



Quality of Service direction for WLR

Direction setting further minimum standards for WLR
provisions under the SMP conditions imposed in the 2014
Fixed Access Market Reviews

Non-confidential version

Further statement

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About this document

On 19 October 2016 we published our decision to set new directions on BT which modified minimum quality of service (QoS) standards to the provisioning and repair of some of the wholesale products that telecoms providers purchase from Openreach to offer broadband and telephony products to consumers and small businesses. These directions were imposed in order to ensure that the minimum standards remain effective in the light of changes in the mix of services telecoms providers were purchasing from Openreach and due to the delay in the next wholesale market reviews.

At the same time, we consulted on a draft direction proposing to extend the duration of the Wholesale Line Rental (WLR) provision minimum standards that Openreach must comply with.

In this document we set out our final decision to set this direction. The effect of this direction is to ensure that the WLR minimum standards for appointment availability and on time provision will remain in place until such time that they are revoked or replaced by our next round of wholesale market reviews.

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Section 1

Overview and decision

- 1.1 We concluded our most recent reviews of the fixed access markets¹ in June 2014 (referred to as the Fixed Access Market Reviews or FAMR).² In that review, Ofcom imposed a number of new SMP obligations on BT, including minimum service standards covering provisioning and repair for the main copper-based access services, specifically for Wholesale Line Rental (WLR) and Metallic Path Facility (MPF). These were – and remain – the highest volume services and, therefore, have the greatest impact on competition and on the engineering resource levels maintained by Openreach.

Our August 2016 consultation

- 1.2 On 5 August 2016 we consulted on using our direction-making powers in order to ensure that our quality of service (QoS) remedies would continue to be effective despite changes in the mix of services telecoms providers were purchasing from Openreach and the delays in our wholesale market reviews.³ Our proposals were to replace the previous focus on ‘on time repair’ of WLR lines delivered to service maintenance level 1 (SML1) and MPF lines delivered to service maintenance level 2 (SML2) with a set of minimum standards applying to all lines (WLR and/or MPF) at a given care level. Our objectives were to address the changes observed in the wholesale products purchased by telecoms providers and to ‘future-proof’ our QoS regulation in the event of future shifts between care levels.
- 1.3 In addition, we proposed to use our regulatory powers to issue directions and consents under the SMP Conditions to:
- Update the KPI reporting requirements to require BT to report additional data for MPF lines at SML1;
 - Extend the deadline for the reporting of KPIs relating to the volumes of installations and repairs affected by MBORC declarations by one month;⁴
 - Consent to the dis-application of the final year minimum standards for WLR and MPF repairs imposed in the 2014 FAMR, on the basis that these will no longer be necessary; and

¹ The supply of copper loop-based, cable-based, and fibre-based wholesale local access at a fixed location; wholesale fixed analogue exchange line services; wholesale ISDN30 exchange line services; wholesale ISDN2 exchange line services; and retail ISDN2 exchange line services.

² Ofcom, FAMR: Volume 1: Statement on the markets, market power determinations and remedies, 26 June 2014: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

³ Ofcom, Quality of Service for WLR and MPF: Proposed Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews, 5 August 2016: <http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-mpf-quality/summary/quality-of-service-wlr-mpf.pdf>

⁴ MBORC (Matters Beyond Our (BT’s) Reasonable Control) means a force majeure event that releases Openreach from the liability to make any payment under the corresponding SLG.

- Extend the provision and repair minimum standards to ensure that they remain in force until the next Narrowband and Wholesale Local Access (WLA) market reviews are completed.

Our October 2016 statement and further consultation

- 1.4 Our consultation of 5 August closed on 9 September 2016 and we received responses from Openreach, TalkTalk, Vodafone, and Verastar Ltd. We carefully considered stakeholder responses, and set out our considerations in a statement.⁵ We decided to implement the proposals on which we consulted, with one substantive change in light of comments from stakeholders.⁶
- 1.5 In the same document we published a further notice proposing a direction to capture the continuation of the WLR minimum standards for provisions. We asked stakeholders whether they agreed with our proposed directions and set a closing date for responses of 18 November.

Impact assessment and equality impact assessment

- 1.6 The analysis presented in our August 2016 consultation constituted an impact assessment, as defined in section 7 of the Act. Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which sets out that we have to carry out impact assessments where the remedies we impose would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy, Ofcom is committed to carrying out impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, please see our guidelines.⁷
- 1.7 We have undertaken an equality impact assessment in relation to our QoS regulation, which can be found at Annex 2 of the 2014 FAMR Statement.⁸ In relation to this decision, it is not apparent to us that the outcome of this document is likely to have any particular impact on race, disability, and gender equality. Specifically, we do not envisage the impact of any outcome to be to the detriment of any group of society. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

⁵ Ofcom, Quality of Service for WLR and MPF: Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews, 19 October 2016: https://www.ofcom.org.uk/data/assets/pdf_file/0032/92678/20161017-QoS-Statement_Non-confidential.pdf

⁶ We consulted on a 12-month compliance period for on time fault repair starting with the publication of this statement. In light of stakeholder feedback, we decided to increase the compliance period for the next period of the repair standards to 17 months to ensure that all minimum standards compliance measures conclude at the end of BT's financial year.

⁷ Ofcom, Better policy making: Ofcom's approach to impact assessment, 21 July 2005: http://stakeholders.ofcom.org.uk/binaries/consultations/ia_guidelines/summary/condoc.pdf

⁸ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/annexes.pdf>

Response to the further consultation

- 1.8 We received one response to our further consultation from Openreach. Openreach stated that it agreed with our proposal to issue the direction ensuring the continuation of the WLR provision standards and noted the procedural nature of our further consultation.
- 1.9 We note Openreach's support for this aspect of our proposals and we continue to consider that, in the interests of both competition and consumers, it remains necessary to prevent the minimum standards falling away at the end of 2016/17 for both MPF and WLR.
- 1.10 Accordingly, and having already implemented the direction for MPF, we have decided to implement the direction proposed for WLR. This will ensure that the appointment availability and on time provision standards remain in force at their current level for future 12-month periods (until they are revoked or superseded).

Conclusion and legal tests

- 1.11 On the basis of our considerations above, we have decided to issue the directions set out in Annex 1.

Legal tests

- 1.12 We consider that setting this direction will fulfil our general duties under section 3 the Act, meet the Community requirements set out in section 4, and also meet the requirements in section 49 in that it is:
 - objectively justifiable, in that extending the life of the current requirements is necessary to ensure that important regulatory protections remain in place in advance of the forthcoming market reviews;
 - not unduly discriminatory, in that the obligations in this direction only applies to BT in a market for which it has been designated as having SMP;
 - proportionate, as the minimum standards will continue to be targeted specifically at those areas for which regulation is required and go no further than is required to addressing the competition issues identified; and
 - transparent, in that it is clear that our intention is to ensure that BT maintains a minimum level of QoS in the delivery of key wholesale inputs.

Notification to the Secretary of State and European Commission

- 1.13 In accordance with section 49C(1) of the Act a copy of the notifications proposing the directions was sent to the Secretary of State. The Secretary of State did not notify Ofcom of any international obligations of the UK related to our proposals.
- 1.14 Section 49B of the Act, relating to notifying the European Commission, BEREC and other Member State national regulatory authorities, did not apply in this case because our proposals were not of EU significance, as defined under section 150A(2) of the Act. This was on the basis of our view that the proposals will not

affect trade between Member States.⁹ Rather, they continue to ensure the effectiveness of existing regulatory remedies imposed in the 2014 FAMR.

- 1.15 In accordance with section 49C of the Act, copies of the directions given will be sent to the Secretary of State and the European Commission.

⁹ The cumulative criteria that must be satisfied in order for a proposal to be of EU significance include the criterion that the proposal would, in Ofcom's opinion, affect trade between Member States (see section 150A(2)(d)).

Annex 1

Direction

DIRECTION UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 12.4 RELATING TO REQUIREMENTS CONCERNING MINIMUM STANDARDS OF QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF THE PROVISION OF NETWORK ACCESS TO WHOLESALE ANALOGUE LINE RENTAL

Background

1. On 26 June 2014 OFCOM published the “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 Statement on the markets, market power determinations and remedies” (the “FAMR Statement”).
2. Under SMP services condition 12 of the Legal Instrument at annex 29 to the FAMR statement (the “Legal Instrument”), BT must comply with minimum standards in relation to the provision of network access for Metallic Path Facilities (“MPF”) and Wholesale Analogue Line Rental (“WLR”).
3. Paragraph 12.4 of condition 12 requires BT to comply with any such further minimum standards as OFCOM may direct from time to time.
4. On 19 October 2016 Ofcom published a statement and further consultation document entitled “*Quality of Service for WLR and MPF Directions and Consents relating to the minimum standards and KPIs imposed in the 2014 Fixed Access Market Reviews*” (“the Consultation”). Ofcom consulted on proposals pursuant to SMP services condition 12.4 to specify further minimum standards in relation to the provision of network access for WLR including a proposed direction. Ofcom invited responses to the Consultation by 18 November 2016. A copy of the proposed direction was sent to the Secretary of State in accordance with section 49C(1)(a) of the Communications Act 2003 (“the Act”).
5. Ofcom received several responses in relation to the proposals set out in the Consultation and it considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.

Decision

6. OFCOM has decided to give the direction set out in the Schedule to this Notification with effect from 22 November 2016.
7. The effects of, and the reasons for the decision to give the direction are set out in the accompanying statement.

OFCOM's duties and legal tests

8. OFCOM considers that the direction set out in the Schedule to this Notification complies with the requirements of section 49(2) of the Act.
9. In giving the direction OFCOM has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.
10. A copy of the Direction set out in the Schedule to this Notification, has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.

Interpretation

11. For the purposes of interpreting the Schedule the following definition shall apply:

“Access Agreement” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1 and, in relevant cases, Condition 2;

“Committed Date” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

“BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

“Dominant Provider” means BT;

“Equivalence Management Platform” means the Dominant Provider's operation support system designed to handle the majority of transactions for equivalence of inputs and network access;

“Exchange Line” means apparatus comprised in the Dominant Provider's electronic communications network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing electronic communications services at the premises at which the Network Termination and Testing Apparatus is located;

“Further WLR Minimum Standards” has the meaning given to it in paragraph 1 of the Schedule;

“High Level MBORC Declaration” means any declaration by the Dominant Provider in respect of a Relevant Region (or a part thereof) that an MBORC has occurred in relation to network access to Wholesale Line Rental but only in respect of 'major' MBORC declarations;

“MBORC” (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

“OFCOM” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);

“Order” means a request for Wholesale Line Rental submitted to the Dominant Provider by a Third Party;

“Ordinary Maintenance” means maintenance which is part of the service provided by the Dominant Provider in consideration of the charge for an Exchange Line and includes normal fault repair, as defined in the Dominant Provider’s standard terms and conditions;

“Network Termination Point” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;

“Network Termination and Testing Apparatus” means an item of apparatus comprised in an electronic communications network installed in a fixed position on served premises which enables:

- i. approved apparatus to be readily connected to, and disconnected from, the network;
- ii. the conveyance of signals between such approved apparatus and the network;
- iii. the due functioning of the network to be tested, but the only other functions of which, if any, are:
 1. to supply energy between such approved apparatus and the network;
 2. to protect safety or security of the operation of the network; or
 3. to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);

“Provisions Compliance Year” means a period of 12 months beginning on 1 April and ending on 31 March, with the first such year starting on 1 April 2017.

“Relevant Region” means the ten geographic areas specified Schedule 3 to Part 1 of the FAMR Legal Instrument or such other regions as Ofcom may direct from time to time; and

“Service Level Commitment” means the quality standards that the Dominant Provider must meet when performing its obligations;

“Service Level Guarantee” means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;

“Third Party” means a person providing a public electronic communications network or a person providing a public electronic communications service;

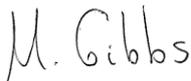
“Wholesale Analogue Line Rental” means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line;

“Wholesale Line Rental” means Wholesale Analogue Line Rental provided to Third Parties’ end users;

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

12. For the purposes of interpreting this Notification and Schedule to this Notification, except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Legal Instrument and otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, OFCOM

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

22 November 2016

Schedule

Direction under section 49 of the Communications Act 2003 and Condition 12.4 requiring BT to comply with minimum standards in relation to the provision of network access to Wholesale Analogue Line Rental.

1. In relation to the provision of network access to Wholesale Analogue Line Rental under conditions 1 and 2 of the Legal Instrument, the following shall be Further WLR Minimum Standards:

Provisions

That the Dominant Provider in each Provisions Compliance Year —

- a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party in at least 79% of such instances;
 - b) complete that provision on the Committed Date in at least 89% of such instances.
2. In each Provisions Compliance Year:
 - a) in eight of the ten Relevant Regions the Dominant Provider must comply with each of the applicable Further WLR Minimum Standards; and
 - b) in the remaining two Relevant Regions the Dominant Provider must comply with each of the applicable Further WLR Minimum Standards except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Order shall be excluded.
 3. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Provisions Compliance Year the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this direction.