

Written evidence submitted by INCA

The Independent Networks Co-operative Association (INCA) was established in 2010 as a trade association for next generation broadband services. INCA brings together 200 organisations – alternative network operators (non-incumbent), suppliers, local authorities and professional services firms. All are working to build the UK's new digital infrastructure, full fibre and wireless.

For more information about INCA, please visit: <https://www.inca.coop/>.

Introduction

The alt-net sector has played an important role in ensuring that the UK has reached 50% gigabit capable coverage and it is on track to meet the 85% target that has been set by the Government. The alt-net sector is not only doing this by providing a significant direct contribution to rollout, but also by creating a more competitive environment and by keeping incumbents on their toes.

However, our members have serious concerns about the impact that a range of recent decisions from Ofcom and Government will have on their ability to compete for rollout and investment. Decisions such as the designation of Area 3 in the Wholesale Fixed Telecoms Market Review as being essentially a BT fiefdom, with no competitive providers regarded as relevant competition (and consequent incentives to BT) has raised concerns amongst rural alt-nets and their investors who have committed £billions to commercial rural deployment. This decision was made at a very early stage of the investment cycle. Likewise, the decision by Ofcom to approve the BT Equinix proposal, a discount and loyalty scheme designed to ensure service providers stay on the Openreach network rather than use wholesale access to new alternative networks, has caused a high level of concern amongst alt-nets and their investors who have factored wholesale into the plans going forward.

INCA believes that decisions like these show a clear divergence in how Ofcom and the Government are interpreting the Statement of Strategic Priorities and crucially risk a reduction in private sector investment and competition, and consequently risk delaying rollout in the hardest to reach areas and potentially lower value for money in the publicly funded rollout projects.

Additionally, although BT has announced ambitious full fibre-rollout plans these are currently largely unfunded and partly rely on taxpayers' money. In comparison the smaller, agile network builders have already secured £15bn of commercial investment

from investors and in some cases local communities to finance their faster roll out plans which are often in challenging areas.

Alongside these specific concerns, INCA members share the sector-wide concerns about access to land as they are still experiencing issues with the current wayleave system, resulting in operators spending substantial sums and time on negotiating wayleave agreements. A quick and substantial wayleave reform would ensure that any available investment would actually be spent on rollout rather than on landlord fees and would significantly speed up deployment of broadband.

Threats to competition and value for money

There are growing concerns from the alt-net sector, and their investors, over recent decisions that have been made by Ofcom and Government and the impact these will have on competition in the telecommunications sector. Crucially, these decisions indicate that Ofcom and DCMS are diverging in how the Government's Statement of Strategic Priorities should be interpreted and implemented.

Ofcom should be more ambitious about infrastructure competition

The transition of the UK network from copper to fibre provides a once in a generation opportunity to introduce real infrastructure competition and thus could bring with it the opportunity to remove the Significant Market Power regime in the long-term. However, we are concerned that Ofcom still does not share the ambition of the wider and instead still implements a regulatory approach that is biased towards Openreach being the only provider in parts of the UK.

Ofcom's decision to approve Openreach's Equinox Offer

Ofcom is under a duty to secure efficient and sustainable competition as well as achieve maximum benefit for customer and consumers. Yet despite these duties, Ofcom approved a new Openreach offer giving a discount for their FTTP products at the end of September (Equinox Offer).

Our members as well as investors in broadband infrastructure are extremely concerned by the impact of this new offer on the future of broadband rollout. We believe this ten-year long offer has been constructed to form a loyalty scheme for large Openreach customers which, as a result, will disincentivise them from consuming alternative networks due to complex minimum order requirements. In addition, the scheme locks in these providers for ten years with a break clause at the six-year mark when Openreach would be able to raise the price of the FTTP products. By approving the offer, Ofcom has prioritised the potential of lower consumer prices over competition in the market and thus has significantly skewed the regulatory market environment in favour of Openreach.

Equinox directly and indirectly affects the ability of alt-nets to compete with Openreach and could hamper future investment in the sector which will be crucial in reaching the 85% target and the hardest to reach areas. It will also leave many parts of the UK with Openreach as the monopoly provider and maintaining its position of Significant Market Power. INCA strongly believes that Ofcom has failed to fully take account of these matters and has prioritised short-term consumer savings over the wider sector's ability to bring gigabit-capable broadband to as many areas of the country in the shortest possible time. **Crucially, we do not believe that Ofcom's decision complies with the letter and spirit of the Government's Statement of Strategic Priorities, and we would welcome if the Public Accounts Committee scrutinised the Equinox offer in more detail to ensure that competition is retained and that we have a competitive environment for the publicly-funded rollout areas.**

In addition, the Government must look at how it is measuring the delivery of its Statement of Strategic Priorities. In particular, the stable and long-term regulation that incentivises network investment and ensures fair and effective competition between new and existing network operators. Effective competition would enable the removal of Significant Market Power from the wholesale industry, and we propose that this should be a specific objective in time for the next market review.

Concerns about the Project Gigabit BDUK Programme

INCA's members welcome the government's commitment to supporting deployment of gigabit capable networks in challenging rural areas and are working hard with DCMS to ensure Project Gigabit gets the best outcomes for rural communities with value for money for the nation as a whole. We recognise that this is a complex and difficult project whose success is imperative for very many rural communities.

In general, DCMS/BDUK officials are willing to engage with the sector to identify emergent challenges with the procurement process, however they have also demonstrated significant inertia in implementing solutions to these challenges.

One example of a challenge that has been successfully addressed by DMCS after we raised concerns is the interplay between the main procurement process and already ongoing voucher-supported rollout plan. Vouchers are popular with rural alt-nets investing on a commercial basis since they facilitate connections to outlying farms, hamlets, and other remote premises, on a demand-led basis. Without change, the initial plans would have forced alt-net providers to immediately and significantly cut-back their voucher supported build plans, in the regions in most need of improved connectivity.

Fears that the Project Gigabit tendering process would lead to the cessation of vouchers in those areas have been allayed by the creation of Voucher Priority Areas where some premises in the intervention areas are designated as 'deferred scope' and so taken out of the initial scope for procurement. This means that commercial and community-owned projects can continue with their plans to extend service using vouchers to top-up the commercial investment. This pragmatic solution is a welcome change and has a very positive effect in that a small amount of public funding added to the existing commercial investment saves a much larger amount of public funding later through the procurement process, plus it reduces the risk of using state subsidy to overbuild networks built with commercial investment.

However, there are other issues of continuing concern. Firstly, mapping of premises designated 'white' (for intervention) and grey (likely to be covered with commercial investment) seems at times very strange. In one recent example a number of market towns are being designated white and the more rural areas around them grey. This defies logic.

A second concern is the financial requirements for operators to bid for the larger Type B procurements. The scale of the Type B procurement means that only BT and Open Reach comply with the full requirements of the financial constraints. In the recent Cumbria ITT the requirements are such that few, if any, independent operators can bid. If this is replicated in other procurements, we risk having an equivalent of the 'framework of one' supplier for these large procurements that bedevilled the original BDUK superfast broadband programme and led to several National Audit Office reports and PAC inquiries. In addition, the subsidy control burdens on Type A procurements are the same as they are for Type B. This means that Type A procurements have a substantial risk of over-build, but present insufficient market impact to change the wholesale dynamics in the UK by favouring Type B procurements over Type A. DCMS and Government must re-examine the subsidy control requirements.

Wayleaves are diverting money and time away from rollout

In INCA's Spring 2021 report ***Metrics for the UK independent network sector*** found that wayleaves topped the list of challenges cited by independent operators working to deliver the UK's overall policy objectives. Despite government's efforts to improve the situation through the Telecommunications Infrastructure (Leasehold Property) Act, operators still spend substantial sums negotiating and obtaining wayleaves and often face long delays that hold back deployment of new networks. On average it takes over two years to negotiate a wayleave with a London local authority and longer for housing associations and large private sector landlords. If every multi-dwelling unit Landlord claimed £20 wayleave cost per property this adds over £20m to the roll-out costs in

London. However, some landlords are asking for much more than this with some new build developers asking for more than £1,000 wayleave fee per property.

Several positive proposals for resolving the ongoing issues faced by the industry have been put forward by INCA members to DCMS including:

- Context specific legislation that recognises the differences between fixed line and wireless networks (either mobile, or fixed wireless broadband).
- Standardised wayleaves enshrined in law to simplify negotiations, alongside an indication of acceptable fee-levels to minimise time and costs of negotiations.
- Placing obligations on landlords to engage in constructive negotiation with operators, alongside appropriate sanctions for failure to do so.
- Conducting a Government-run Information Campaign to explain the benefits of full fibre and other gigabit-capable networks to landlords and other landowners

Operators and landowners benefit most from a co-operative working relationship but in the view of some INCA members many landlords simply do not appreciate or understand the role they play in helping to meet the need to upgrade the UK's digital infrastructure on the timescale set by Government. As a result, we are becoming increasingly concerned by the silence from Government and DCMS on proposed changes to the current wayleaves system. ***Our members desperately need reform if their build plans are to be a success and we urge the Public Accounts Committee to press the Government to commit to comprehensive wayleave reform and a timetable that matches the Government's overall ambitions for the sector.***

Conclusion

We are very concerned that Ofcom's and the Government's policy priorities are not as well aligned as they should be and that some of Ofcom's recent decisions are undermining the fair and effective competition between new and existing network operators.

We are also keen to ensure that the Government's Project Gigabit funding programme for hard-to-reach areas properly accounts for the existing and planned investment of the alternative operators when designating intervention areas.

Moreover, we need an ambitious and timely reform of the wayleaves regime to fully enable the sector to move as quickly as possible in connecting the UK to gigabit-capable broadband.

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