INCA and Altnet response to Ofcom Request for Information in relation to the Openreach Equinox Offer

Prepared for

INCA, Zzoomm, County Broadband, Full Fibre, Truespeed, Fern Trading, Community Fibre, ITS, WightFibre, Persimmons, Digital Infrastructure, and Airband.

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Content

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1 Introduction

1. On July 16th 2021, INCA and the altnets listed on the front page of this document submitted a response to Ofcom's Request for Information (RfI) in relation to the new proposed Openreach discount scheme know as Equinox (the RfI response).

2. Ofcom requested a follow up discussion and presented the following questions in advance of that discussion:

   1) "*Generally speaking, have INCA members' FTTP build plans progressed significantly since the WFTMR statement? Have they accelerated, slowed or stayed roughly the same?*

   2) *INCA argues that using an altnet for FTTP could put an ISP's ability to receive discounts from Openreach at risk (para 53). Please could you walk us through the logic behind this effect.*

   3) *Do INCA members have any evidence on the proportion of broadband customers that are reluctant to take FTTP broadband or evidence on why they may be reluctant (e.g., is the main obstacle price or the inconvenience of installation?) What, if anything, can be done by altnets to appeal to these customers?*

   4) *INCA argues that the Equinox ARPU revenue share and absolute levels of pricing discounts will harm altnets. Why are lower prices not desirable? How does INCA distinguish these features of Equinox from price cuts that respond to competition and benefit consumers?*

   5) *INCA refers to the Equinox forecasting requirements (para 20). Does INCA have a specific competition concern in relation to these forecasts and, if so, please could you walk us through the logic of that concern?*

   6) *INCA refers to the Equinox discount on 550Mbps connections that were previously on a non-Openreach network (para 12-14). How significant is this product variant (550Mbps) to consumers?*" [1]

[1] Copied from email sent by Keith Hatfield on Thursday 22/7 2021 at 12.29pm.

3. We note that the questions are directed at INCA but alert Ofcom to the fact that some of the altnets participating in the RfI response are not INCA members. The response was produced by a group of parties of which INCA was one. The rest are individual altnets (some of which are INCA members). Presenting the questions to INCA is not a problem, but it is important that Ofcom understands that the participants represent their own businesses and INCA represents its membership. Future queries may be best directed at 'respondents' or 'INCA and altnets'.

4. Additionally, towards the end of the meeting, Dave Clarkson asked whether the issues altnets have with Equinox are related to the absolute level of pricing resulting from the discounts or the pricing structures in Equinox. He particularly asked:

   7) *Would altnets have the same concerns if Equinox offered the same discounts, but with a service mix threshold of 100% FTTP? or*

   8) *Would altnets have the same concerns if Equinox offered the same discounts, but with no service mix threshold (or the FTTP threshold set at 0%)*

5. This document sets out the INCA and altnet responses to the questions presented before the meeting and the two additional questions posed during the meeting.

6. For ease of reference, we have numbered the two additional questions 7 and 8, following on from the 6 questions presented prior to the meeting.

7. As Ofcom's questions refer to the RfI response, we cross-reference that document in this document to ensure consistency.

8. This document should be considered by Ofcom as the authoritative response by INCA and altnet to all the questions covered. In the event this document differs in any way from what was stated verbally during the meeting, this document takes precedent.

1.1 Brief summary and conclusions

9. This submission confirms that altnets expect to and are able and willing to compete with Openreach for retail and wholesale customers.

10. However, Ofcom should not sanction the use by Openreach of its existing CP relationships (and the certainty that CPs will remain dependent on Openreach for

certain services and in certain geographic locations) to increase existing barriers to market entry and expansion for operators building competing fibre networks.

11. Equinox contains a number of elements, which have been identified as areas of concern with potential anticompetitive effects:

- The product mix rental discount threshold being applied nationally (where Openreach offers FTTP);
- The ARPU threshold offering a long-term windfall for CPs if they remain loyal to Openreach;
- The 12-months discount targeted at winning customers from competing networks;
- The ±10% forecasting tolerance linked to connection discounts;
- The absolute price levels resulting from Equinox; and
- The very high difference between the Openreach FTTP list prices and the discounted prices which represents a significant risk to CPs, regardless of the actual price levels.

12. We trust that our additional explanation of our concerns in response to Ofcom's questions below will be of assistance to Ofcom when drafting the Equinox consultation document.

13. In response to Ofcom's additional questions (questions 7 and 8) as posed during the meeting on July 22, the removal of the service mix qualifying threshold would go a considerable way to alleviating altnets concerns, but that is only one element of Equinox. The other elements and effects as listed above remain of concern.

14. Ofcom's explicit question of whether the absolute price levels resulting from Equinox was of concern to altnets, we confirm that this is the case in as far as the absolute price levels are challenging for locations where two or three competing networks would otherwise be sustainable, and also for particular locations where the cost of deployment is significantly higher than the UK average.

15. Ofcom would be mistaken if it were to judge Equinox on each of its elements separately, rather than on the cumulative effect of all the elements. Altnets are not claiming that

the absolute price levels are predatory in the competition law sense, but that the absolute prices would have a significant chilling effect on altnet investment, especially when combined with other Equinox elements including the product mix threshold-dependent rental discounts.

2 Questions 1-6

2.1 Question 1

16. "*Generally speaking, have INCA members' FTTP build plans progressed significantly since the WFTMR statement? Have they accelerated, slowed or stayed roughly the same?*"

17. As explained during the meeting, deployment plans for individual altnets are confidential and so Ofcom would need to ask altnets individually for the effect of the WFTMR on their plans.

18. Nevertheless, altnets can confirm that the WFTMR has caused their investors to express concerns as to whether Ofcom is genuinely supporting competitive fibre network build and network competition, and therefore to question the viability of new investment.

19. Altnets were also able to confirm that existing deployments were progressing to plan, but discussions with investors on new deployments are now more challenging.

20. In some instances, altnets are worried by the effect of the WFTMR and are consequently speeding up deployment to secure a first mover advantage. Whilst that may be perceived by Ofcom as good news, it should be seen in the context of doubts about any deployments beyond those already commenced.

21. In addition, altnets were able to confirm that the increased awareness of the existing Openreach offers[2] and the proposed Equinox offer are causing further concern to

[2] In particular the GEA volume offer and the FTTP only V2 offer.

investors and resulting in reduced confidence in a pro-competitive regulatory framework.

22. Any additional details will need to be supplied in confidence by individual altnets.

2.1.1 Duration of Equinox

23. When discussing the ten-year duration of Equinox and its impact on future market reviews, Ofcom stated that it expects the competitive network deployment scenarios to be largely played out by the end of this review period (that is by March 2026), and therefore the impact of Equinox on the next market review period would not be determinative. This belief appears to be linked to a complete faith by Ofcom that Openreach will deploy fibre to 25m premises by 2026, this despite high levels of scepticism across the telecoms sector and from investment institutions. We note that even Openreach statements do not amount to a firm commitment.

24. Altnets agree with Ofcom that the competitive conditions that Ofcom enable during this market review will have a significant impact on the overall outcome for competitive network deployment and general competition across the UK, in both Areas 2 and 3. But, Ofcom needs to apply the same level of scepticism and critical analysis to Openreach's investment and deployment plans as it evidently applies to altnet plans. It is in Openreach's interest to set expectations of very rapid deployment as this will likely (due to Openreach's existing dominance in the market) condition the investment market for altnets as well as influence the analysis by politicians, Government and Ofcom to place a reduced emphasis on altnet deployment. As Ofcom's overarching WFTMR strategy is to encourage network competition, this reliance on Openreach deployment statements is unsound and appears to lead Ofcom to conclude that the role of altnets is all but finished as they have caused Openreach to accelerate fibre deployment and make ambitious public deployment statements.

25. If Equinox is not allowed to deprive altnets of demand from CPs, then altnets are likely to keep deploying at maximum speed to capture the first mover advantage. Such rapid deployment by altnets sustains ~~the~~ competitive pressure on Openreach and delivers FTTP-based broadband services to consumers and businesses at a pace that cannot

be rivalled by an Openreach-only deployment. That deployment is intended to continue well into the next market review period.

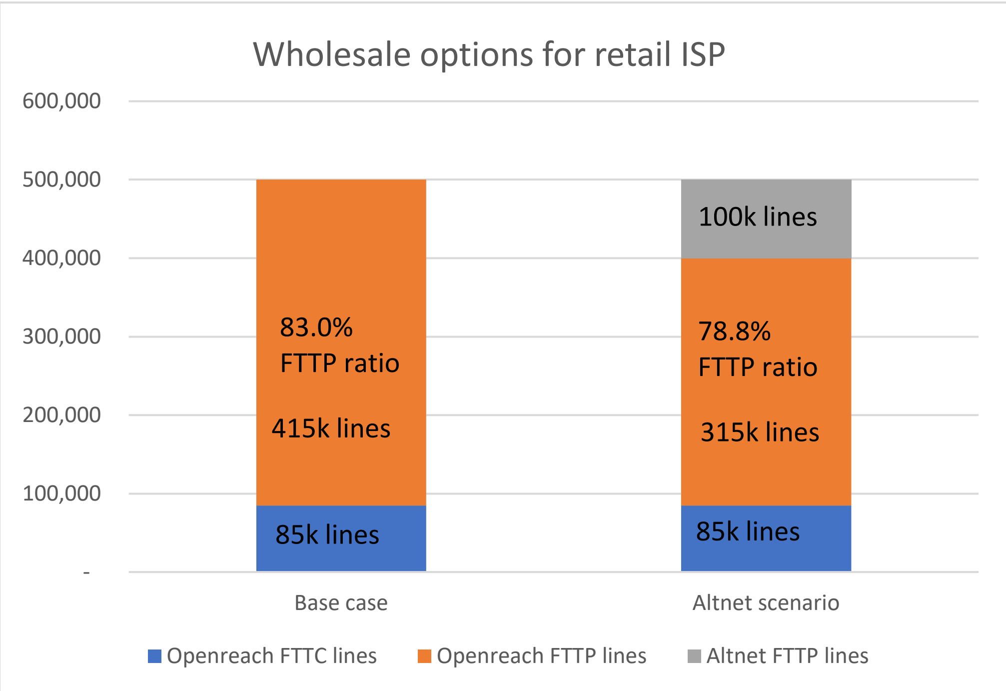
26. If Ofcom keeps an open mind and actually applies the rules it has set out in the WFTMR, then the competitive investment market is likely to still be vibrant and by no means settled by the end of this market review period. With this in mind, it is important that Ofcom reconsider the impact of the proposed 10-year duration of Equinox.

2.2 Question 2

27. “*INCA argues that using an altnet for FTTP could put an ISP’s ability to receive discounts from Openreach at risk (para 53). Please could you walk us through the logic behind this effect?*”

28. During the meeting, we presented an illustrative example. We set out that example below.

29. The chart below illustrates an example where a retail CP faces demand for 500k new broadband lines, of which 415k are for FTTP and 85k are for non-FTTP.



30. In the base case, where all lines are purchased from Openreach, the FTTP ratio is 83%. This means that the CP qualifies for the Equinox rental discount on the 415k FTTP lines.

31. The CP may consider buying 100k lines from an altnet instead of from Openreach. If the FTTP demand in total remains unchanged, then the CP would only buy 315k FTTP lines from Openreach, along with the same number of non-FTTP lines (85k). In this case, the FTTP ratio would fall to 78.8%; this is below the 80% Equinox threshold for rental discounts, and so the CP would not qualify for rental discounts on the FTTP lines. The discount foregone would be substantial, resulting in, for example, 80/20 FTTP rental prices 18% higher than the discounted price (increasing from £177 to £209 per line per year).

32. Altnets explained that it is the fact that the service mix threshold applies nationally (where Openreach has deployed fibre) that causes the problem. If the threshold were to be applied at an exchange-by-exchange level, the concerns would be considerably reduced. This is because a CP could then choose to not purchase FTTP from Openreach in certain locations and doing so would not influence their ability to meet the FTTP threshold in other locations.

33. This is because, as illustrated above, any prior or contemporaneous use of altnet lines by a CP would dilute the average FTTP % take-up by the CP from Openreach, as the Openreach FTTP footprint expands over time.

34. We believe that it is very reasonable to assume that the 80% FTTP threshold is a reasonably hard target to meet for CPs. We explain below under question 3, the reasons we are aware of for why some consumers opt to not take FTTP when purchasing a new broadband service.

35. Ofcom asked whether altnets thought that CPs would continue to offer non-FTTP services in the Openreach FTTP footprints and if so why. Altnets confirmed that this is very likely to be the case, the rationale for this is set out below under Question 3.

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2.3 Question 3

36. “*Do INCA members have any evidence on the proportion of broadband customers that are reluctant to take FTTP broadband or evidence on why they may be reluctant (e.g. is the main obstacle price or the inconvenience of installation?) What, if anything, can be done by altnets to appeal to these customers?*”

37. Altnets are not able to provide an estimate for the proportion of consumers that would not take an FTTP service when purchasing a new broadband connection. This is because consumers have a multitude of reasons for making their service choice and selecting their service providers.

38. Altnets that offer retail services regularly achieve 20-30% penetration at the retail level, but the reasons for that are varied including that, consumers are often tied into long contract durations with their existing suppliers. Altnets suggested to Ofcom that it could consider reducing the maximum contract duration for legacy services as this would reduce this significant barrier to switching.

39. Altnets highlighted that CPs using the Openreach FTTC services could easily offer to migrate their retail customers to FTTP-based services before the expiry of the customers’ existing non-FTTP contracts. This effectively forecloses the opportunity for altnets to compete for those retail customers and, whilst not directly relevant to the Equinox offer, this must be part of the context in which Ofcom considers the likely impact of Equinox. The issue of retail customer contestability is critical for the creation of a level playing field between Openreach and competing network providers.

40. Altnets already offering wholesale access have found that the large CPs have typically not wanted to use their wholesale services. This is due to a variety of reasons including the (likely) the impact of the GEA volume discount scheme (under which CPs are incentivised to keep their customers on Openreach FTTC services until Openreach deploys FTTP in the relevant locations) and lack of scale by individual altnets.

41. To address the second point, a group of altnets are working together to create a common wholesale platform (CWP) to offer large CPs the scale of multiple altnet networks through a single interface. The foreclosure effect of Equinox at the wholesale level is a significant threat to the success of the CWP.

42. Altnets expressed a strong support for the implementation of the One Touch Switching (OTS) platform as soon as possible as this would significantly reduce barriers to switching between competing networks.

43. It was also acknowledged that, even after OTS is implemented, some barriers to switching would remain, including the need for the consumer to have a new fibre connection installed to replace the copper connection. Altnets, however, stated that they have found that consumers are often willing to put up with the inconvenience of the fibre installation process because they expect a significant increase in quality (and sometimes also speed, depending on the service they have purchased) from the new fibre connection. That, however, only applies to the first move to fibre, if a competing network operator wants to market to customers already connected to a fibre network, the need to have a new fibre installed would likely present a significant barrier to switching. Altnets noted that, for altnets using PIA, this could be overcome by allowing all operators (including Openreach) to use the fibre connections installed by the first fibre operator that connects the premises.

44. A very significant barrier to switching experienced by altnets, however, is that consumers simply don't understand that their existing FTTC connection is not 'fibre'. This means that anyone selling full fibre connections has a significant consumer education challenge as part of the sales process. Altnets urge Ofcom to assist in overcoming this issue.

45. Also, very significantly, many premises in urban areas are in multi-dwelling units (MDUs) where the owners are not granting wayleaves to operators wanting to install fibre connections, so consumers occupying those premises have no alternative but to continue taking non-FTTP services. The wayleave issues also apply to non-MDU premises.

46. Collectively, the reasons outlined above are likely to make it challenging for CPs to meet the 80% FTTP threshold across the full Openreach FTTP footprint.

2.4 Question 4

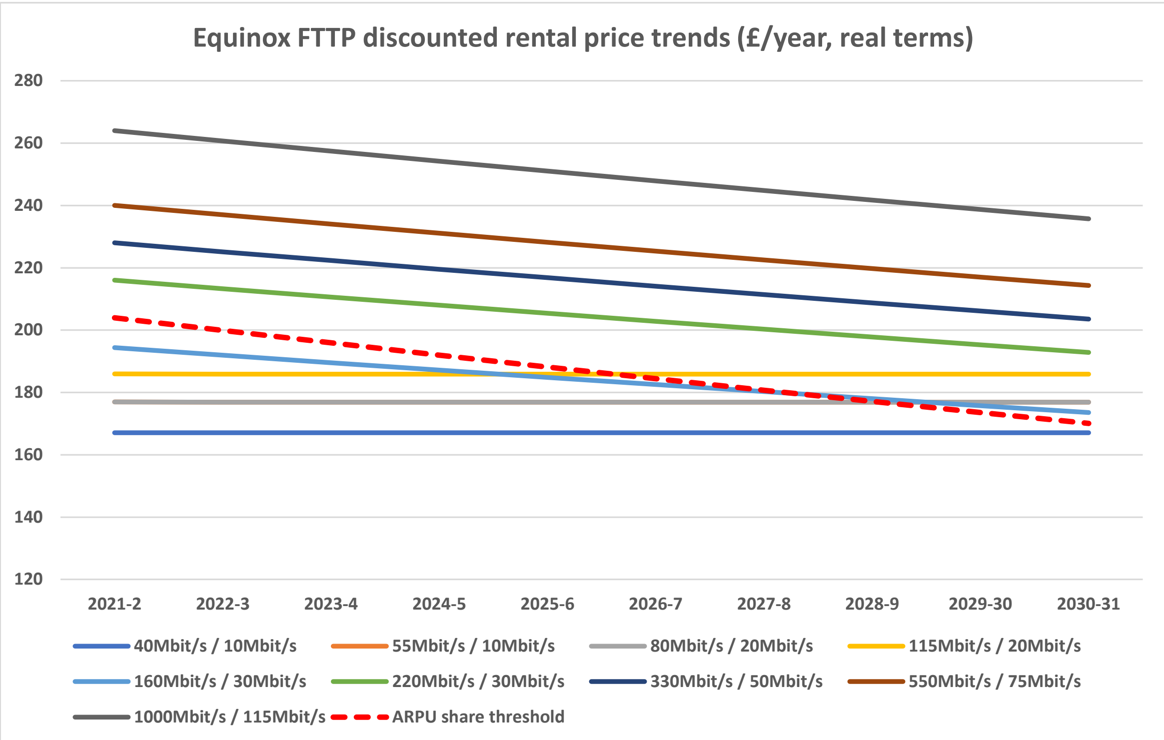
47. "*INCA argues that the Equinox ARPU revenue share and absolute levels of pricing discounts will harm altnets. Why are lower prices not desirable? How does INCA distinguish these features of Equinox from price cuts that respond to competition and benefit consumers?*"

48. This question has several components, and we address then separately below.

2.4.1 ARPU revenue share

49. As explained in the RfI response, the relative level of the threshold for the ARPU revenue share trigger reduces more rapidly than would the rental prices under the product mix discounts.

50. This means that, over time, the ARPU revenue share trigger point becomes easier to reach and it is therefore in the CP's interest to purchase as many high-speed fibre connections from Openreach as possible. This was illustrated in paragraph 115 of the RfI response and copied below:



51. The potential windfall to a CP that achieves an ARPU higher than the threshold at any point in time could be very significant and would increase over time as the number of FTTP connections increase. For example, if the CP achieved an ARPU of £1 above the trigger point and had 3m FTTP connections from Openreach, that CP would receive £18m per annum as revenue share[3]. That number of FTTP connections should be relatively easily achievable by large CPs once the Openreach FTTP footprint has grown for 5 years.

52. The ARPU revenue share is therefore a strong long-term loyalty inducing component of Equinox with the effect of foreclosing the wholesale market to altnets by denying them access to the demand from CPs in both the short- and long-term. Further, it is likely that the actual level of the ARPU revenue share for CPs will be uncertain and so this discount may not be passed on to end consumers but retained by CPs.

2.4.2 Absolute price levels

53. Ofcom asks why lower prices are not desirable.

54. Before we go into a detailed response, we need to point out to Ofcom that it has set out as its overarching strategic objective in the WFTMR[4] the need to incentivise investment in new fibre networks and to achieve network competition to at least the 2/3 of UK premises included in Area 2. Additionally, altnets have on many occasions told Ofcom that many locations in Area 3 could also support infrastructure competition, providing that altnets could compete with Openreach on a level playing field.

55. Achieving network competition requires that there is sufficient investment headroom in the retail and wholesale prices in the legacy market. This is because consumers will make value-judgements when being offered fibre connections and if the legacy pricing is low then it will be harder for fibre operators to justify an FTTP price level that is sufficiently high to make the investment viable.

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[3] calculated as 50% of £1 * 12 to get annual revenue share per customer and * 3,000,000 to get total revenue share per annum.

[4] WFTMR V3 paragraphs 7.73 and 7.129.

56. Another critical factor that must be satisfied if network competition is to be achieved, is that the prices in the market can support fibre investments where the final market share is no greater than 50%. In areas, where three networks may exist, the prices need to be able to support 3 networks with a market share of around 33%.

57. Lower market shares result in higher unit prices. This is due to the well-established fact that fixed telecoms networks are characterised by significant economies of scale with a large portion of costs being sunk costs in the form of physical network construction. Even the use of PIA does not change this fact.

58. Finally, when building competing fibre networks, altnets need to make the individual network deployment viable. They do not have a national network over which to average their costs, so cannot cross-subsidise between low- and high-cost locations. This is a fact that Ofcom must accept as it clearly does not expect a single altnet to duplicate Openreach's nationally ubiquitous network footprint. Consequently, prices set by Openreach that it can justify as part of a national footprint, may be below the costs of an altnet building in a high-cost location.

59. So, returning to Ofcom's questions of why low prices are not desirable, that question has to be answered in the context of the points set out above:

    1) Ofcom's overarching objective of encouraging network competition;

    2) The fact that competing networks must be able to exist with maximum 50% (and in some locations max 33%) market share; and

    3) That competing networks need to be able to cover efficiently incurred costs in high-cost locations, despite Openreach's average national costs being lower than those experienced locally by efficient altnets.

60. In the WFTMR, Ofcom concludes that the long-term benefits to consumers of network competition outweigh the benefits of short-term low prices[5]. The clear implication of this

[5] WFTMR V3 paragraph 7.29: "*We recognise that commercial terms may have benefits e.g. volume discounts may provide short term benefits to access seekers (and may, in turn, benefit consumers through lower prices if cost savings are passed through) However,* ***our objective is to promote competition and investment in gigabit-capable network by Openreach and others, and the resulting network competition should benefit consumers in the long term***." [emphasis added]

is that short term, low prices that harm efficient business cases for competing networks that are sustainable at either 50% or 33% market shares are not in the long term interest of consumers and should not be allowed.

61. Altnets are of the view that the heavily discounted prices resulting from Equinox (including the effect of the ARPU revenue share) may not support 2nd and 3rd network economics. Additionally, Altnets believe that the prices resulting from Equinox could make stand-alone investment in high-cost locations unviable.

62. That is not to say that the prices resulting from Equinox would be predatory in the meaning given to this term in competition law. We are not suggesting that Equinox is likely to result in price levels below the Openreach incremental costs of providing FTTP connections.

63. As explained in the RfI response, it is the delta between Openreach's full list prices and the discounted prices that is the significant issue. If a CP loses its Equinox discounts, it will face sudden, radical price increases that it would not be able to recover from its retail customers in the short term. That is a very significant business risk for the CPs, which is likely to deter them from using altnets or reduce the use of altnet wholesale services to very low levels.

2.4.3 Discounts versus permanent price reductions

64. Altnets are concerned that the overall design of the Equinox discount scheme is likely to have an anticompetitive effect on the market, harming the investment case of altnets as CPs benefit from being tied into Openreach.

65. An important feature of Equinox is that it is a long-term *discount* scheme, designed to operate for ten years with the potential to be discontinued in year six, and not a permanent price reduction. These next ten years are also likely to be the peak period for the rolling out of FTTP networks by both Openreach and altnets and so the period over which Ofcom's overarching objective will be achieved or not.

66. As the SMP operator, Openreach has the incentive and ability to foreclose the market to rival network builders through setting prices that are below the cost level that can be achieved by an altnet that does not benefit from the same economies of scale and

scope as Openreach. These prices do not need to be predatory, i.e. below Openreach's own costs, for them to deter entry by altnets. Rather, Openreach prices only need to be below the costs of the altnet ("limit pricing") or low enough to send a signal to altnets that Openreach has sufficiently low costs to always undercut altnet prices.

67. The fact that Equinox is a discount scheme rather than a permanent price cut allows Openreach to raise prices in either year six or year ten once altnets have reached the limit of their investment or, at the extreme, exited the market. Any short-term gains from the discount scheme are therefore likely to be lost once the discount expires.

68. For Ofcom to achieve its overarching objective, a better approach would be for Openreach to set reasonable FTTP prices on a permanent basis that would create long term price stability, enabling CPs and altnets to make rational investment decisions.

69. It is very possible that the prices resulting from Equinox would not cover Openreach's relevant costs, were it to have only 50% or 33% market share, but by tying the prices to the product mix condition and the ARPU revenue share threshold, Openreach is reducing the likelihood that it will face network competition in the majority of the country. This means that Openreach can assume a much higher market share than would otherwise be the case. The assumption of a very high Openreach market share is likely to be baked into the Openreach pricing and costing assumptions.

70. Altnets are not opposed to low prices to consumers and plan to offer competitive FTTP services in their network areas. Altnets expect to compete with Openreach in many locations but do not expect Ofcom to enable Openreach to abuse its existing CP relationships[6] to tie in CPs and effectively foreclose the wholesale FTTP market to altnets as well as making the retail market extremely challenging due to the resulting retail prices. For Ofcom to allow the introduction of Equinox[7] would be acting directly counter to its expressly stated overarching objective of achieving fibre network competition across much of the UK.

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[6] And the CPs' continued dependency on Openreach for non-FTTP services and for FTTP services where only Openreach will deploy

[7] And the continuation of the GEA volume offer and the FTTP only V2 offer.

2.4.4 Non-price benefits of competition

71. Altnets explained during the meeting that altnets innovate and enable CPs to innovate in ways not possible when using the Openreach infrastructure and products. This innovation includes the creation of improved and different SLAs to both private and business consumers, new pricing structures, product speeds and functionality, to mention but a few.

72. It is important that Ofcom does not get blinded by the aggressive and anticompetitive pricing structures and levels proposed by Openreach. Ofcom must not lose sight of the many and varied benefits to consumers in the long term that will only be available if there is competitive pressure on all providers right up to the furthest upstream network[8] level.

2.4.5 Summary

73. Altnets' answers to Ofcom's fourth question set out clearly that altnets are not opposed to long term low prices that reflect the efficient cost level of competing networks in a multi-network market.

74. The structure of Equinox shows that the Equinox discounts are not sustainable long-term price reductions, but rather short-term pricing structures and levels that are likely to have the effect of causing direct harm to competitive fibre investment, with the possibility of discontinuing the offer in year 6 and, in any event, increasing prices at the end of the offer period.

2.5 Question 5

75. "*INCA refers to the Equinox forecasting requirements (para 20). Does INCA have a specific competition concern in relation to these forecasts and, if so, please could you walk us through the logic of that concern?*"

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[8] Except physical infrastructure where differentiation is less likely.

76. The Equinox forecasting accuracy requirement (±10%) constitutes a significant risk to CPs, as non-compliance with this accuracy threshold could result in Openreach clawing back connection discounts the CP has already received.

77. As explained during the meeting, the risk of submitting a forecast to Openreach that includes an assumption that the CP will start buying FTTP wholesale services from one or more altnets from a certain date is that that date may change due to no fault of either party; the consequence would be that the CP's forecast to Openreach could be out by more than 10%. The CPs could therefore face a significant invoice from Openreach as a consequence of this.

78. It is not clear whether the claw-back could be for all connection discounts received under Equinox – in which case the risk would increase over time, but the threat of Openreach using this right is likely to further strengthen the incentives on CPs to only use Openreach for FTTP connections. It is important that the elements of Equinox are seen as a whole and not evaluated only separately.

2.6 Question 6

79. "*INCA refers to the Equinox discount on 550Mbps connections that were previously on a non-Openreach network (para 12-14). How significant is this product variant (550Mbps) to consumers?*"

80. The 12-months offer enables the CP to offer retail customers more than three times the speed of a 160Mbps service, at the price of the 160Mbps services. The fact that it is the 550Mbps service that is being offered is not significant, it is the perception of getting a lot more for the same price that is significant here. We believe this offer is likely to be very attractive to retail customers.

81. Altnets believe this element could be used in a number of ways by CPs, including as a means of attempting to move a significant number of customers the CP might have connected using an altnet across to Openreach, once the Openreach FTTP service is available in a specific location. If a CP finds it difficult to compete against an altnet launching FTTP services in a town or city, but Openreach has not yet launched FTTP services in that location, that CP could avail itself of the altnet's wholesale services to

ensure that it's retail market share is not unduly eroded by the altnet. Once Openreach FTTP is made available, the CP could then use the 12-months offer to attempt to move its existing FTTP retail customers from the altnet to Openreach, in order to ensure the CP still meets the 80% national FTTP product mix threshold.

82. Altnets consider this Equinox element to be clearly targeted at where competing networks are present, and therefore to be a geographic discount in all but name and clearly targeted at emerging competitors. This element is therefore prohibited under Ofcom's geographic pricing restrictions as set out in the WFTMR.

83. The fact that this element may initially be primarily targeted at Virgin Media (which may not be considered by Ofcom an emerging competitor, although it is engaging in new full fibre build and as such would also be vulnerable to the effects of Equinox), does not mean that it is not also targeted at emerging altnets.

3 Questions 7 and 8

84. As explained above and in the RfI response, the reasons altnets believe that Equinox would result in market foreclosure are the cumulative effects of the following:

- The product mix rental discount threshold being applied nationally (where Openreach offers FTTP);
- The ARPU threshold offering a long-term windfall for CPs if they remain loyal to Openreach;
- The 12-months discount targeted at winning customers from competing networks;
- The absolute price levels resulting from Equinox; and
- The very high difference between the Openreach FTTP list prices and the discounted prices which represents a significant risk to CPs' regardless of the actual price levels.

85. At the meeting on 22nd July 2021, Ofcom asked altnets whether they would still have the same concerns if Equinox were structured differently. In particular, they presented

two potential alternative structures and asked altnets to consider them and revert with their considered response.

3.1 Question 7

86. "*Would altnets have the same concerns if Equinox offered the same discounts, but with a service mix threshold of 100% FTTP?*"

87. This change to Equinox would only affect the level of the product mix rental discount. It is a very significant element of Equinox, but the ARPU threshold, the forecasting accuracy threshold (which is associated with a potential claw-back of connection discounts already granted to the CP), and the 12-months discount elements are also significant. If those elements remain in place, then altnet concerns related to those elements remain unchanged.

88. The comments below, therefore, apply only to altnet concerns as regards the product mix rental discounts.

89. The product mix rental element has two significant components:

- the pricing structure and the existence of the national threshold, and
- the actual price levels resulting from the rental discounts.

90. We address these separately below.

3.1.1 The structure of the product mix rental discount

91. As explained above under Question 2, the 80% FTTP threshold qualifying criterion results in a significant risk of losing the rental discount if a CP were to use the wholesale services of an altnet.

92. Altnets consider that this is not a realistic scenario, as there is likely to continue to be a significant portion of new orders for non-FTTP connections for some time. The rationale for this was set out above under question 3, not least the fact that it is very challenging to gain wayleaves to provide FTTP services.

93. However, if the qualifying threshold were 100%, then there would be no non-FTTP services element that would increase nationally if a CP were to use altnet FTTP

services in some locations. In the unlikely event of this occurring, the altnet concern related to the risk of losing the Openreach rental discount due to use of altnet services would no longer apply.

3.1.2 Actual price levels

94. The altnet concerns relating to the resulting actual price levels would not be addressed by this change. As explained under Question 4 above, the absolute price levels, whilst unlikely to be predatory in the meaning given to that term in competition law, the effect of the absolute price levels would likely remain in that they would deter network competition and may deter build in high-cost locations.

95. On balance this (theoretical) scenario would reduce the altnet concerns considerably, but concerns relating to the other elements and the effect of the actual resulting price levels would remain.

3.2 Question 8

96. "*Would altnets have the same concerns if Equinox offered the same discounts, but with no service mix threshold (or the FTTP threshold set at 0%)?*"

97. This scenario is more realistic than the one presented in Question 7. This scenario simply means that the rental discounts would be available to any and all FTTP connections purchased by the CP from Openreach.

98. This scenario could be considered to be a genuine effort by Openreach to accelerate copper-to-fibre migration without the intention of also foreclosing the market for competing network providers.

99. As with the theoretical scenario presented in Question 7, the removal of the product mix threshold qualifying criterion would remove a significant cause for concern for altnets. Concerns arising from the actual resulting price levels remain unchanged. however.