

Ofcom's proposed Plan of Work

2024/25

Independent Networks Cooperative Association

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Table of Contents

1	Introduction.....	1
2	Ofcom's duties and priorities.....	1
3	Ofcom's proposed priorities for 2024/25.....	2
4	Matters requiring Ofcom's attention over the next 12 months.....	5
4.1	Physical infrastructure access.....	5

1 Introduction

- 1 The Independent Networks Cooperative Association (INCA) is the leading UK trade association representing organisations deploying independent digital infrastructure. Founded in 2010, INCA aims to foster a new approach to digital infrastructure, focusing on full fibre (FTTP) and high-quality wireless broadband whilst campaigning for the policy and regulatory support needed to maintain a healthy, competitive market. INCA has over 200 members and represents most of the full fibre infrastructure builders commonly referred to as Altnets. Members include network owners, operators, suppliers, and managers as well as access networks, middle mile networks, network hubs and exchanges and organisations (including public sector) that are developing or promoting independent networks.
- 2 INCA welcomes the opportunity to respond to Ofcom's proposed plan of work for 2024/25. INCA's response will focus only on fixed telecoms-related activities and issues.

2 Ofcom's duties and priorities

- 3 With regards to telecoms, Ofcom's duties are governed by the Government's Statement of Strategic Priorities (SSP)¹. The SSP sets out the Government's strategic priorities and outcomes in relation to safeguarding the interests of telecoms consumers and the security and resilience of telecoms networks. Ofcom must have regard to the SSP when exercising its regulatory functions.
- 4 Ofcom's duty to promote competition is strengthened via the SSP, beyond what is understood to be Ofcom's formal duties, particularly with regards to network competition, as outlined:

"We regard competition where possible as a key driver of network roll-out. It is essential

¹ <https://www.gov.uk/government/publications/statement-of-strategic-priorities>

that competition is fair and effective between existing network operators and new entrants, and we expect Ofcom to adopt an engaged, proactive approach to monitoring any anti-competitive behaviour. Ofcom has powers at its disposal – including information gathering, audit enforcement and penalty powers - to perform this role.”²

5 Furthermore, Ofcom is required, courtesy of the SSP, to ensure that there is clarity around the application of the ‘fair bet’ principle. The SSP states:

“The regulatory environment should ensure there is clarity regarding the application of the ‘fair bet’ principle over an extended time scale. The Government’s view is that an effective ‘fair bet’ regime would be one that allows firms making large and risky investments to have confidence that any regulation will reflect a fair return on investment, commensurate to the level of risk incurred at the time of making the investment decision.”³

6 These elements of the SSP demonstrate clearly what is expected of Ofcom in the execution of its duties in order to meet the Government’s target of 85% availability of gigabit-broadband connections by 2025 and nationwide⁴ coverage by 2030.⁵

3 Ofcom's proposed priorities for 2024/25

7 With regards to telecoms, Ofcom’s proposed priorities for 2024/25 are as follows:

- World-class digital infrastructure
- Furthering the interests of telecoms customers
- Secure and resilient telecoms infrastructure.

INCA believes that it will be essential in the future to also include within Ofcom’s priorities a commitment to promoting and safeguarding infrastructure competition, as required in the SSP.

² SSP, para. 19

³ SSP, para. 20

⁴ Nationwide coverage means “at least 99%” of premises

⁵ House of Commons Library - Gigabit broadband in the UK: Government targets, policy, and funding (July 2023).

- 8 With regards to Ofcom's key projects and programmes to support the priority of "An internet we can rely on", the following is noted with regards to fixed telecoms:
- Wholesale Fixed Telecoms Market Review (WFTMR)
 - WFTMR (in Hull)
 - Inflation-linked in-contract price rises
 - Security and Resilience.
- 9 The WFTMR 2021 focused on encouraging infrastructure competition and reducing barriers to market entry and expansion. INCA believes that Ofcom's overall 2021 WFTMR objectives remain valid and supports Ofcom's desire to ensure regulatory consistency and stability to support the long-term investment decisions involved in new fibre network deployment. INCA is supportive in principle of Ofcom continuing to monitor implementation of the current WFTMR until cessation, but we are concerned that Ofcom is not monitoring compliance effectively. In the remaining two years of the WFTMR 2021, Ofcom must carefully assess compliance and consider what can be achieved between now and the end of the period.
- 10 With regards to the next WFTMR, INCA stresses the importance of consulting as early as possible. We are aware that Ofcom proposes to consult during Q1 of 2025 and during our initial discussions with Ofcom with regards to the WFTMR 2026, Ofcom suggested that the three stages of the review process – 1. Market definition (product and geographic), 2. Assessment of competition in each market defined (SMP analysis) and 3. Design of remedies – would be consulted on simultaneously. INCA believes that this is highly inappropriate in a rapidly changing market as the three stages are incremental and build on each other, e.g. consulting on all three stages simultaneously is unlikely to allow for changes to market definitions because Ofcom has already undertaken a considerable amount of work on SMP analysis and remedies formulation using their assumed market definitions as an essential building block. Making changes to market definitions at such a late stage would make it unlikely that Ofcom could complete the WFTMR process within the March 2026 deadline.

- 11 INCA considers that market definition is a critical part of the WFTMR and should not be treated simply as 'a means to an end' as suggested by Ofcom during the initial INCA/Ofcom WFTMR 2026 meeting. The analysis and understanding of existing and anticipated competition across all the fixed telecoms markets is complex and if Ofcom's analysis and conclusions are not based on a full understanding of likely market developments and competitive constraints (which can only be collected through an open consultation process), there are material risks that Ofcom would draw inappropriate conclusions resulting in under or over-regulation to the long-term detriment of consumers and citizens in the UK.
- 12 INCA proposes that Ofcom reconsiders its approach to the WFTMR 2026 consultations and avoids conducting them in parallel. INCA proposes that market and product definitions should be conducted and consulted on much sooner than Q1 2025.
- 13 INCA has attempted to engage early with Ofcom about the next WFTMR. We are disillusioned with the response from Ofcom in which we were essentially told that we should not undertake our own research and analysis but to only make it known what INCA would like to see as a result of the WFTMR 2026. INCA believes that this is fundamentally the wrong way for Ofcom to approach the forthcoming WFTMR and they should not be suggesting to industry that their research and analysis is unnecessary.
- 14 INCA has long-standing concerns with regards to Ofcom's approach to stakeholder engagement; Ofcom's response to INCA's attempt to engage early with the forthcoming WFTMR process has only added to our concerns of Ofcom's perceived lack of interest with Altnets and that they are more geared towards the interests of the market incumbents.
- 15 Ofcom should commence the WFTMR 2026 process immediately and establish a programme which stakeholders can engage with transparently, allowing for quality analysis and engagement throughout the process from across the sector. The current plan, as defined in the Plan of Work 2024/25, for Ofcom to publish its main consultation in Q4 2024/25 without reference to the need for greater market engagement before then, is flawed.

- 16 In the WFTMR 2021, some aspects were consulted on in the eleventh hour, thus making a comprehensive, well-resourced response from industry difficult to generate. This also gave the impression that it was a tokenistic exercise as Ofcom's final response would have already started to be drafted by this time. This must be avoided in the WFTMR 2026 to avoid accusations that the views of Altnets were not being taken into account by Ofcom.
- 17 Since the WFTMR 2021 was published, the fixed-telecoms sector has evolved and undergone significant change across network design, copper withdrawal and market structure et al. It is inconceivable that Ofcom is not proactively engaging with Altnets on these areas prior to consultation nor does it appear to have a plan to do so.
- 18 INCA supports endeavours by Ofcom to improve consumer information and will be providing a separate response to the consultation on prohibiting inflation-linked price rises.

4 Matters requiring Ofcom's attention over the next 12 months

- 19 INCA considers that concerns raised under this heading require Ofcom's attention over the next 12 months and should be added to the proposed work plan.

4.1 Physical infrastructure access

- 20 Access to Openreach's physical infrastructure (PI) (ducts, chambers and poles) was identified in the FTIR, the SSP and set out explicitly in the WFTMR 2021 as essential to the timely and cost-effective deployment of fibre by competing providers across the country. Ofcom's subsequent decisions made significant progress towards creating a framework for the development of products, processes and (to some extent) prices that put Altnets on a similar footing to Openreach when deploying their fibre networks using the Openreach PI.

- 21 The way Openreach can use its own PI and how PIA customers can use it remain very different, with different systems and processes throughout and no attempt at overcoming those differences. The WFTMR 2021 foresaw a gradual move towards equivalence and that all new processes and systems should be Equivalence of Input (EoI) compliant. This has not transpired, and INCA is unaware of whether and, if so, how these principles have been implemented.
- 22 Now three years into the 5-year review period, it is time to review how PIA is working and what remains to be done in order to ensure equivalence between Openreach and PIA customers. INCA believes that such a review would be very valuable for the preparation for the 2026 WFTMR as well as to ensure that continued progress is made for the two remaining years of the 2021 WFTMR.
- 23 With regards to PIA pricing, Ofcom introduced a new pricing principle for duct access near the end of the WFTMR 2021 process. INCA believes this principle needs to be reviewed and potentially be replaced with the outcome of a more open and complete consultation process in which Ofcom has the time to engage with the arguments and analyses presented by stakeholders. It is imperative that the 11th hour consultation of the last WFTMR is not repeated.
- 24 The 11th hour consultation on PIA pricing also brought to light that the cost basis Ofcom uses for setting PIA prices includes costs that have already been recovered by Openreach and that it also does not represent the costs of a modern network. If using historical costs then the cost base needs to be adjusted to exclude costs already recovered; Alternatively, Openreach should only be able to recover the cost a a modern equivalent asset. INCA believes that Ofcom needs to initiate a review of the cost basis for PIA access and that such a review should start this year.
- 25 Now is the time for Ofcom to proactively investigate and consider the PIA products, processes, costing and pricing. This would create essential insights for the forthcoming WFTMR process.