

INCA response to:

Ofcom's
consultation on
Quick, easy and reliable switching

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1 Executive summary

1. INCA is pleased to present its response to Ofcom's consultation on quick, easy, and reliable switching. INCA welcomes Ofcom's proposal to mandate the One-Touch-Switching (OTS) (with hub functionality) option and looks forward to working with Ofcom, the OTA, and other stakeholders to further develop, implement and use this new switching platform.
2. INCA supports Ofcom's choice of the OTS switching platform, but
 - INCA is concerned that a new revised Code to Switch (CTS) option has been published by Ofcom with no guidance as to Ofcom's view of this new proposal, nor of the impact of the timing of a final decision,
 - INCA is deeply concerned that Ofcom provides no guidance for and appears to significantly underestimate the complexity of agreeing governance and funding principles for the switching hub facility, and
 - INCA Believes that Ofcom's proposed timeframe for completion and implementation of the new switching platform (by December 2022) is extremely tight and may not be feasible. This is particularly the case due to the revised CTS option and the need to establish the complex governance and funding principles for the hub provider, in a market with more than 100 participants with very different needs and profiles.
3. Industry has been unable to agree on a single specification for the new gaining provider led switching platform, so Ofcom had to evaluate the two options presented, namely the One-Touch-Switch (OTS) option and the Code to Switch (CTS) option. Ofcom found the OTS option to be by far the strongest and best fit when evaluated against clear evaluation criteria and Ofcom's policy objectives. INCA agrees with that assessment and set out in the response its reasons for that, and for why we do not consider the CTS option to be compliant with the relevant criteria, not proportionate in terms of costs and burden on operators.
4. Very late in the current consultation process (on March 29th), however, Ofcom published a revised CTS proposal, which had added into it the option of in Interactive Voice Response (IVR) functionality. Ofcom has not commented on this revision, has not altered its assessment analyses or conclusions.
5. Whilst INCA does not believe that the inclusion of an IVR option in the CTS option makes a material difference to the analysis and likely conclusions, we are concerned at the uncertainty resulting from the introduction of the new option at this stage of the process. It is our firm belief that Ofcom would not be able to change its recommendation without undertaking a full revised analysis and reconsulting on its findings and conclusions. We urge Ofcom to clarify the situation as soon as possible.
6. Both switching platform options require a hub functionality, so it will be necessary to establish a central function, regardless which option is chosen. Although Ofcom encourages providers to start collaborating to establish the funding and governance principles for that central functionality, Ofcom has offered no guidance on the principles to be applied nor recognised the complexity involved in agreeing on funding and

governance in a market with > 100 players of very different profiles, sizes and needs. Smaller operators are particularly concerned that the hub functionality is provided in a manner and on terms that enable them to compete effectively.

7. Ofcom's recent letter asking that a working group is set up under the OTA for governance purposes is welcome, but, in INCA's view, insufficient. a separately staffed and funded project office is likely to be necessary if stakeholders are to make any substantial progress within a reasonable timeframe.
8. Finally, but by no means last, INCA has deep concerns about Ofcom's proposed timetable, to have the new switching platform implemented by December 2022. Ofcom's reminder that it can impose penalties of up to 10% of relevant revenues, if providers are not compliant by December 2022 appears disingenuous and inappropriate given revised General Conditions (GCs) are unlikely to be finalised until September 2021 at the earliest and that a whole new governance framework needs to be designed, agreed, and implemented.
9. INCA remains committed to working with Ofcom, the OTA, and other stakeholders, but we believe that Ofcom may be setting the industry up to fail by imposing unrealistic timelines and no support or guidance on governance.

2 Introduction

2.1 Introduction

10. INCA welcomes the opportunity to respond to Ofcom's consultation on Quick, easy, and reliable switching. INCA members are building competing networks and easy switching is a critical to their ability to attract customers (wholesale and retail) to their networks.
11. The process of developing a solution for voice and broadband switching that is truly gaining provider led and easy to use by customers has been long and complex. INCA and individual INCA members have played significant roles in that process and we welcome Ofcom's proposal to implement the One Touch Switch (OTS) solution, which we have been supporting.
12. We note that, shortly before the original response deadline for this consultation of March 31st 2021, Ofcom published a revised version of the Code To Switch (CTS) solution, prepared by Sky and Virgin Media. Ofcom has extended the response deadline to allow respondents to comment on this revised CTS proposal, but has itself not changed its analysis or recommendations to take into account the new CTS proposal.
13. This response includes our initial comments on the revised CTS proposal, but we reserve our right to provide further, and more detailed, comments should Ofcom decide to amend its proposals. We further note that we understand that, in order to amend its proposals, Ofcom would have to re-consult to allow stakeholders a full opportunity to review Ofcom's analyses and proposals. INCA will want to provide detailed comments on any further analysis provided by Ofcom.

2.2 About INCA

14. INCA is a trade association. Its members are supporting, planning, building and operating sustainable, independent and interconnected full fibre and wireless networks that advance the economic and social development of the communities they serve and permit the provision of applications and services through open competition, innovation and diversity.
15. INCA's aims are to:
 - support the development of sustainable independent networks through collaboration on the provision and procurement of products and services and adoption of common standards.
 - support collaboration between members to create new, independent digital infrastructure that can be shared by operators and suppliers.
 - support mutual trading between members.
 - represent the interests of independent networks.
 - promote the advantages and successes of independent networks.
16. INCA has more than 150 members, including: network owners, operators and managers; access and middle mile networks; public sector organisations actively promoting the development of 21st century digital infrastructure; vendors, equipment suppliers, and providers of services that support the sector.

3 Ofcom's analysis and comparison of the OTS and CTS proposals

17. INCA has actively supported the development of the OTS solution and welcomes Ofcom's recommendation that this is the solution that should be implemented in the UK.
18. INCA agrees that the OTS is compliant with the EECC requirements, and that the CTS solution is not. It is our view that the revised CTS proposal does not change that, and we will set out below why we believe that to be the case.

3.1 Ofcom's assessment framework

19. Ofcom applies the following criteria to assess and compare the two options:
 - Is the solution easy to use?
 - Does the solution provide for a quick switching process?
 - Is the solution reliable?, and
 - Is the solution based on informed consent?
20. INCA agrees with Ofcom's assessment framework. We believe that the criteria and tests applied by Ofcom are appropriate and transparent and that they enable Ofcom to clearly

assess the two options to arrive at a proposal that is both compliant and optimises consumer benefits.

21. When applying its assessment framework, Ofcom considers different types of customers and the preferences of those customer types established through research, depending on what services they take and which they want to switch, what communication channels different customer groups have expressed preference for, the different preferences between voice and broadband customers, and experiences and preferences of customers who have used Notification of transfer and Auto-Switch.
22. INCA agrees that these are appropriate and reasonable factors to use when applying the four elements of the assessment framework

3.2 Implementation costs

23. Ofcom used costing estimates provided by the OTA (based on industry submissions and commercial quotes received from potential suppliers). It then calculated the net present costs for the two solutions over a 10-year period, using the weighted average cost of capital as the discount factor.
24. INCA agrees that Ofcom's approach to assessing the costs of the two options is reasonable.

3.3 Proportionality

25. INCA agrees that it is critical that Ofcom assesses the proportionality of its proposed solutions. we comment later on Ofcom's proportionality assessments of the two solutions.

4 Why the OTS solution is compliant and proportionate

4.1 Ease of use

26. In this section we explain why we support Ofcom's analysis. INCA agrees with the majority of Ofcom's analysis, the fact that we do not mention every single measure and criterion assessed by Ofcom does not mean that we disagree with those that we do not mention. Where we disagree with Ofcom we state so explicitly.
27. Ofcom states that the OTS option is easier to use than the CTS option. Ofcom summarises its reasons for this as:
 - it is simpler to understand and follow;
 - it gives greater control to customers over the extent and type of contact they have with the losing provider; and
 - it is likely to involve less effort for most customers.

4.1.1 simplicity

28. We agree that OTS is simpler to use and understand than the CTA because it involves a single action by the customer, namely calling/contacting the provider the customer wants to move its service(s) to.
29. We also agree that OTS would likely be more familiar to customers that have previously used the Notification of Transfer system and that customers that have mobile services in their bundles would find the OTS option more consistent with the mobile Auto-Switch solution.

4.1.2 Customer control and gaining provider led

30. Here again, Ofcom has identified parameters to guide its assessment of the two options under this heading:
 - the customer should not have to coordinate the end of one service and the start of another;
 - the customer should have a choice of communications methods;
 - The customer should have control over the timing of the switch; and
 - the customer should not need to contact the losing provider to terminate the old contract.
31. INCA agrees that these are reasonable and appropriate parameters to use when assessing compliance under this heading.
32. For OTS, the customer clearly does not have to coordinate the end of one service and the start of another. The customer also has the choice of a number of communications methods, the customer controls the timing of the switch and the customer does not need to contact the losing provider at all, so will not be subject to any unwanted save activity or any other inconvenience arising from having to deal with both losing and gaining providers.
33. It therefore seems clear to us that the OTS option clearly meets all of Ofcom's evaluation criteria in this category.

4.1.3 Minimising effort to complete the switching process

34. As the OTS option involves a single contact by the customer to the gaining provider, we agree with Ofcom that the OTS option would involve the least effort by the customer to effect the switch. Even in complex switching scenarios, it is our view that the OTS option will offer the most efficient and least effort approach, when compared to the CTS.

4.2 Speed of switching

35. Although Ofcom considers that the actual switching process may be equally quick for both options, when considering the several attempts a customer may have to make to get through to the losing provider to start the CTS process, it is INCA's belief that OTS switch would happen quicker for customers from the time of deciding to switch and when the actual switch takes place.

4.3 Reliability

36. As Ofcom has not identified significant issues with either option under this heading, we do not comment on it in detail, other than to say that we agree with Ofcom's overall assessment.

4.4 Informed consent

37. INCA agrees that both options would provide for customer switching decisions based on informed consent.

38. Ofcom mentions the possibility that OTS users could feel pressured to consent, due to them speaking with the gaining provider at the time of receiving the switching information from the losing provider. Whilst we acknowledge that this is a possibility, we agree with Ofcom's assessment that the customer will be provided with the necessary information to make informed decisions regardless which option is used.

39. INCA considers the risks of unwanted save activity under the CTS option would have a significantly higher likelihood of pressurising customers into not switching than would be the risk of the gaining provider pressurising the customer to switch once the customer has received switching information via the hub while speaking with the gaining provider.

4.5 Implementation costs

40. Annex 7 sets out Ofcom's cost analyses. INCA acknowledges that the costings are based on imperfect inputs from stakeholders and as such can only be an estimate of the likely levels of cost. The costing data call collected and presented to Ofcom by the OTA. The OTA collected cost estimates from stakeholders and also from potential external suppliers.

41. Based on Ofcom's presentation in Annex 7, we understand that it has sufficient data to make reasonable estimates of the likely capex for each of the two options, but that only very limited data was provided to estimate opex associated with the operation of the switching platforms.

42. Naturally, to assess the costs over a period of time, both capex and opex should be included and the lack of reliable opex data therefore causes a challenge for Ofcom's assessment.

4.5.1 Capex

43. Whilst the capex estimates varied (to an extent in line with the size of the stakeholder's operations), the majority indicated a lower capex for the OPTS solution than the CTS solution, while others indicated similar or identical capex estimates. Only one stakeholder submitted higher capex for OPTS than for CTS.
44. In addition to the data collected and analysed by the OTA and Ofcom, the revised CTS option includes an IVR functionality. As we understand it, this would require every single provider to acquire, implement, and maintain an IVR system to a specification not yet defined. This would without doubt add to the CTS capex and further widen the gap between the estimated capex for the two options.
45. Based on those data and Ofcom's overall assessment that the OPTS capex would be lower than the CTS capex¹, INCA agrees with Ofcom that the capex associated with the introduction of the OPTS option would likely be lower than for the CTS. INCA also agrees with Ofcom that the level of capex estimated is relatively low, when compared to the likely benefits from the OPTS option.

4.5.2 Opex

46. Only six stakeholders provided opex estimates, with the majority estimating similar or identical opex across the two options.
47. One stakeholder, however, projected an opex saving of more than £7m per annum for the CTS option, versus an incremental £2m annual opex for the OPTS. We understand the estimated CTS opex savings being explained as efficiency savings for existing processes resulting from changes and automation resulting from the CTS implementation.
48. INCA believes that the opex saving estimate should be excluded from Ofcom's calculations, for the following reasons:
 - The opex estimates should be conducted on a 'greenfield approach', meaning that they should not consider changes to other processes that already exist. The relative inefficiency of one provider should not be able to distort the overall cost impact assessment for the industry; and
 - it is a significant outlier that causes a significant distortion to a relatively small data set;
49. INCA therefore believes that Ofcom's opex estimates should be changed to exclude the estimated savings by that one stakeholder.
50. Further, INCA believes that, for the revised CTS option, opex should be increased to reflect the costs of implementing and maintaining an IVR system.

¹ Even without including the costs on an IVR.

51. Regardless of the above, Ofcom concludes that, over 10 years, the OTS costs are lower than the CTS costs and INCA agrees that this is unlikely to change after implementing the changes set out above.

4.6 Proportionality

52. Ofcom applies two tests to assess proportionality of the two switching platform options:

- is the option the most effective means of achieving Ofcom's policy objective?
- is the intervention necessary and the least onerous approach?

53. INCA agrees that these are reasonable and appropriate tests for this purpose.

54. Ofcom describes its policy objective as set out below:

*"to ensure customers can switch their voice and broadband services using an effective and efficient process that complies with our new switching rules and does not create unnecessary difficulties or deterrents. In fulfilling our objective, we aim to ensure that customers can use a process that is easy, quick, reliable and based on informed consent."*²

55. Throughout the consultation document, Ofcom describes the OTS option and confirms that it would be the most effective means of achieving Ofcom's policy objective. INCA agrees with that assessment.

56. Also, in order to assess the proportionality of either of the two options, it is first necessary to determine whether it is necessary (and thus proportionate) to intervene at all. INCA's members are building new networks that compete with the Openreach network and with Virgin Media's network. They experience first-hand the difficulties customers face when choosing to move their service from the Openreach or Virgin Media networks to a new altnet network. The possibility of extended service gaps is a significant deterrent and as such INCA is of the very strong belief that intervention is definitely required and proportionate in principle.

57. Considering next the proportionality of the OTS option, INCA has reviewed Ofcom's cost estimates (as discussed above) and find that the benefits of the OTS (which INCA believes will facilitate smooth and frictionless switching for the vast majority of customers) are likely to significantly outweigh the costs.

58. It should be noted in the context, however, that the mechanisms for funding the creation of the switching platform and for the ongoing use of that platform are yet to be determined and INCA reserves its right to consider that certain funding options may be disproportionate for smaller providers. We comment on funding and governance issues later in this response.

² Paragraph 5.121.

59. We therefore now conclude that the OTS option passes Ofcom’s two tests and that we consider the OTS option to be proportionate because it will deliver Ofcom’s policy objectives, it is necessary, and its benefits would significantly outweigh its costs.

5 Why the CTS solution is neither compliant nor proportionate

60. INCA agrees with Ofcom’s assessment framework and parameters. These are discussed in section 3.1 above and we will not repeat them here.

5.1 Ease of use

61. In this section we assess Ofcom’s review of the CTS option. We also take into account the inclusion of an interactive voice response (IVR) functionality as part of the CTS, as per the revised CTS circulated by Ofcom on March 29th 2021. When we refer to the amended CTS, we will make that clear.

62. As set out above, Ofcom uses the following parameters to assess the two options in terms of their ease of use:

- simplicity;
- customer control and need to contact losing provider; and
- effort required by customers.

5.1.1 simplicity

63. Ofcom states that it considers that “*customer confidence will be greater the fewer and clearer steps they need to take, and the less they need to understand and remember*”.³ INCA strongly agrees with that statement. It therefore follows that the CTS option, which requires a minimum of two interfaces, is suboptimal when compared to the OTS option.

64. It is also worth noting that many customers will naturally start by calling the provider they want to move their service(s) to. If they are then told that they need to go and call/contact their current provider (the losing provider) and then subsequently contact the gaining provider again, we are not talking about two interfaces but three or more (as we note Ofcom’s research found that often several calls to the losing provider were required).

65. Ofcom further points out the more significant differences between the CTS option and the existing switching solutions for fixed and mobile services, that would be the case for the OTS option. INCA agrees that this is likely to add increased complexity and confusion for consumers. Indeed, we agree with Ofcom that the CTS option would be a retrograde step relative to the existing Notification of Transfer process.⁴

66. INCA also agrees that, although the CTS option has some similarities to the current Auto-Switch process, the need to call the losing provider (regardless of whether that can be

³ Paragraph 4.6 a).

⁴ Paragraph 5.10.

done using IVR) makes the CTS solution more complex and time consuming than the Auto-Switch process where a code can be requested using a txt message.

67. This is further complicated by the possibility of the customer needing two separate codes for fixed and mobile services and the processes for the getting those codes not being the same. INCA agrees that there is a risk that resulting confusion could “*undermine some of the benefits of the Auto-Switch reforms*”.⁵

5.1.2 Customer control and gaining provider led

68. Here again, Ofcom has identified parameters to guide its assessment of the two options under this heading:

- the customer should not have to coordinate the end of one service and the start of another;
- the customer should have a choice of communications methods;
- The customer should have control over the timing of the switch; and
- the customer should not need to contact the losing provider to terminate the old contract.

69. INCA agrees that these are reasonable and appropriate parameters to use when assessing compliance under this heading.

70. Here Ofcom expresses a number of concerns with the CTS option, including the need for the customer to speak with the losing provider if they do not want to. Although the CTS option offers a number of different communications options, a significant proportion would either have no alternative than to call the losing provider or would find that the most convenient and least complex way of contacting the losing provider to obtain the code.

71. INCA believes that the CTS option is not gaining provider led and thus is not compliant with the EECC provisions as transposed in the UK. This simple fact that the customers must first contact the losing provider clearly demonstrates that the process is not gaining provider led. The off-putting necessity of contacting the losing provider will likely (as proven by Ofcom’s research as cited throughout the consultation document) cause a number of customers to not even engage in the switching process. INCA does not believe that the CTS option can be described as gaining provider led, even if the gaining provider does lead once the customer has gone through the (at least) two-step process of first contacting the losing provider and then contacting the gaining provider.

72. The revised CTS option includes the availability of an IVR, thus enabling the customer to obtain a code by phone without having a conversation with the losing provider. The IVR option could, in principle, address some of those concerns but it is important to recognise that the very group of customers who would gravitate to calling the losing provider, in

⁵ Paragraph 5.17.

preference of other technology-enabled communication options, is also the group who would find it most complex and off-putting to have to navigate an IVR service.

73. INCA does not consider it likely that the making available an IVR interface would in fact significantly reduce the number of customers that would be subject to unwanted save activities and thus put off from making a switch which could deliver them benefits in terms of savings and receiving products more attuned to their individual needs and preferences.

74. INCA therefore believes that Ofcom's assessment in paragraph 5.25 is still correct:

"On this basis, our provisional assessment is that Code to Switch:

a) would expose customers to potential difficulties and deterrents relating to contact with the losing provider that many would not face using One Touch Switch and do not currently face under the existing Notification of Transfer process; and

b) would lack an effective mechanism to give customers control over the extent and nature of the contact they have with their losing provider (in particular the option to avoid speaking in person to their losing provider) so they can avoid, or reduce the impact of, the difficulties and deterrents relating to contact with the losing provider."

75. Ofcom refers to its research having identified the following difficulties relating to contact with the losing provider:

- hassle associated with contacting more than one provider;
- difficulties in contacting the losing provider; and
- unwanted save activity.⁶

76. INCA agrees that these difficulties would apply to the CTS option and would still apply to the CTS option even if an IVR option were to be added in.

77. Although the CTS options states that the intention is for the losing provider to not undertake save activity once the code request has been made, INCA also agrees with Ofcom's statement in paragraph 5.54:

"We note that it is intended that the process of getting the code is quick and simple and that there is no retention activity during the interaction. However, in our view the losing provider might not have a clear incentive to effectively design their systems and processes to achieve this, given the interaction would lead to them losing a customer. There would remain an incentive for the losing provider to try to retain the customer when they contact them to request a code and a risk that they may seek to frustrate the switching process in other ways."

5.1.3 Minimising effort to complete the switching process

78. The very fact that the customers would have to contact both the losing and provider (thus making at least two calls/ taking two actions) means that the CTS option does not minimise

⁶ Paragraph 5.28 and subsequent sections and summarised in Paragraph 5.43.

effort for the customer to complete the process, given that the OTS option offers the customers a single action switching process.

79. INCA therefore believes that the CTS option fails on this parameter.

5.2 Speed of switching

80. Although Ofcom considers that the actual switching process may be equally quick for both options, when considering the several attempts a customer may have to make to get through to the losing provider to start the CTS process, it is INCA's belief that OTS switch would happen quicker for customers from the time of deciding to switch and when the actual switch takes place.

81. INCA therefore also believes that the CTS option fails against this parameter.

5.3 Reliability

82. As Ofcom has not identified significant issues with either option under this heading, we do not comment on it in detail, other than to say that we agree with Ofcom's overall assessment.

5.4 Informed consent

83. INCA agrees that both options would provide for customer switching decisions based on informed consent.

84. INCA is concerned that, whilst it could be argued that the CTS option may provide the customer with more 'space' to carefully consider the losing provider's switching information, the CTS option also offers increased activity for unwanted save activity, which could distort the customer's assessment of the switching information to deter switching.

85. On balance, therefore, INCA considers that the OTS (with hub) option is likely to offer the most objective informed consent conditions for the customer.

5.5 Implementation costs

86. Our assessment of Ofcom's cost analyses is set out in section above and is not repeated here, other than to confirm that we agree with Ofcom that the OTS option costs (capex and opex) are likely to be lower than the CTS option costs.

87. It is important to note here also, that the revised CTS proposal includes an IVR system that would need to be purchased and implemented by every single provider. Those costs associated with that are not included in the Ofcom analyses and would therefore further widen the gap between the OTS and CTS costs.

5.6 Proportionality

88. Ofcom applies two tests to assess proportionality of the two switching platform options:

- is the option the most effective means of achieving Ofcom's policy objective?
- is the intervention necessary and the least onerous approach?

89. Ofcom describes its policy objective as set out below:

*"to ensure customers can switch their voice and broadband services using an effective and efficient process that complies with our new switching rules and does not create unnecessary difficulties or deterrents. In fulfilling our objective, we aim to ensure that customers can use a process that is easy, quick, reliable and based on informed consent."*⁷

90. In the consultation document, Ofcom describes how it does not consider that the CTS option will help achieve Ofcom's policy objective

91. As described above, Ofcom has concluded that the CTS option would have a higher capex than the OTS, and that is before including the potential additional cost of every single provider having to introduce an IVR facility that would be compliant with requirements yet to be specified.

92. INCA therefore concludes that the CTS option would not be proportionate, this is due to the OTS option delivering better against Ofcom's policy objective and incurring lower overall costs for providers participating in the switching platform.

5.7 Summary assessment of OTS and CTS options

93. As explained above, it is INCA's firm view that, regardless of the modification proposed to the CTS option, the OTS option remains the only option that is compliant with the EECC and Ofcom's policy objective, it is the lowest cost option and the only proportionate solution available for Ofcom to impose.

6 Point of clarification

94. In our analysis of the switching options we have looked at a number of different switching scenarios and have identified a few for which we are not certain whether the new fixed switching platform would apply. We list them below and would be grateful for Ofcom clarification.

- switching between 4G and 5G broadband services;
- switching between 4G or 5G broadband service and a fixed line broadband service (FTTC/FTTP); and
- switching from a fixed line (FTTC/FTTP) to a 4G or 5G broadband service.

⁷ Paragraph 5.121.

7 Governance and funding issues and options

95. Despite asserting forcefully that it expects providers to have the chosen option fully implemented and operational by December 2022, Ofcom has not included in its analyses or recommendations any considerations of how the preferred option should be funded and managed, nor how the costs of development and ongoing use, upgrades and maintenance should be recovered between participants.
96. INCA considers this to be a significant omission, which can put the implementation timetable at further substantial risk.
97. In section 7 of the consultation, Ofcom sets out suggestions for preparatory implementation work by industry.⁸ Ofcom suggests that, as both options include a hub facility, it is necessary for stakeholders to agree governance and funding arrangements for both options and thus industry could and should commence that work prior to Ofcom issuing its final Statement in Q2.
98. INCA notes that on March 29th, Ofcom issued a letter asking the OTA to facilitate industry discussions. INCA is pleased that this has now happened, although concerned that it could and should have happened earlier as the governance and funding challenges associated with the implementation of the new gaining provider led switching platform are considerable and likely to be contentious.
99. INCA is concerned that, according to industry sources, not all providers are able or willing to commit resources to this activity until such time that the final General Conditions (GC) amendments have been confirmed by Ofcom. We address this issue further below in our Timing section.
100. INCA is committed to working with the OTA, Ofcom, and providers to identify governance models and negotiate in good faith to achieve an acceptable solution, but with more than 100 providers involved and the continued disagreement between the supports of the OTS and CTS options, we are deeply concerned that this could be a long and complex process that is likely to need more support than currently proposed by Ofcom in its recent letter.

7.1 The need for a project office

101. INCA believes that, in order to achieve the most speed resolution to the funding and governance issues, a project office should be established and funded. This should be led by a competent individual with experience in similar processes in the UK and/or internationally.
102. We urge Ofcom to ask the OTA to make the creation of a project office a top priority at the first meeting of the industry group on governance. It is our firm belief that, unless a formal and resourced project office is created, the governance negotiations are unlikely to be completed in a reasonable time period. It should be noted that this approach has been taken in the past for the mobile switching changes where an existing governance

⁸ Paragraphs 7.6 – 7.8.

model was in place and the number of parties needing to reach agreement was 4. In contract, the fixed switching governance discussions will be starting from scratch with no existing governance model to use, and with more than 100 parties involved.

103. This issue must not be underestimated. Despite our commitment and enthusiasm to bring the governance and funding negotiations forward, we are not convinced that all industry parties share that enthusiasm. And even if all parties were to come to the table at this time, the level of complexity and diverging interests represented is likely to make these negotiations extremely complex and contentious.

7.2 Governance options

104. Third-party organisations to manage a hub service could take one of many legal forms, depending on whether the organisation is seeking to make a profit for shareholders or is operating on a not-for-profit basis for the benefit of its members.

105. We set out below a number of potential governance models that could be used to provide the hub service for either the OTS or the CTS. At this time, we do not express any preferences, nor do we believe the list to be complete or the analyses presented exhaustive.

106. The list is provided in an attempt to demonstrate both the complexity of the task and the willingness of altnets to move this process forward as quickly as possible. but feel that this initial list of options could be used as the starting point for negotiations.

107. INCA believes it would be extremely helpful if Ofcom were to set out principles that would have to be satisfied by the organisation providing the hub services. Such principles could include

- that services are defined to meet needs of a wide range of providers,
- that all service must be provided on a non-discriminatory basis to all providers,
- that the services must, at all times, be compliant with requirements set by Ofcom or agreed in industry for a (allowing sufficient time to implement any changes require),
- that interfaces must be open and non-proprietary,
- that fees must be cost-oriented, and
- that implementation of the hub service must be done in a cost-efficient manner.

7.2.1 Private Company (operator owned)

108. A number of the operators could form a company/joint venture. The company would fund the development of the standards/platform and levy a fee on smaller operators to use it. The owners could recoup their investment by offering switching services to the industry as a whole. The company may or may not be set up to be profit generating.

Pros	Cons
No upfront financial investment required from most operators.	The company founders could potentially design in processes that favour themselves over others.
	Fees may be set to generate commercial returns and may be structured in a manner that would favour some operators over others (e.g., if every operator paid the same but some are very small and others very large).

7.2.1.1 Example: [Open Banking Limited](#)

109. Open Banking is governed by the Competitions and Markets Authority (CMA) and funded by the UK's nine largest banks and building societies: Allied Irish Bank, Bank of Ireland, Barclays, Danske, HSBC, Lloyds Banking Group, Nationwide, RBS Group and Santander.

Its role is to

- Design the specifications for the Application Programme Interfaces (APIs) that banks and building societies use to securely provide Open Banking
- Support regulated third party providers and banks and building societies to use the Open Banking standards
- Create security and messaging standards
- Manage the Open Banking Directory which allows regulated participants like banks, building societies and third-party providers to enrol in Open Banking
- Produce guidelines for participants in the Open Banking ecosystem
- Set out the process for managing disputes and complaints

7.2.2 Mutual Company

110. A mutual company is owned by and operated for the benefit of all its members. Membership fees can be scaled/banded to reflect the size of member operators. A mutual company offers services to its members on a not-for-profit basis.

Pros	Cons
All members are eligible for inclusion in decision making.	Decision-making could be slow and cumbersome
Fees from services offered can be used to pay for the costs of running the organisation as well for providing the services	

7.2.2.1 Example: [London Internet Exchange Ltd \(LINX\)](#)

111. LINX is a not-for-profit organisation, that focuses on investing its service and membership fees into strengthening all LINX network services. According to its [Governance webpage](#), LINX is controlled by its members, overseen by its board, guided by its governance documents, but always after consultation.

[LINX Fees](#)

Membership: £1200 pa

Service fees depend on the services taken.

[LINX History](#)

112. LINX was created when Demon Internet, PIPEX, UKnet and the UKERNA joined forces to link their networks to avoid the need to use US based internet exchanges. When BT indicated a willingness to join them LINX was formed. In 1995 LINX was incorporated as a mutual company.

[LINX Certificate of Incorporation](#)

[LINX Audited accounts from Sep 1995 \(first year of trading\)](#)

7.2.3 Operators' Trade Association

113. An association works collectively on behalf of its members and is governed by its membership. All members are represented and are bound to collective decisions made by unanimity of votes.

Pros	Cons
All members are represented and able to vote on decisions	It may be difficult to achieve unanimity of votes, leading to delays in agreement and implementation of changes.
Fees from services offered can be used to pay for the costs of running the organisation as well for providing the services	'One member one vote' could result in a small operator having a veto over a decision supported by the majority of operators (large or small).
A trade association may set out the process for and manage disputes and complaints, whether or not the trade association itself operates an automated switching hub service.	

7.2.4 Example: [COIN](#)

114. COIN is an association of Dutch telecommunications service providers. Amongst other services, it offers a switching service for broadband and bundles by managing and facilitating the exchange of necessary information via connection to a shared platform.

This enables both the losing and the gaining provider to access all information required for a smooth service provider switch.

115. This is achieved by COIN operating a platform which its members access via the [COIN API](#). Using the API means automatic access to most functionalities of its web services. The COIN API is included as part of COIN membership, so there are no additional costs.

7.2.5 Example: [UK Competitive Telecommunications Association \(UKCTA\)](#)

116. UKCTA is a not-for-profit trade association limited by guarantee and registered at Companies House. UKCTA is owned by its member companies and has a board of directors, drawn from its membership. The role of the board is primarily to oversee the management of resources and to ensure the overall effective functioning of the company.

117. UKCTA is a lobby group for non-BT operators.

[UKCTA Rules of the Company](#)

[UKCTA Articles & Memorandum of Association](#)

PRIVATE COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

7.2.6 Co-operative Society

118. A co-operative society works collectively on behalf of its members and is governed by its membership. All members are represented and are bound to collective decisions made by unanimity of votes.

119. In the UK, a co-operative society is subject to regulation by and registration with the [Financial Conduct Authority \(FCA\)](#).

Pros	Cons
All members are represented and able to vote on decisions	Collegiate decision-making may be slow and cumbersome.
Fees from services offered can be used to pay for the costs of running the organisation as well for providing the services.	
A co-operative may set out the process for and manage disputes and complaints, whether or not the co-operative itself operates an automated switching hub service.	

7.2.7 Example: [Independent Networks Cooperative Association \(INCA\)](#)

7.2.8 Social Enterprise

120. Some not-for-profit organisations generate their income by selling goods and services. They often start off by receiving investment from members or external

organisations, which they pay back once up and running. These organisations are called social enterprises.

121. Social enterprises can be controlled by volunteers, but they can also be controlled by people who have invested in them, people who are paid to work for them, or people who benefit as customers.

7.2.9 Trade Forum for Consumers

122. A trade forum is an association whose members come together to provide information and services to consumers. It is funded by its members with the aim of informing and helping consumers.

Pros	Cons
A trade forum may set out the process for and manage disputes and complaints, whether or not the trade forum itself operates an automated switching hub service	Members collectively bear the costs of running the forum
A trade forum may offer services direct to consumers as well as to its members.	

7.2.9.1 Example: [NZ Telecommunications Forum \(TCF\)](#)

123. The New Zealand Telecommunications Forum (TCF) offers neutral, independent information about telecommunications for New Zealand consumers. It is a member organisation; representing the majority of telecommunications providers in New Zealand (over 95% by revenue share). Its members pay for its services, which include public good initiatives, disputes resolution services, logistical processes and consumer education, so consumers can access them for free. They provide neutral, independent information about New Zealand telecommunications products and services and how the industry works in New Zealand.

124. TCF operates a peer-to-peer broadband switching model using a transfer code

[TCF Code for Transfer of Telecommunications Services](#)

(swim diagram of process shown on page 26)

[TCF Non-regulated Customer Code for the Transfer of Fibre Services](#)

125. TCF also provide the following services free of charge to consumers:

- Mobile phone recycling scheme
- Mobile handset blacklisting service, for lost and stolen phones.

[TCF Structure & Governance](#)

TCF Membership Fees are allocated on a tiered basis. Fees are not in the public domain.

Tier	<i>members are liable persons that have telecommunications revenue ...</i>
One	greater than or equal to \$250 million in the preceding financial year
Two	of less than \$250 million but greater than or equal to \$50 million in the preceding financial year
Three	of less than \$50 million but greater than or equal to \$10 million in the preceding financial year
Four	of less than \$10 million in the preceding financial year, or, any eligible person that is not a liable person.
General Associate	are approved by the Board on a case-by-case basis

7.3 Commercial Switching Service Provider

126. The market for providing hub services could be open to commercial service providers, allowing for competition in the market to drive down the cost of provision. Separating the governance from delivery allows for a route to appeal or for problem resolution/ruling if the Gaining Provider and Losing Provider are unable to resolve an issue.

Pros	Cons
Prices are set in response to market competition.	Prices necessarily include an element of profit for the company.
Private service providers can operate in several territories worldwide, so it may be possible to benefit from economies of scale.	It would be necessary to agree and comply with international data exchange standards. (<i>Global Best Practice?</i>)
Engaging with an established service provider could reduce the lead time and cost to implement, particularly for small territories or operators	
One-stop-switching between territories could be possible	

7.3.1 Example: [PortingXS](#)

127. PortingXS is a Dutch company that provides the communications industry with user friendly and accessible number portability and data processing services. While enabling consumers and businesses to easily switch their communications provider and to secure their personal data, PortingXS helps communication service providers to achieve ambitions, simplify processes and comply with regulations.

128. Originally established in the Netherlands to manage mobile Number Portability in 2001, PortingXS has subsequently expanded its offerings to include automated fixed and mobile number portability and number database & directory services in over 20 territories globally.

[PXS Number Portability Brochure](#)

129. PXS offers an automated XML API through its SaaS gateway service. The PXS model could potentially be adapted/extended to support switching broadband provider.

8 Timing

130. Ofcom strongly asserts its desire to see the new switching platform implemented by December 2022, even making it clear that it has the powers to fine providers up to 10% of relevant turnover if they fail to do so.⁹
131. Whilst INCA is aware of Ofcom's powers to fine, we are deeply troubled by Ofcom's attitude and expectations. The process to arrive at a recommended switching platform has not yet been completed and the recently published revision to the CTS option increases uncertainty, as it may now be possible that Ofcom will reissue a revised analysis with a revised recommendation. It is our view that much of the timetable has so far been under Ofcom's control, but Ofcom is now proposing to make industry accountable for meeting an extremely challenging implementation deadline.
132. As set out clearly above, INCA does not believe that the addition of an IVR function to the CTS option makes any material change to the comparison of the two options, using the tests and parameters set out by Ofcom, but the revised CTS option nevertheless introduces additional uncertainty.
133. In the past, Ofcom has allowed an 18-months implementation period from the finalisation of enabling GCs for major new systems and processes, but in this instance, Ofcom has departed from that practice, allowing (at the most) 15 months for implementation.
134. INCA finds this astonishing and very worrying, as the complexities associated with the procurement, implementation and management of the fixed switching platform are considerably larger than those faced, for example, when implementing the Auto-Switch solution for mobile switching¹⁰.
135. INCA is disappointed that Ofcom appears to be taking an adversarial route to achieve the implementation of the new critical tool to improve consumer choice and facilitate better competition in the market to the benefits both to consumers and to the general economy.
136. INCA believes that Ofcom's choices over the past 2 years have contributed to the extended timeline and thus to the extremely tight timeline to procure, implement and launch this new complex interface. We agree with Ofcom that providers should be incentivised to work hard to ensure that the new switching platform is implemented as quickly as feasible, but we fear that what Ofcom is demanding is not realistic and could in fact cause the timelines to be extended rather than accelerated. This is because the focus of providers may become to secure legal cover against a potential significant penalty, rather than to facilitate speed implementation.

⁹ Paragraph 3.18.

¹⁰ In mobile, only four operators had to agree the governance and there was an existing governance framework in place for the legacy porting and switching platform.

137. Ofcom's timetable seems particularly unrealistic in light of the significant challenge of developing and agreeing a governance platform for the switching hub and how it should be funded. We have set out those challenges above.
138. Above all, INCA and its members want the new switching platform to be implemented as quickly as possible. We are likely to be net beneficiaries of improved switching platform facilities as we deploy new networks and challenge Openreach in both retail and wholesale markets. Our concerns as set out above are not born from a desire to in any way delay, but from fear that Ofcom's adversarial approach may achieve the opposite.
139. There is also a risk that the compressed timetable could impact on the governance negotiations, potentially allowing larger providers to force through conditions that are not equitable, simply because the smaller providers would be concerned about the impact of a potential significant fine imposed by Ofcom in the event of late implementation.
140. We therefore urge Ofcom to show more flexibility to enable equitable governance provisions to be established and for the new platform to be procured, installed, and launched in a manner that ultimately maximises benefits to all parties. We agree that Ofcom should ensure that all parties are incentivised to achieve the implementation as quickly as possible and will work with Ofcom to achieve that.
141. Notwithstanding our deep concerns, as expressed above, INCA and its members will participate and contribute actively and constructively to the processes that will enable speedy implementation of the new gaining provider led switching platform mandated by Ofcom.