



Response to Further consultation on WLA pricing remedies

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1 Executive Summary

- 1 INCA welcomes the opportunity to respond to this consultation, but considers that it should not have been issued. INCA sees no need for the changes proposed by Ofcom in this consultation and consider the only beneficiary of the proposals to be BT/Openreach.
- 2 INCA is concerned that this consultation is symptomatic of Ofcom bending to Openreach pressure in the 11th hour of the market review process, but showing no indication to consult on the material concerns presented by other stakeholders in response to Ofcom's Telecoms Access review (TAR) consultation issued in March this year.
- 3 INCA considers that the proposal to rely on Openreach contractual provisions instead of issuing amended charge control provisions removes Ofcom's ability to enforce its charge control decision (as the contractual provisions would be outside Ofcom's jurisdiction and subject only to the courts).
- 4 INCA considers that reliance on the Equinix contractual provisions would exacerbate inequities in the Equinix offer that risk disadvantaging ISPs outside the BT group due to the cashflow impact of the Equinix refund mechanism.
- 5 INCA considers that reliance on future contractual structures promised by Openreach in a letter published alongside this consultation would be unduly risky and serve no benefit other than convenience and a significant win for Openreach who could claim that Ofcom is stepping back from direct price regulation in the broadband market.
- 6 INCA considers that the application by Ofcom of a waiver to allow Openreach to apply WLA connection charges during the TAR period using the WFTMR geographic market definitions would give precedence to existing contractual provisions set by the incumbent over the outcome of Ofcom's market analysis and resulting conclusions and regulatory structures.
- 7 INCA fundamentally opposes the proposals set out in this consultation and urges Ofcom to implement the WLA charge control as intended using its own instruments and ensuring that Ofcom remains the body responsible for enforcement of the TAR regulations.

2 About INCA

- 8 The members of the Independent Networks Cooperative Association (INCA) are supporting, planning, building and operating sustainable, independent and interconnected 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. We are working together to create cohesive interconnected next generation networks.

3 Introduction

- 9 The Telecoms Access Review (TAR) is set to replace the Wholesale Fixed Telecoms Market Review (WFTMR) in April 2026. Ofcom has labelled the TAR as a ‘continuity review’, with a priority to enable to continued development of sustainable network competition whilst protecting consumer interests.
- 10 In March 2025, Ofcom published its TAR consultation documents, including proposals to use an ‘anchor product’ pricing approach in the Wholesale Local Access (WLA) market. Ofcom proposed using the ‘80/20’ product as the anchor product and to use the existing Equinix offer price as the starting point for the charge control applicable to that product.
- 11 In this consultation, as part of the overall TAR consultation process, Ofcom makes two proposals which change the proposal in the March 2025 TAR consultation:
 - To remove most of its originally proposed charge controls for the 80/20 anchor product and replace those provisions with a commitment by Openreach to alter its contracts with ISPs to deliver the same outcome – after Ofcom’s TAR statement is issued, and
 - To allow Openreach to continue to apply 80/20 connection charges in accordance with the WFTMR WLA geographic market definitions, rather than reflect the TAR WLA geographic markets.

4 Ofcom's proposals in context

- 12 INCA broadly welcomed Ofcom's proposals in the March 2025 TAR consultation. The proposals in this consultation, however, dilute – even contradict – the spirit of the March TAR consultation.
- 13 INCA sees the proposals in this consultation as a partial abdication of responsibility and accountability for the development of sustainable network competition across the UK.
- 14 The proposals in the consultation should be seen together with recent offers and discounts in the market including the proactive migration offer and the significant reductions in the Equinix 1.2 and 1.8 Gbps FTTP prices, neither of which Ofcom has considered were of concern.
- 15 INCA considers this consultation to be symptomatic of a tendency for Ofcom to make general positive pro-competition statements at the policy and strategy levels, but not implementing the spirit of those statements once 'the rubber hits the road' and Openreach presents Ofcom with proposals and initiatives.
- 16 INCA considers this consultation (and the one published by Ofcom today relating to other price controls in the March TAR consultation), to confirm a trend of last-minute changes introduced to Ofcom's strategic proposals, caused by 'operational' and 'practical' issues or limitations presented by Openreach.
- 17 INCA notes that, whilst this consultation and the one published earlier today reflect concerns and issues presented to Ofcom by Openreach, neither reflects any of the material concerns presented to Ofcom by any other stakeholder.
- 18 INCA further notes that all the proposals in this and today's consultation favour BT/Openreach in one way or another. It is difficult to consider that to be entirely coincidental.

5 Contractual approach to WLA price regulation

- 19 Ofcom will be aware that INCA's primary concern regarding Openreach's wholesale access prices (FTTC and FTTP) is not the maximum price that Openreach is allowed to charge, but rather the minimum price Openreach is allowed to charge.

- 20 Nevertheless, the regulated maximum anchor price for Virtual Unbundled Local Access (VULA) can play an important role. This is particularly the case for FTTC pricing where, if unregulated or less regulated, Openreach could raise its pricing to accelerate the migration to FTTP in advance of Altnets having completed their network deployments. INCA's concerns on this issue have been documented in its TAR response on the subject of copper retirement.
- 21 Although most of INCA's members do not purchase WLA products, some do. Several Altnets have recently started looking at offering services outside their network coverage areas using access to other Altnet networks as well as Openreach. This makes the FTTP anchor price of direct relevance to INCA and its members.

5.1 Ofcom reliance on Openreach contractual provisions with ISPs

- 22 Aside from any concerns as set out below, INCA is concerned that Ofcom is proposing to substitute its regulatory measures, for which BT Group is accountable to Ofcom, with contractual provisions applicable only between Openreach and its ISP customers and for which Openreach would be accountable to its customers and the courts, but not to Ofcom.
- 23 Ofcom's decisions have repercussions beyond just the group of industry players who directly consume the relevant regulated product, and it is important that BT/Openreach is accountable to Ofcom for compliance with the regulatory framework. INCA is concerned that, not only would Ofcom be taken 'out of the compliance loop' for the 80/20 anchor product pricing, but other parties with direct and indirect interest in this pricing would not be considered interested parties in the event the Openreach does not comply with the spirit of the proposals.
- 24 INCA supports the principle of a gradual reduction in regulatory intensity as competition (at all levels), but this is not the time for Ofcom to start stepping back. Ofcom will be aware that network competition is at a critical point where actions by BT/Openreach to create barriers to both network expansion and take-up on Altnet networks could cause irreparable harm. Although the outcome of the proposed approach may be the same as if Ofcom were to continue to apply the charge control in the conventional manner, that is not certain. As outline above, INCA considers that Ofcom must remain able to enforce its regulatory policies. To the best of our understanding, that would not be case if Ofcom were to rely on Openreach's contractual terms with ISPs.

5.2 Use of the GEA Volume Offer

- 25 It is not clear whether Openreach is proposing to revive the GEA Volume Offer for the purpose of its proposal to Ofcom for setting the FTTC 80/20 pricing for the 2026-31 period. If so, then this may be in breach of the restrictions both in the WFTMR and proposed for the TAR regarding 'Other Commercial Terms' with possible loyalty-inducing effect.
- 26 If not the GEA Volume Offer, is Openreach proposing to create a new and entirely unconditional offer for 80/20 FTTC retail and connections?
- 27 INCA does not believe that Ofcom can rely on an as yet unspecified offer to set the PTTC 80/20 pricing. It would appear to go against all good regulatory practice to leave the terms of 'regulated terms' entirely in the hands of the regulated incumbent. INCA considers this possibility extremely unwise and potentially open to challenge.

5.3 Distortion of the ISP market

- 28 Some INCA members purchase Openreach WLA products to provide services outside their physical network footprint. Under the Equinox terms¹ which provide for Openreach to charge ISPs the standard rate for the service purchased and then refund the difference between the standard rate and the Equinox discount rate on a quarterly basis and subject to the ISP meeting the relevant criteria.
- 29 This means that the ISPs suffer a cashflow impact while Openreach holds on to their money before the refunds are made². INCA is not aware whether 'Internal' BT-Group ISPs are subject to the same cashflow impact. Even if they were, it would be internal transfers.
- 30 Under Ofcom's March 2025 TAR proposals, however, Ofcom proposed to set the standard 80/20 FTTP price at the 80/20 Equinox discount price. This would mean that, at least for the 80/20 product, ISPs would not suffer that cashflow impact and thus (at least in part) levelling the playing field between BT-Group ISPs and 3rd party ISPs.
- 31 Ofcom's new proposal to rely on Openreach contract provisions, would reinstate the cashflow impact for the 80/20 FTTP product INCA considers that is likely an unintended consequence and INCA considers this to be

¹ Equinox contract, Section 3 schedule 1.

² To the best of INCA's knowledge, no interest is paid by Openreach on the sums held under Equinox.

yet another reason for Ofcom to not proceed with the contractual provisions proposal.

5.4 Openreach's Equinix letter

- 32 On May 2023, Clive Selley (CEO of Openreach) wrote to Ofcom stating that *"Openreach does not have any current plans to change its Equinix 2 FTTP rental prices once launched and does not intend to initiate any further such changes during this market review cycle (i.e. until 31 March 2026), aside from those changes provided for as part of the Equinix offer itself (e.g., CPI-based price increases)"*.
- 33 Despite that, Openreach recently notified planned Equinix price reductions for its 1.2 and 1.8 Gbps FTTP products. Reduction for which Ofcom has chosen to not commence a consultation process.

5.5 Openreach's recent letter

- 34 Ofcom has published, alongside this consultation, a letter from Mark Shurmer of Openreach, stating that Openreach will establish contractual provisions to emulate Ofcom's intended WLA anchor price charge control. That letter provides no detailed provisions to be included in those contracts, nor a limitation of other provisions that could be included alongside those needed to emulate the Ofcom charge control. There also seem to be no provisions covering the eventuality that the ISPs do not agree to the contractual terms put forward by Openreach.
- 35 INCA considers it an undue risk for Ofcom to rely on a contractual change signalled by Openreach in its letter, but to be implemented within a month of the TAR Statement.
- 36 Unless Ofcom can be fully assured that the proposed changes will be implemented with effect from when the TAR takes effect and that the ISPs have agreed to those changes in advance.
- 37 Regardless of the concerns stated above, INCA considers the proposed approach to be unduly risky. This is particularly the case as the reliance on Openreach contractual terms would simply be a matter of convenience, caused by Ofcom's own decision to use the Equinix 80/20 product and existing pricing as the anchor product.
- 38 The precedent set by Mr Selley's letter from 2023 does not provide a base of confidence for Ofcom to rely on Openreach's word. The more recent letter from Openreach offers even less certainty than Mr Selley's letter.

INCA considers it inappropriate for Ofcom to place reliance on a future action by the regulated incumbent, which that incumbent cannot even guarantee due to dependence on third parties.

6 The use of WFTMR geographic markets for WLA connection charges during the TAR period

- 39 It is INCA's understanding that the purpose of ex-ante regulatory remedies is to set rules for how the SMP provider can do business for the period those remedies are applied.
- 40 As such, Openreach was aware, when introducing the Equinox offers, that the offer terms would span more than one market review term and that market definitions were not guaranteed to remain unchanged.
- 41 INCA is deeply concerned that it now appears that Ofcom is proposing to 'bend the remedy rules' to accommodate the Equinox offer, which Openreach designed and launched in the full knowledge that there would be a market review in 2026.
- 42 Although Ofcom is seeking 'continuity' between the WFTMR and the TAR, INCA cannot see how that should be interpreted as somehow allowing Openreach to apply pricing during the TAR period that are in direct breach of the TAR remedies. INCA further cannot understand the material challenge for Openreach to change its pricing to be compliant with the prohibition of geographic pricing in the TAR. It was Openreach's choice to apply differentiated connection charges between the Area 2 and Area 3 geographic markets in the WFTMR, and it will be Openreach's choice whether to do so in the TAR.
- 43 It is INCA's understanding that the SMP provider must ensure that its contractual and pricing terms are compliant with the, at any time, prevailing regulatory rules. Not for the regulations to be 'bent and flexed' to accommodate the SMP provider's existing contractual terms.
- 44 Although the continued application of the higher connection charges in locations that are currently WFTMR Area 3, but will become TAR Area 2, could improve the economics for Altnets competing with Openreach in those locations. This would be complex to manage and, in reality, of little real benefit.
- 45 On balance, INCA considers the proposed approach would set an extremely undesirable precedent and that Ofcom needs to apply the

market definitions and remedies as proposed, with out exceptions. Not doing so, would create perverse incentives for Openreach to establish contractual frameworks during one market review period to constrain Ofcom’s ability to apply appropriate remedies in the following market review period.

7 Answers to Ofcom’s questions

7.1 Question 1

- 46 Do you agree with our proposals relating to the Contract Focused Approach?
- 47 *No, INCA does not agree. INCA is not opposed to gradual relaxation of regulatory rules, but Ofcom must remain able to police and enforce the rules it applies.*

7.2 Question 2

- 48 Do you agree with our proposals relating to charge controlling FTTP connections (where copper-based services are not available)?
- 49 *Yes, INCA agree that FTTP products should be subject to a charge control where copper-based services are not available.*

7.3 Question 3

- 50 Do you agree with our proposal to amend the proposed geographic discrimination prohibition by introducing a carve-out that would permit geographic differences in connection charges, where such differences reflect the terms of the Equinox 1 or Equinox 2 contracts (as applicable) and also align with WFTMR21 geographic market boundaries?
No, INCA does not agree. INCA believes it fundamentally wrong that evidence-based regulations should be modified to fit around contractual provisions designed by the regulated incumbent. INCA considers this would set a dangerous precedent.