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26 July 2020

**Wholesale Fixed Telecom Market Review Consultation:  
Further Response Information from ITS Technology Group**

Dear Sirs,

This short paper provides further information to the response on the consultation above provided by INCA on behalf of the altnet sector, including ITS Technology Group (ITS). It provides specific information on the points of that response most relevant to ITS. We trust this provides further insight into those points as already raised by INCA.

**Consultation Overall**

ITS is in full support of all the observations and comments made in the INCA response to the consultation provided separately.

In particular, ITS acknowledges that a move to differential regulatory measures based on the level of competition in a Geographic Area has value in encouraging market development. ITS believes that competition should be assessed at the infrastructure, not services level. We further agree that infrastructure competition is only effective with obligations to provide wholesale services to third party operators.

However, we also believe there are some specific issues in how this change in regulatory approach is proposed within the consultation, which will have an impact on ITS' operations and our strategic approach to the market. We have described these below, with some suggested proposals to mitigate the impact.

**Area 3 Proposals**

ITS believes the assumption underlying the proposal in the consultation is that there is no effective infrastructure competition in 'Area 3' as defined, nor is there likely to be without intervention and / or incentive. ITS refutes this assumption. There are many altnet operators already offering cost effective services in rural areas that would classify as 'Area 3', over alternative infrastructures to those provided by Openreach. These include both fixed fibre, copper and Gigabit-capable wireless solutions. ITS itself has 16 such 'hybrid' networks, utilising both fixed fibre and wireless technologies.

In addition to being cost-effective, they are also economically sustainable.





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We acknowledge and accept that many rural networks and infrastructures provided by altnets are currently economically sustainable because they remain 'vertically integrated' and hence do not offer the service choice for the consumer. However, this is generally an interim measure to protect the vulnerability of a network business case in its early stages.

ITS has a stated position as an operator to provide wholesale services over all our networks where at all possible, whether fixed 'full fibre' metro or hybrid rural. Services are offered on an Open Access basis to any ISP wishing to use the network infrastructure. We have over 100 indirect channel partners who are 'onboarded' to use ITS networks and this number is expected to reach 200 in 2021. Of these, 40% are considered 'active' as they regularly place orders each month. This is well above industry norms and is evidence that wholesale provision over altnet infrastructure is viable in the market.

To date, all ITS metro networks have wholesale capability and all new hybrid networks will also be connected to our national network to enable wholesale provision. We have plans to extend this to the remaining hybrid networks already installed during 2021.

We believe that the proposals as drafted will favour Openreach deployment in Area 3 and seriously stifle incentives from other operators, including ITS, to expand existing networks and to implement further networks in Area 3.

We would propose instead that the regulatory measures proposed on Openreach for Area 3 should not apply where there is (or there are stated plans in the next 3 years for) infrastructure competition from any operator who also commits to providing wholesale services over that infrastructure.

### **Leased Line Market Convergence**

ITS welcomes the intention to remove differential regulation between leased line and broadband markets. The technology exists for economically sustainable leased line and broadband services to be delivered over the same network architectures. The only rationale remaining for differential regulation between these markets is the protection of 'legacy profits' for incumbent operators.

However, there is a real risk that simply removing the 'protections' around the leased line market could encourage predatory action by incumbents through their use of existing 'leased line' fibre routes for other purposes. Whilst this would enable growth in FTTP provision by these operators, it is likely to damage the business case for infrastructure competition from other operators.

We would propose that any change in leased line regulations contain an obligation for SMP operators to make dark fibre available over the associated fibre infrastructure, in order to ensure a 'fair and level playing field' in the provision of wholesale FTTP rollout. This could be managed along similar lines as the now refined and increasingly successful PIA scheme.





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### **Burden of regulation on operators**

The proposals contain a 'hidden cost', which will be felt most heavily by altnets and other emergent operators.

The resource effort within an operator currently required to comply with a single national regulatory structure is likely to multiply by a factor of more than 3 for the Geographic regulation approach proposed. In addition to having different regimes to comply with and consider across each Area, further effort will be required to determine the relative value and economics of new infrastructure alongside the impact it might have regarding a change in Area definition. This would apply to monitoring compliance, reporting on deployment and performance, as well as analysing the extent the operator's deployments are enabling wholesale infrastructure competition and hence impacting the regulatory conditions applicable to an Area.

Major or more mature operators have operations on such a scale to be able to absorb the greater levels of regulatory activity that the proposed approach will require.

Altnets operating in only one Geographic Area may see little difference in the regulatory burden but those operating across the UK and probably in all three proposed Areas, such as ITS, will be impacted significantly.

At present, altnets carry either a fixed staff overhead for regulatory and reporting matters, which is often incorporated into the operational costs. Alternatively, they contract in services at higher fee rates from external professional advisors.

ITS optimises this through retaining external expert support and advice under service contract, whilst incorporating regulatory reporting and issue identification within our service operations functions. We foresee an increase in regulatory resource effort of at least 300%. The only way to avoid this increase is to choose to operate in one or two of the Areas only, thus limiting the level of competition.

We propose that Ofcom consider carefully how to reduce the burden of regulatory reporting and compliance on smaller operators to mitigate this risk to competitive tension. This may include options such as:

- Less frequent reporting periods
- Greater automation where possible
- Longer periods for responding to consultations
- Greater liaison and coordination with altnets through industry associations, such as INCA, to enable the burden of consultation response and reporting etc to be shared.





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## Conclusion

ITS acknowledges the potential benefits of Geographic differentiation in Regulation, particularly for operators with SMP. However, we believe the proposed measures as drafted will have a measurable impact on ITS' ability to play our full part in achieving the Government objectives of 100% Gigabit Capability in 2025.

We trust the observations and alternative proposals offered in this response are helpful to Ofcom and we remain committed to participating in any further dialogue regarding this consultation.

Yours Faithfully,

(By email)

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