by Ofcom. Despite these significant qualifiers and the strong conditionality of BT's commitments, Ofcom has consistently treated those commitments as certainties but Altnet commitments as '*maybes*'.

[145] BT Results for the full year to 31 March 2019 page 4 - Fixed network
[146] q420-release.pdf
[147] BT Annual Report 2021 page 46 – Decisions made during the year
[148] Full Fibre broadband build plan | Openreach