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Openreach response to Ofcom's consulation "*Openreach Proposed FTTP Offer starting 1 October 2021*"

NON-CONFIDENTIAL VERSION

6 September 2021

Foreword

This response is provided by Openreach Limited[1]. Openreach is a wholesale network provider. We support more than 600 Communications Providers (CPs) to connect the 30 million UK homes and business to their networks. We sell our products and services to CPs so they can add their own products and provide their customers with bundled landline, mobile, broadband, TV and data services. Our services are available to everybody and our products have the same prices, terms and conditions, no matter who buys them.

[1] Openreach Limited is a wholly owned subsidiary of BT Group Plc.

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1. Executive Summary

1.1 The Equinox FTTP pricing offer (the "Offer") will, among other things, provide discounts on certain FTTP connection and rental prices if Communications Providers (CPs) ensure that a minimum percentage of any new Openreach orders are placed on FTTP where available.

1.2 Ofcom considers that it is arguable that this feature within the Offer makes FTTP prices conditional on the "range of services purchased" such that the requirement in SMP Condition 8.6 to provide 90-days' notice ahead of introducing offers with certain features is triggered. Openreach provided 90 days' notice of the Offer on 1 July 2021 and Ofcom is using this period to assess whether the Offer raises any competition concerns.

1.3 Ofcom's provisional view is that the Offer does not raise competition concerns and it therefore proposes to take no action.

1.4 Openreach welcomes Ofcom's provisional view and agrees with Ofcom's assessment of the Offer.

1.5 As summarised by Ofcom in Annex 6, the Offer provide significant discounts to CPs on connection and rental charges if the "Order Mix Targets"[2] are met in each 3-month measurement period. Discounts are not conditional on the absolute volume of access services purchased from Openreach in any period nor on the absolute volume of access services retained on the Openreach network at any point in time.

1.6 The Order Mix Targets are designed to provide incentives to CPs to use ultrafast-capable FTTP connections to supply access services to end-customers as the Openreach FTTP network is rolled out, and to reduce the flow of new orders that are placed on the 'legacy' Openreach copper/FTTC network. These targets will work alongside the implementation of regulatory 'stop-sell' rules at exchanges where ultrafast coverage exceeds 75% to shift CP acquisition and regrade activity towards the supply of FTTP connections. As such the Offer is consistent with Ofcom's objectives to promote investment in and take-up of ultrafast networks to the benefit of UK's consumers and businesses.

1.7 With CPs necessarily looking to supply customers with ultrafast-capable connections and in the absence of absolute volume commitments, decisions about whether to use the Openreach network or any available alternative network (Altnet) to provide connectivity to end-customers will therefore be based on comparing prices, technical capabilities and expected service/quality standards – i.e. consistent with network based competition on the merits.

1.8 The Equinox deal does not introduce penalties on CPs for using Altnets to supply connections and a decision to use an Altnet for some supply needs will not impact the prices paid to Openreach for FTTP or any other access services. The discounted prices and terms within Equinox therefore represent competition on the merits and are not something that raises competition concerns or warrants regulatory intervention.

1.9 We provide additional analysis and commentary in this response to support this view and confirm Ofcom's provisional assessment. This includes addressing the claims put forward by some Altnets about circumstances in which the Order Mix Targets could impact CP purchasing decisions. These hypothetical concerns appear to be based, at least in part, on a misunderstanding about how the terms of the Offer will be applied but, even

[2] In each measurement period after the Onboarding and/or Ramp-up periods, discounts will be paid on rental charges if 80% of new orders in the Openreach FTTP footprint are placed on FTTP and on rental and connection charges if 90% of new orders in the Openreach FTTP footprint are placed on FTTP.

correcting for this, are framed around a specific scenario about the proportion of orders that are still placed on legacy services even where FTTP is available. Under this scenario, CPs just meet the targets to receive discounts, but do not exceed the target with stakeholders suggesting this could impact a decision to use Altnets to supply customers where Altnets have overbuilt the Openreach FTTP network. Evidence shows that this specific scenario is implausible, and CPs can be expected to shift sales activity away from legacy services in the Openreach FTTP footprint. This therefore supports Ofcom's provisional conclusion that Order Mix Targets do not create a potential barrier to using Altnets.

1.10 We also address additional issues raised by stakeholders in response to Ofcom's 'Call for Inputs' (CFI), agreeing with Ofcom's conclusion that these issues are not relevant to the specific assessment Ofcom is carrying out at this stage and are, in any event, not providing substantive evidence to suggest the Offer is inconsistent with Ofcom's objective to promote investment by Altnets.

2. Ofcom's overall approach and analytical framework for assessing the Offer

2.1 Ofcom was very clear in the WFTMR that the 90-day notification requirement was being introduced to provide a longer time window to scrutinise certain types of offers that had been identified as potentially raising competition concerns. The trigger for the 90-day notification period is very specific and clearly defined in SMP Condition 8.6. That is, Ofcom identified that it would want to assess any changes to the terms of supply for new and existing network access services where these made the prices or other terms "… conditional on the volume and/or range of services purchased."

2.2 Such conditionality was identified as giving rise to potential loyalty inducing effects that could undermine Ofcom's policy objective of promoting investments in ultrafast-capable networks. Specifically, the concern was that Openreach could use its wider geographic network coverage and/or scope of services sold to structure supply terms in a way that deterred the use of new sub-national FTTP networks. That is, as any CP would likely need to use Openreach for at least some of its network access requirements, Ofcom wanted to ensure that CPs would not pay higher average prices to Openreach for network access services (or more generally face less attractive terms of supply) if they chose to shift some demand to new network suppliers as their services become available. If average prices paid to Openreach increased if volumes were shifted to Altnets, then this could place an unfair burden on the Altnet to offer deeper discounts than Openreach for a comparable access service and this may not be considered to be 'competition on the merits'.

2.3 The actual impact would depend on the specific detail of any conditionality introduced within the terms of supply for network access. The existence of conditionality within the terms was not prohibited by the WFTMR, nor did Ofcom introduce a prior approval/consent process for such terms. But Ofcom was clear that conditionality should act as an early warning signal of a potential concern that should trigger closer review. Ofcom provided some guidance in the WFTMR about how it would expect to approach this "prior assessment" of conditionality within the 90-day window ahead of the new terms taking effect.

2.4 It follows that the focus of any prior assessment should be only on the conditionality and whether it could give rise to the type of theoretical loyalty inducing effects that Ofcom had identified and that could undermine the business case for new network builders and deter entry/expansion, contrary to Ofcom's policy objectives.

2.5 This is not to claim that no other issues could arise – as a matter of principle - with other terms within a new offer. But the 90-day framework set by Ofcom is not aimed at considering details within network access offers which have nothing to do with the potential impact on competitors and network competition.

2.6 In this respect, we agree with Ofcom's approach in the provisional assessment where Ofcom considers many of the points raised by stakeholders fall outside of the scope of the exercise it is conducting within the 90-day window. We make for completeness some comments on these broader set of issues below which for the avoidance of doubt we do not consider merit any Ofcom intervention or concern, but the main focus of this submission is on Ofcom's assessment of the conditionality within the Offer.

2.7 For the avoidance of doubt, we agree with Ofcom's summary description of the key terms and structure of the Offer and do not repeat them in our response.

3. Assessment of whether Order Mix Targets discourage the use of Altnets

3.1 In our submission to Ofcom in response to the Call for Inputs, we noted that we did not consider that the Equinox offer triggered SMP Condition 8.6. Under the terms of the Equinox offer, the discounts on FTTP pricing are not strictly "conditional on the volume and/or range of services purchased" but on a minimum proportion of total new Openreach orders being placed on the available FTTP network. This means a CP could get discounts on FTTP services even if no orders were placed on copper/VDSL (or, indeed, any other Openreach services) and discounts would be available on Openreach FTTP lines regardless of the total volume of FTTP lines ordered and/or retained in any given period. Nevertheless, we note Ofcom's position that it is "arguable" that SMP Condition 8.6 is triggered by the Order Mix Targets and that the details of the conditionality should be assessed before Equinox goes live. We therefore gave 90 days notification of the Offer. We focus on our comments on why the Order Mix Targets do not raise any competition concerns.

3.2 We agree with Ofcom's approach of initially considering whether the Equinox Offer potentially creates a barrier to using altnets. To assess this first question, Ofcom considers a hypothesis that the Order Mix Targets could create a barrier to using altnets if those targets are "challenging to meet". In this context, Ofcom references some illustrative worked examples put forward by INCA and by Kingston.

3.3 We have assessed these illustrative worked examples in Annex 1 and believe the detail set out may reflect a misunderstanding of how the Offer will work in practice in terms of how and when Order Mix Targets are measured. To be clear, Order Mix Targets are only assessed by reference to orders placed with Openreach in each distinct 3-month measurement period and by reference to orders placed to the specific set of premises where FTTP is available to order (the "Openreach FTTP RFS footprint"). That means the only possible effect of the Order Mix Targets on a CP's decisions about the choice of network access provider will be in relation to which network access provider is used to deliver the flow of orders that the CP needs to process within the Openreach FTTP RFS footprint and within the specific measurement period. There can be no possible effect of the Order Mix Targets on the choice of network access provider to meet the CP's flow of orders placed outside the Openreach FTTP RFS footprint in that period.

3.4 But, correcting for this important potential misunderstanding, Ofcom appears to be considering potential impacts that could arise under the following scenario:

- in any given measurement period, a CP will want to process a flow of new orders to support the supply of services to end-customers – i.e. to acquire new customers currently served by other CPs or to regrade existing customers to new access services
- within the Openreach FTTP RFS footprint, CPs may still place a proportion of orders on the Openreach 'legacy' copper/FTTC network.
- To meet the Order Mix Target in the measurement period and obtain discounts on the base of Openreach FTTP lines, the CP may then need to ensure a minimum volume of orders in the measurement period are placed on the Openreach FTTP network.

- If a CP is "close" to the Order Mix Target, any decision at the margin to use Altnets for some orders in that period instead of placing those orders with Openreach FTTP, may lead to the CP missing the Order Mix Target and a loss of discount on the remaining Openreach FTTP base.
- This potential financial impact could then affect any decision about whether to use Altnets for orders in a measurement period [within the Openreach FTTP RFS footprint.

3.5 The extent to which this scenario could plausibly have any impact on a CP's choice of network provider is dependent on three factors:

a) The level of Order Mix Targets and what this implies about the maximum proportion of legacy orders that can be placed with Openreach in the Openreach FTTP RFS footprint before discounts are lost (the "legacy threshold");

b) The proportion of <u>*total*</u> CP orders within the Openreach FTTP RFS footprint in any measurement period – whether placed with Openreach or with an Altnet – which are supplied using Openreach legacy services; and

c) The extent of Altnet overbuild within the Openreach FTTP RFS footprint.

3.6 Using some of the values in INCA's worked example, we have considered the following scenario:

- a CP wants to place 1,000 orders to supply end-customers with access connections during a 3-month measurement period;
- all those orders are to premises that fall within the national Openreach FTTP RFS footprint defined at the start of the measurement period; and
- a percentage of those orders are placed on legacy Openreach services even though FTTP is available.

3.7 In INCA's worked example, it assumed that precisely 100 out of 1,000 CP orders (i.e. exactly 10%) were supplied using legacy Openreach services. This specific assumption meant that the CP would need to supply all remaining 900 orders with Openreach FTTP to meet a 90% Order Mix Target in that measurement period. But if the proportion of the 1,000 total orders that are supplied using Openreach legacy services was lower than assumed in INCA's specific assumption, then the total <u>volume</u> of orders that would need to be placed on Openreach FTTP for Order Mix Targets to be met would be lower. E.g. If INCA assumed 50 out of 1,000 CP orders (5%) were supplied using legacy Openreach services, then the 90% Order Mix Target would be met if 450 out of the 1,000 orders were supplied using Openreach FTTP; or if 10 out of 1,000 CP orders (99%) were supplied over legacy, then 90% Order Mix Targets would be met if only 90 of the 1,000 orders were supplied using Openreach FTTP.

3.8 It follows that to the extent that CPs will shift sales activity towards FTTP where it is available and cease to supply new connections over the Openreach legacy network and given that Altnets will not be able to supply every premises within the national Openreach FTTP RFS footprint (spanning premises in Area 2 and Area 3) – i.e. they will not have the 100% network overbuild assumed in INCA's worked example – it would not be realistic to assume that the Order Mix Targets will have any effect on marginal decisions within measurement periods to use Altnets. It is therefore relevant to consider whether CPs may face significant challenges that would require them to continue to place a minimum proportion of total orders onto Openreach legacy services.

3.9 As we set out below, experience to date shows that CPs are able to make shifts in sales activity and that there is not a volume of customers who would insist on being supplied using Openreach legacy services rather than FTTP.

Furthermore, in any event, the extension of regulatory stop-sell arrangements as the Openreach FTTP network is rolled out will drive CPs and end customers towards having to place 100% of new orders onto FTTP.

(a) Factors that could drive CPs to continue to use Openreach copper/FTTC access lines to serve premises where FTTP is available

3.10 Two broad reasons appear to have been put forward by stakeholders to suggest why CPs may continue to place copper/FTTC orders even where FTTP is available:

a) Supply issues: where Openreach faces challenges in actually provisioning a FTTP connection to the end customer due to wayleave/access issues

b) Demand issues: where the CP continues to place orders on legacy copper/FTTC to address end customers who either do not want FTTP due to the 'hassle' of the installation process and/or the fact they may place a low valuation on the capabilities of the FTTP connection relative to a copper/FTTC connection.

3.11 Supply issues should not arise given that the FTTP footprint over which Order Mix Targets are calculated each period is defined by reference only to those premises where FTTP lines and are expressly ready for service – i.e. where any required wayleaves or access permissions for a premises are in place.

3.12 We then make the following points to support our position that demand issues will not mean CPs need to continue to place a high proportion of the flow of new orders in a measurement period on Openreach legacy copper/FTTC services:

a) Under the FTTP Only v2.0 offer, CPs have shifted their sales activity to FTTP in order to meet targets. [✂]. CPs will be able to comment in more detail on the specific steps taken to achieve this, but they will need to manage sales channels to shift activity to FTTP as it becomes available and introduce restrictions on placing orders over legacy services, etc. The observable fact that the mix of orders have been above 90% once these steps have been taken by CPs is evidence that there is not a significant base of customers who will insist on being served over legacy network rather than the new FTTP network. This supports Ofcom's position that where FTTP is available, CPs will pivot to selling ultrafast-capable connections to customers and will not look to continue supplying copper/FTTC to a base of customers who perceive low value in FTTP (or attach a high cost to the 'hassle' of installation). We accept there will be a transitional period where CPs will need to introduce changes and work with partner sales channels, resellers, etc, but this is captured in the Order Mix Targets in the first year and in catch-up mechanisms.

b) The Order Mix Targets apply to orders placed by a cohort of customers who are seeking to change their existing access service – whether to regrade their connection with their existing CP or to switch CP – in the measurement period. It is logical that these customers are less likely to be resistant to adopting FTTP due to "hassle" factors than the wider base of customers who are not seeking any change to their access service.

c) Even if there is some resistance from end-customers to adopting FTTP, there is no requirement for CPs to supply those customers and there will be longer-term commercial benefits to focus sales activity on acquiring customers who place higher value on ultrafast-capable connections and the services this will enable them to access.

d) In any event, stop-sell policies are being introduced in Openreach exchange areas where coverage exceeds 75% of premises (and where 12 months prior notice has been given) at which point no acquisition orders can be placed on legacy copper/FTTC services – i.e. 100% of orders to premises where FTTP is available will need to be placed on FTTP. 14 exchanges, covering c4% of the current Openreach FTTP RFS footprint of 5.5m premises are currently covered by stop-sell rules on legacy services. But a further 133 exchanges will move to stop-sell in October and about 65% of premises within the current Openreach FTTP RFS footprint will fall within stop-sell exchanges by August 2022. This trend will continue over time as FTTP is deployed and more exchanges move into stop-sell. So while the Offer will accelerate the shift away from Openreach legacy orders where FTTP is available, this is consistent with the expected direction of travel and the desired policy outcome. We also note that shifting CPs' sales and marketing activity towards the capability of connections to deliver ultrafast speeds benefits new network suppliers offering such connections.

e) Evidence from the Salisbury stop-sell trial shows that less than 1% of total orders have been placed on legacy services to ensure service continuity for certain vulnerable customers who may otherwise been unable to use equipment such as health pendants. So even though some specific demand issues may arise from certain customer groups, evidence suggests these are not significant.

3.13 It is therefore clear that Equinox will not create any barrier or disincentive for a CP to place orders with an Altnet or to move current Openreach lines to Altnets to the extent that:

a) The number of orders which a CP will effectively have to place on legacy services even where FTTP is available is likely to be minimal;

b) The purpose of the offer is driving CPs to change the way they sell and market FTTP (where available) rather than disincentivising them to move lines to Altnets: CPs will be required to drive sales over ultrafast-capable FTTP connections instead of over legacy connections generally and if they were to place all their new orders in an area on FTTP and decided to place them all with an Altnets, this would not act against the Order Mix Target. In fact, we consider that INCA and Kingston's worked examples referred to in Annex 1 are effectively starting from the wrong premise by implying that a CP would first ascertain the number of new orders they will need to place on the legacy Openreach network and then reverse-engineer the minimum number of orders they would need to place on the Openreach FTTP network in order to meet the Order Mix Target. The more logical approach is that CPs pivot sales and marketing activity towards selling ultrafast-capable connections to customers and then consider which network supplier can support supply of those connections.

c) The Order Mix Target is calculated only on new orders within the single measurement period. Orders placed on the Openreach FTTP network before an Altnet rolled out its own network in the same area would not count towards subsequent measurement periods when both networks are available in parallel. Decisions about whether to move any Openreach connections to Altnets once they had deployed network would not count against the Order Mix Target. Similarly, if an Altnet rolled out FTTP in an area before Openreach had deployed FTTP, a CP would not be required to move them to Openreach FTTP once that network is ready for In that area in order to meet the Order Mix Targets. The CP's choice about whether, where and when to use Altnets would therefore be based on competition on the merits, driven by an assessment of price, quality and reliability of access connections available over different networks.

(b) The level of Order Mix Targets:

3.14 The INCA example is based on the 90% Order Mix Target that applies from October 2022. Order Mix Targets are lower in the first 12 months and flexibility has been introduced to allow CPs time to install Cablelinks, adapt sales practices/controls and work with different brands and resellers to provide opportunity for CPs to minimise volumes that could still be placed on Openreach legacy services and ensure that over 90% of orders are placed on FTTP from year 2 onwards and that CPs are not operating "close" to Order Mix Targets. Furthermore, catch-up mechanisms are in place to remove impacts from failing to meet targets in a single measurement period and rental discounts will continue to be available at 80% Order Mix Target reducing the financial impact of any shortfall against the 90% target. This all serves to reduce any risk that CPs would miss targets and that this could impact marginal decisions to use Altnets to supply new orders where available.

(c) The degree of FTTP network overbuild:

3.15 The INCA worked example is based on 100% overbuild of the Openreach FTTP RFS footprint by an Altnet. In the early years of network deployment, overbuild of FTTP networks will be much lower. While this will grow over time, it is unlikely to reach high levels across the planned national 25m Openreach FTTP footprint which will span Area 3 as well as Area 2. Furthermore, over time, as the degree of overbuild increases any factors that might drive the continued use of copper/FTTC where FTTP is available will be reducing– e.g. as the volume of lines within the FTTP footprint covered by regulatory stop-sell and where copper/FTTC cannot be ordered increases and the mix of acquisition volumes necessarily shifts towards 100%.

Conclusion

3.16 On this basis, we agree with Ofcom's conclusion that the Order Mix Targets will not discourage use of Altnets. For impacts to arise, there would need to be a clear risk that the proportion of orders CP's place on legacy services remains very close to the implied "legacy threshold" (10% under the 90% Order Mix Target) even as stop-sell is applied across much of the Openreach FTTP RFS footprint and that the level of overbuild is sufficiently very high. This is unrealistic. We would also restate that the Offer has no impact at all on CP decisions to use Altnets outside of the defined Openreach FTTP footprint or inside the footprint if migrating existing customer connections from Openreach copper/FTTC or Openreach FTTP to Altnet FTTP as part of their upgrade/retention activity.

4. Assessment of whether forecasting requirements discourage ISPs from using altnets

4.1 We do not consider that forecasting requirements alone trigger SMP Condition 8.6 and would therefore ordinarily fall to be considered under a "prior assessment" of potential competition concerns in isolation. But we agree with Ofcom's conclusion that the forecasting requirements within the Offer provide enough flexibility to accommodate CPs that wish to use altnets and that CPs planning to use altnets can factor this into forecasts to Openreach.

5. Other issues raised by stakeholders in response to the call for inputs and considered by Ofcom

(a) Low Openreach prices act as a barrier to altnet entry and expansion

5.1 We agree with Ofcom that the 90 day "prior assessment" process was not intended to address general concerns about low wholesale prices. But we also repeat the simple points we raised in our submission in response to the CFI: price levels within the Offer are anchored to the 40M FTTP anchor price level that Ofcom decided supported efficient market entry. It would be inconsistent to therefore suggest that Equinox prices deterred such entry.

(b) Assessment of whether targeted discounts deter altnet build

5.2 The Offer provides some discounts to prices paid for Openreach FTTP lines supplied to premises where there is currently no active Openreach connection – i.e. New to Network connections. Discounts apply to connection charges in Area 2 and to rental charges for 550M FTTP lines for 12 months which will be set at the price for 160M FTTP lines.

5.3 We agree with Ofcom that these discounts are not prohibited by SMP Condition 4 which requires Openreach to seek consent for geographic differences in rental charges for access services. Connection discounts are clearly not relevant and New to Network discounts are not geographically applied.

5.4 Furthermore, to the extent that broader concerns have been raised about the impact of New to Network discounts on either Virgin Media or new Altnets we agree with Ofcom that these do not demonstrate a specific competition concern that could warrant regulatory intervention. To attract end customers to our FTTP network we need to offer our wholesale CP customers prices that will drive adoption of ultrafast-capable services in competition with Virgin Media who is offering such services over their established and expanding network footprint. We also need prices that can drive incremental growth in customers attached to our network from customers who may have been wireless only households or otherwise not taken a fixed line service. Offering discounts on these lines helps incentivise efforts to expand the Openreach customer base and drive incremental value to the Openreach network. No evidence has been presented to suggest this is anything but fair competition on the merits.

(c) Cumulative impact of Equinox with existing offers

5.5 INCA suggest that the existing GEA volume offer acts to deter CPs from moving Openreach connections to Altnets where they have deployed their own FTTP network but ahead of Openreach building FTTP. This suggestion overlooks the fact that under the GEA volume offer, Openreach mix targets are adjusted if a CP switches volumes to another network provider. As such, a CP decision about whether to move an existing customer connection to an Altnet FTTP service or to acquire new customers using the Altnet will not impact the average prices paid to Openreach for remaining legacy connections. This is, again, competition on the merits.

Annex 1

Comments Worked examples presented to Ofcom in CFI

INCA Worked Example (Final page of INCA's CFI response):

There is a town in which 1,000 households want to switch to TalkTalk

Scenario 1: Openreach is the first company to bring full fibre to the town. TalkTalk markets its service and 900 households agree to have fibre installed as part of the switch. 50 households can't be full fibre enabled in a reasonable time due to wayleave and street works issues and so take a copper service. The final 50 households don't want to have the hassle of having a new cable installed and so just take a TalkTalk service using their existing copper line. TalkTalk FTTP ratio with Openreach is 90%

Scenario 2: City Fibre roll out fibre to the town first It cannot enable 50 of the properties due to the same wayleave and street work barriers. The same 50 households don't want the hassle of having a new cable installed 900 customers sign up to TalkTalk over the CityFibre network. Openreach roll out their full fibre soon after and the 100 customers living in properties that can't get fibre and those that don't want a new cable installed decide to sign up to TalkTalk using the FTTC solution. TalkTalk FTTP ratio with Openreach is 0% seriously impacting its national average and putting at risk millions of pounds of discounts

Comments on INCA's worked example:

Under Scenario 1, the 50 customers who INCA assumes cannot order FTTP due to wayleave/access issues would not have been counted in the FTTP footprint and would be excluded from the numerator and denominator in calculating the Order Mix Target for the period. That is, the footprint is defined by premises that have "Customer Ready for Service" flagged and this would only happen where it had been confirmed that any wayleaves and permissions were in place.

It is unclear why INCA seems to assume that under Scenario 2 TalkTalk places 900 FTTP orders with CityFibre in a separate measurement period to that where it places 100 FTTC orders with Openreach. If those orders were all placed in the same measurement period before Openreach has deployed FTTP, then the Order Mix Targets are not relevant.

This suggests that INCA may have misunderstood that the Order Mix Target is measured as a one-off metric in each distinct 3-month measurement period across the Openreach FTTP footprint at the start of each measurement period. So if TalkTalk wants to serve 1,000 customers in the town at the point in time where only CityFibre has built FTTP, then any orders placed to any of those 1,000 customers sit outside the Order Mix Target calculation for that period. If TalkTalk place 100 orders with Openreach legacy and 900 orders with CityFibre FTTP, this will make no difference at all to the prices paid for any Openreach FTTP purchased outside the theoretical town.

Kingston's worked example (paragraph 3.16)

"… *assume a CP has the ability to connect 100 end customers. If all end customers are on the Openreach network it must convert 80% of these. If 10 are on alternative networks, then in order to reach the 80% target* *(of 90 customers) it must convert 72. In total the CP must therefore convert 82 customers to Openreach FTTP. Therefore at the margin, each customer converted to alternative FTTP networks makes it harder to achieve the Openreach target. This therefore disincentivises CPs from using alternative FTTP networks*"

Comments on Kingston's worked example:

The Offer requires that 80% of all Openreach new orders placed in the Openreach FTTP footprint are on FTTP. If the CP only placed 90 orders with Openreach and uses an Altnet for the remaining 10 orders, then it only needs to place 72 FTTP orders with Openreach. This compares to having to place 80 orders on Openreach FTTP if all 100 orders were placed with Openreach. It is not clear why Kingston therefore claims that each customer connected to alternative FTTP networks makes it *harder* to achieve the Openreach target when that Openreach FTTP target has reduced.

Annex 2

[✂]