

Prohibiting inflation-linked price rises

Independent Networks Cooperative Association

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1 Introduction

- 1 INCA welcomes the opportunity to respond to Ofcom's consultation on prohibiting inflation-linked price rises.
- 2 The Independent Networks Cooperative Association (INCA) is the leading UK trade association representing organisations deploying independent digital infrastructure. Founded in 2010, INCA aims to foster a new approach to digital infrastructure, focusing on full fibre (FTTP) and high-quality wireless broadband whilst campaigning for the policy and regulatory support needed to maintain a healthy, competitive market. INCA has over 200 members and represents most of the full fibre infrastructure builders commonly referred to as the Altnets. Members include network owners, operators, suppliers and managers as well as access networks, middle mile networks, network hubs and exchanges and organisations (including public sector) that are developing or promoting independent networks.

2 Executive Summary

- 3 INCA supports Ofcom's aim to increase clarity for consumers but is concerned that the proposal for absolute £/p levels of future increases could result in higher price increases that might have been the case using the CPI+ formula.
- 4 INCA understands that Ofcom is not seeking to restrict the ability of telecoms providers to increase their prices, but simply to reduce the scope for consumer confusion. Inflation-related price changes are appropriate and reflect a market where prices are cost-reflective.
- 5 Effective competition in the UK's retail telecoms markets would likely address both price levels and communication clarity issues, so Ofcom should focus its efforts on removal of barriers to competition at all levels (not just upstream access to

Openreach) and ensure that any direct measures are not market distortive and do not have unintended consequences.

3 Consumer Harm

- 6 INCA agrees, based on the data supplied under s.3 in the consultation, that some consumers may be harmed as a result of inflation-linked mid-contract price rises, but this harm is arguably only material when inflation rises to levels seen in 2022/23. Whilst confusion may remain if/when inflation returns to a lower percentage, any material 'harm' of using CPI-based price formulae will disappear.
- 7 While Ofcom's research showed that many consumers were 'annoyed' that they were facing a price increase, providers would have been feeling similar inflation-driven cost pressures. 'Annoyance' may not be the most appropriate measure for assessing consumer harm arising from macro-economic conditions. It is arguable that if inflation was not at the high levels of 2022/23, consumers would not have been as 'annoyed'. Importantly, only a small minority of consumers said they would have difficulty providing for the increased cost; this was asked in relation to the Mar/Apr 2023 increase – if this was asked the year before, the 7% who said they would have difficulty affording it would undoubtedly be fewer.
- 8 Whilst Ofcom has acknowledged that high inflation adds to its concerns, it is not the main driver of concerns and two of Ofcom's objectives are to enable consumers to have sufficient clarity and certainty to ensure they do not face unfair burdens. INCA believes, however, that the qualitative and quantitative research findings would be substantially different if they were conducted during a period when inflation had not risen to such an extent.
- 9 Additionally, Ofcom's research shows an increase in consumer understanding of how pricing works between January and October 2023, which should (all other things being equal) lead to less overall consumer confusion (and annoyance) and result in reduced need for additional regulatory intervention.

- 10 Nevertheless, INCA is sympathetic to consumer concerns regarding the current cost-of-living and is supportive of endeavours to make pricing information more understandable to consumers.
- 11 INCA is, however, concerned that Ofcom's increasing imposition of mandatory consumer communications may end up being counter-productive and that consumers may 'switch off'. Ofcom's research, for example, showed that consumers are not looking at the worked examples that now must be included in point-of-sale information.

4 Requirements for Providers

- 12 The nationwide rollout of gigabit broadband is reliant upon private sector finance, all of which requires a positive economic return. The sector is backed by some of the lowest cost of capital available, including UK pension funds. A key aspect of attracting this money is that the services provided by telecoms infrastructure can raise prices in line with inflation. It is entirely realistic and expected that they should not be expected to lose money over time, particularly when these funds derive from taxpayers' pension funds.
- 13 It is a well-known fact that telecoms companies in the UK deliver relatively low returns compared to international benchmarks.
- 14 While many providers may engage in multi-year financial planning processes based on a range of inflation scenarios, as claimed in the consultation (3.71), setting a definitive price at the point-of-sale will almost inevitably lead to providers erring on the higher-side of inflation predictions to avoid ending up with a margin squeeze, as wholesale costs continue to rise in line with inflation.
- 15 INCA is concerned that the requirement for £/p absolute future price increases could, therefore, lead to increases above the level that would have been imposed using a CPI+ increase formula. This is because providers will have a natural

propensity to adopt a worst-case assumption of the CPI level for the coming period (as they face similar CPI-related wholesale cost changes and cannot afford to risk a margin reduction by the two becoming out of step).

16 INCA proposes that Ofcom should consider allowing for a ‘no more than £/p’ statement. It could for example commit to a CPI+ formula but put a cap on the increase. That would seem to better safeguard consumer interests whilst also ensuring that consumers know what the highest price increase could be.

17 INCA also agrees that this information should be included within the Contract Summary and Contract Information, as described in the proposed additions and amendments to GC C1 but cautions against ‘information overload’.

18 INCA also agrees with the proposed additions and amendments to the GC C1 guidance.

19 While it is acknowledged that the proposals will only affect new contracts, INCA is concerned that four months is insufficient for implementation. INCA understands and supports the need to reduce consumer confusion as soon as practically possible, but believes that changes to pricing structures, staff training and advertising and marketing et al. may require more notice of changes.

20 INCA contends that four months is insufficient for some providers and implementation should be no less than 6 months from publication to allow providers of all sizes to undertake sufficient preparation.

5 Further Considerations

21 This proposal to curtail the use of inflation-linked mid-contract price rises highlights the fact that the majority of large retail providers impose mid-contract CPI+ based price rises on their retail customers and that the retail market is not effectively competitive, as the larger providers have continued to impose CPI+ based price rises on their retail customers despite smaller competitors not doing so.

- 22 The ability of the large ISPs to price as they like may be a consequence of market concentration. INCA believes that this consultation is a clear example of there being an underlying problem in that the large CPs tend to move in sync when imposing mid-contact price increase.
- 23 No regulatory intervention can replicate the impact of real competition, and this has been proven in recent years in UK telecoms. The government adopted the right policy in encouraging competition and the market responded accordingly, with enthusiasm. INCA's research, as demonstrated in the '*Securing long-term benefits for broadband customers*'¹ report, shows that consumers are already benefiting from lower prices where competition exists. Competition is of paramount importance to the telecoms sector and the establishment of this consultation has demonstrated that competition is not as effective as it should be.
- 24 INCA, therefore, urges Ofcom to include into the forthcoming 2026 WFTMR process a review of the functioning of the downstream retail markets. Reviews of wholesale markets should always, in any case, start with a review of the relevant downstream markets, so this would be in line with international best practice. Should any issues then be identified that cannot be effectively addressed through upstream wholesale market interventions, then Ofcom could initiate a separate workstream to undertake further analysis and review the need for any additional interventions.

¹ <https://www.inca.coop/policy/2023-report>