
Modifications to broadband USO reporting directions

Explanatory statement

STATEMENT:

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1. Explanatory statement

Modifications to broadband USO reporting directions

Background

- 1.1 In June 2019, we designated BT and KCOM as the Universal Service Providers for delivering the broadband Universal Service Order (USO). We imposed universal service conditions on the Universal Service Providers that they are obliged to meet when delivering USO connections and services.
- 1.2 As part of these universal service conditions, we imposed a number of performance reporting obligations which are contained in the reporting directions given to BT and KCOM.¹ These include public reporting as well as information that is submitted to Ofcom privately.
- 1.3 The main elements of our performance reporting requirements include:
 - a) public reporting by the Universal Service Providers on connection supply times and faults which section 67(3)(c) of the Communications Act 2003 (the “Act”) requires us to impose;²
 - b) public reporting by the Universal Service Providers on other parameters that we think are necessary to monitor how they are meeting the universal service conditions in respect of the outcome of a consumer’s request for a USO connection and performance in relation to complaints handling; and
 - c) additional reporting by BT to Ofcom to demonstrate compliance with specific timeframes within the obligations in respect of eligibility checking and delivery of connections and services.
- 1.4 These requirements were imposed to provide us with the information that we need to monitor the Universal Service Provider’s compliance with the universal service conditions and increase transparency of their performance to consumers and industry.

¹ The reporting and record keeping requirements are contained in the Notification which was published at Annex 1 to our June 2019 statement. Specifically, they were set out in: (i) the universal service conditions F.1 to F.3 contained in Schedule 1 of the Notification (for BT) and Schedule 3 of the Notification (for KCOM); and (ii) the reporting directions contained in Schedule 2 of the Notification (for BT) and Schedule 4 of the Notification (for KCOM).

² Under section 67(3)(c) Ofcom must ensure that universal service conditions contain provisions which requires information published by the Universal Service Providers to be framed by reference to the quality of service parameters, definitions and measurement methods for the time being set out in Annex III to the Universal Service Directive.

Relevant reporting periods

Public performance reporting

- 1.5 The reporting directions set out (among other things) that BT and KCOM must publish specified information on responding to consumers' requests for the broadband USO, delivering the broadband USO, and dealing with consumers' complaints.
- 1.6 The public performance reports containing that information must be published every six months. We specified that the first six-month reporting period starts on 20 March 2020 and ends on 19 September 2020, with subsequent six-month periods following immediately after the first period.³

Reports to Ofcom

- 1.7 In addition to public reporting, BT and KCOM are required to provide the following more detailed information to Ofcom every six months:
- information to demonstrate compliance with the 30-day time period for eligibility checking;
 - information relating to any requests in respect of which BT or KCOM changed one or more anticipated delivery dates and the reasons for any such changes;
 - information relating to any requests in respect of which BT or KCOM provided the USO connections and services after 24 months following an order made by the consumer and the reasons for that.⁴
- 1.8 In light of BT's obligations to deliver USO connections and services within specific timeframes,⁵ the reporting direction given to BT also sets out that BT will need to demonstrate its compliance with those obligations on an annual basis as follows:
- BT's compliance with the 12-month obligations for the requests that were received between 20 March 2020 and 19 March 2021 by 20 June 2021; and
 - BT's compliance with the 12-month, 18-month and 24-month obligations by 20 June for each subsequent year.
- 1.9 Unlike BT, KCOM is not required to meet specific delivery timeframes and does not therefore have reporting obligations in this regard. Instead, KCOM is required to deliver USO connections to any eligible consumers as quickly as possible and no later than 12 months after a consumer places an order unless exceptional circumstances have arisen. KCOM considers that it can already provide all potential customers in its area with access to broadband connections and services that meet the USO specification.⁶ However, if

³ Subsequent six-month period starts on 20 September 2020 and ends on 19 March 2021 repeating thereafter for periods of six months from 20 March to 19 September.

⁴ In reporting this information, KCOM must also explain: (i) any steps taken by KCOM to manage a risk of exceptional circumstances arising; and (ii) any steps taken by KCOM to reduce the period of delay once any exceptional circumstances arose.

⁵ BT is required to deliver 80% of connections within 12 months, 95% of connections within 18 months and 99% of connections within 24 months.

⁶ KCOM [webpage](#) on the broadband USO.

KCOM does have any confirmed USO orders between 20 March 2020 and 19 March 2021, it should report against the requirement to build a connection to these premises within 12 months.

Amending the definition of the relevant reporting period

Comments on the relevant reporting periods

- 1.10 On 25 June 2020, BT wrote to Ofcom regarding the way in which the relevant reporting period is defined in its reporting direction. As outlined above, the direction requires that each reporting period starts on 20 March and end on 19 March the following year for annual reporting periods, or 19 September for mid-year reporting.
- 1.11 BT set out in its letter that these reporting periods raise practical implementation issues, as standard reporting tools and working practices are based on full calendar months rather than partial periods within a month as specified in our direction. BT was concerned that changing its reporting periods in accordance with our reporting direction would be a complex process and unnecessarily introduce additional, potentially significant cost.
- 1.12 BT said that it would be helpful for the broadband USO reporting period to coincide with calendar months and the financial year reporting period for yearly reporting. BT suggested including the 11 days from 20 March 2020 to 31 March 2020 within the first month ending 30 April, with a clear indication that this is a first month plus 11 days. This 'long' first month would apply to the first six-month period ending on 30 September as well as the first 12-month period ending on 31 March 2021. BT considered that this would allow the anomaly to be dealt with in the first relevant time period and all subsequent time periods to align with BT's existing reporting timescales. In practice, this means that:
- the reporting period for its first six-month report will start on 20 March 2020 and end on 30 September 2020 instead of ending on 19 September 2020; and
 - the reporting period for its first annual report will start on 20 March 2020 and end on 31 March 2021 instead of 19 March 2021.⁷

Our decisions to modify the reporting directions

- 1.13 In December 2018, we consulted on the draft universal conditions and directions.⁸ Stakeholders had the opportunity to raise practical issues at that stage including any implementation issues which we would have considered before setting the universal service conditions and giving the directions. Nevertheless, we have considered the points BT have now made and consider that it is appropriate to make the amendments to the reporting directions so that the time periods specified align with whole calendar months and financial year reporting as we understand this is standard for industry reporting tools and working practices. This will ensure that BT will not be required to make unnecessary

⁷ You can find a list of all the suggested amendments on page 3 of BT's letter which can be found in Annex 2 of this document.

⁸ Ofcom, December 2018. [Delivering the Broadband Universal Service: Proposals for designating providers and applying conditions.](#)

changes to reporting systems specifically to report on slightly different time periods for the broadband USO.

- 1.14 We have engaged with KCOM and have decided to make the same modifications to KCOM's reporting direction so that the time periods specified align with whole calendar months and financial year reporting. This will ensure that both BT and KCOM have the same reporting periods. We have decided that the modifications should take effect on the day of publication of this statement and the accompanying notification set out in Annex 1.
- 1.15 We have considered whether the consultation threshold set out in section 49A(1) of the Act is engaged. Under this provision, we are required to consult on the modification of a direction (among other things) where what is proposed would, in our opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories which we regulate. We do not consider that the consultation threshold is engaged because the modifications of the reporting periods specified in the directions do not represent a substantive change. In practice, they will only impact a very small proportion of the information reported in the first reporting period. As a result, we do not believe that the modifications of the directions has any material impact on BT's and KCOM's obligations to report on the broadband USO.
- 1.16 We also consider that the modifications of the directions are not of EU significance as in Ofcom's opinion it would not affect trade between Member States.⁹
- 1.17 In summary, we have decided to modify the reporting directions given to BT and KCOM so that broadband USO reporting coincides with calendar months rather than mid-month and the financial year reporting period for annual reporting requirements. Annex 1 sets out the modifications we have made to the reporting directions which include modifying the following definitions: First 6 Month Period, First Relevant Year, Subsequent 6 Month Period and Subsequent Relevant Year.
- 1.18 We have separately published an [unofficial, consolidated version](#) of the universal service conditions and directions.

Next steps

- 1.19 Following the modifications, the first set of reports to be published and provided to Ofcom will be according to the dates below:
- All of the first public performance reports by BT and KCOM to be published by 30 October 2020.
 - The first report on information outlined in paragraph 1.7 to be provided by BT and KCOM to Ofcom by 30 October 2020.
 - The first report by BT on meeting delivery timeframe obligations outlined in paragraph 1.8 to be provided to Ofcom by 30 June 2021.

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 (please see section 150A(2)(d) of the Act).

Legal tests

- 1.20 We have considered our decision to modify the reporting directions against the tests set out in section 49(2) of the Act and have concluded that it is:
- objectively justifiable, in that the modifications seek to ensure that the Universal Service Providers publish and provide information to Ofcom relating to the broadband USO which is relevant and accessible, reflecting standard industry reporting tools and working practices;
 - not unduly discriminatory, as the modifications which we have made and imposed on BT and KCOM as the Universal Service Providers take account of their individual circumstances;
 - proportionate, since we have taken account of the need to ensure that the obligations are not unduly burdensome for the Universal Service Providers and do not require the Universal Service Providers to make unnecessary changes to reporting systems specifically to report on different time periods for the broadband USO; and
 - transparent, in that it is clear that our intention is to ensure that the information reported is relevant and accessible and BT and KCOM are not subject to any unnecessary or disproportionate regulatory burdens.
- 1.21 We have also considered our decision to modify the reporting directions in light of the requirements set out in sections 3, 4 and 4A of the Act. Our decision is designed to ensure that the information relating to the broadband USO which is reported is relevant and accessible, thereby increasing transparency for the industry and/or Ofcom.

A1. Modified directions

NOTIFICATION OF OFCOM'S DECISIONS TO MODIFY DIRECTIONS UNDER SECTIONS 49, 49A(6) AND 49C(2) OF THE COMMUNICATIONS ACT AND UNIVERSAL SERVICE CONDITIONS F.3 AND I.1 OF SCHEDULES 1 AND 3 OF THE NOTIFICATION PUBLISHED ON 6 JUNE 2019

Background

1. On 6 June 2019, Ofcom published a statement entitled "Delivering the Broadband Universal Service; Statement: Designating Universal Service Providers and setting conditions".¹⁰ At Annex 1 to the statement, Ofcom published a notification (the "**2019 Notification**")¹¹ of its decision to designate the following persons as Universal Service Providers to deliver broadband connections and services to eligible consumers:
 - a. BT to be designated for the Rest of the UK; and
 - b. KCOM to be designated for the Hull Area.
2. The 2019 Notification also contained among other things Ofcom's decisions to:
 - a. set universal service conditions on BT and KCOM which were contained in Schedule 1 and Schedule 3 to the 2019 Notification respectively;
 - b. give a direction to BT (the "**BT Direction**") to require BT to publish and provide to Ofcom the information specified in the BT Direction;¹² and
 - c. give a direction to KCOM (the "**KCOM Direction**") to require KCOM to publish and provide to Ofcom the information specified in the KCOM Direction.¹³

Decisions

3. Since giving the BT Direction and the KCOM Direction, BT wrote to Ofcom regarding the way in which the relevant reporting period is defined in the BT Direction. Both the BT Direction and the KCOM Direction require that each reporting period starts on 20 March and ends on 19 March the following year for annual reporting periods, or 19 September for mid-year reporting. BT set out that these reporting periods raise practical implementation issues, as standard reporting tools and working practices are based on full calendar months rather than partial periods within a month. BT therefore asked Ofcom to consider whether the specified reporting periods could be modified to coincide with calendar months and the financial year reporting period for yearly reporting.¹⁴
4. We have engaged with KCOM who have indicated that the same modifications could be made to the KCOM Direction.

¹⁰ The [statement](#) is available on the Ofcom website.

¹¹ The [Notification](#) is available on the Ofcom website.

¹² The BT Direction was set out in Schedule 2 of the Notification and was given under universal service condition F.3 of Schedule 1 of the Notification.

¹³ The KCOM Direction was set out in Schedule 4 of the Notification and was given under universal service condition F.3 of Schedule 3 of the Notification.

¹⁴ BT's letter is set out in Annex 2.

5. In light of the above, Ofcom has decided to modify the BT Direction and the KCOM Direction to amend the reporting periods as set out in Schedule 1 (for BT) and Schedule 2 (for KCOM). The modifications shall take effect on the day they are published.
6. The effect of, and full reasons for, the modifications of the BT Direction and the KCOM Direction are set out in the accompanying explanatory statement.

Ofcom's duties and legal tests

7. Ofcom considers that the modifications of the BT Direction and the KCOM Direction referred to in paragraph 5 above comply with the requirements of section 49(2) of the Communications Act 2003 (the "**Act**").
8. In deciding to modify the BT Direction and the KCOM 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 all applicable recommendations for harmonisation issued by the European Union in section 4A of the Act.
9. Ofcom has also had regard to the Statement of Strategic Priorities in making the decision referred to in this Notification.
10. Copies of this Notification and the accompanying statement have been sent to the Secretary of State and the European Commission in accordance with sections 49C(1), 49C(2) of the Act.

Interpretation

11. For the purpose of interpreting this Notification:
 - a. except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act or the 2019 Notification;
 - b. words in the singular shall include the plural, and in the plural shall include the singular;
 - c. headings and titles shall be disregarded;
 - d. expressions which are cognate with those referred to in this Notification shall be construed accordingly; and
 - e. the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.
12. In this Notification:
 - a. "**BT**" means British Telecommunications plc, whose registered company number is 01800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
 - b. "**Hull Area**" means the area defined as the "Licensed Area" in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM Group plc;

- c. **"KCOM"** means KCOM Group Limited, whose registered company number is 02150618, 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;
- d. **"Rest of the UK"** means the area consisting of the United Kingdom excluding the Hull Area;
- e. **"United Kingdom"** has the meaning given to it in the Interpretation Act 1978 (c. 30).

13. Schedules to this Notification shall form part of this Notification.



Selina Chadha (Consumer Policy Director), Ofcom

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

4 September 2020

SCHEDULE 1

MODIFICATION OF DIRECTION UNDER CONDITION F.3 OF SCHEDULE 1 TO BT

1. The BT Direction as defined in the Notification is modified as follows:
 - a. Paragraph 2(m) of Part 2 of Schedule 2 which contains the definition of First 6 Month Period is modified by substituting the existing definition with the following:

“First 6 Month Period” means a period which starts on 20 March 2020 and ends on 30 September 2020 (inclusive);
 - b. Paragraph 2(n) of Part 2 of Schedule 2 which contains the definition of First Relevant Year is modified by substituting the existing definition with the following:

“First Relevant Year” means a period which starts on 20 March 2020 and ends on 31 March 2021 (inclusive);
 - c. Paragraph 2(x) of Part 2 of Schedule 2 which contains the definition of Subsequent 6 Month Period is modified by substituting the existing definition with the following:

“Subsequent 6 Month Period” means a period of 6 months subsequent to the First 6 Month Period, the first of which starts on 1 October 2020 and ends on 31 March 2021, repeating thereafter for periods of 6 months from 1 April to 30 September (inclusive);
 - d. Paragraph 2(y) of Part 2 of Schedule 2 which contains the definition of Subsequent Relevant Year is modified by substituting the existing definition with the following:

“Subsequent Relevant Year” means a period of 12 months subsequent to the First Relevant Year, the first of which starts on 1 April 2021 and ends on 31 March 2022, repeating thereafter for periods of 12 months from 1 April to 31 March (inclusive).

SCHEDULE 2

MODIFICATION OF DIRECTION UNDER CONDITION F.3 OF SCHEDULE 3 TO KCOM

1. The KCOM Direction as defined in the Notification is modified as follows:
 - a. Paragraph 2(n) of Part 2 of Schedule 4 which contains the definition of First 6 Month Period is modified by substituting the existing definition with the following:

“First 6 Month Period” means a period which starts on 20 March 2020 and ends on 30 September 2020 (inclusive);
 - b. Paragraph 2(o) of Part 2 of Schedule 4 which contains the definition of First Relevant Year is modified by substituting the existing definition with the following:

“First Relevant Year” means a period which starts on 20 March 2020 and ends on 31 March 2021 (inclusive);
 - c. Paragraph 2(v) of Part 2 of Schedule 4 which contains the definition of Subsequent 6 Month Period is modified by substituting the existing definition with the following:

“Subsequent 6 Month Period” means a period of 6 months subsequent to the First 6 Month Period, the first of which starts on 1 October 2020 and ends on 31 March 2021, repeating thereafter for periods of 6 months from 1 April to 30 September (inclusive);
 - d. Paragraph 2(w) of Part 2 of Schedule 4 which contains the definition of Subsequent Relevant Year is modified by substituting the existing definition with the following:

“Subsequent Relevant Year” means a period of 12 months subsequent to the First Relevant Year, the first of which starts on 1 April 2021 and ends on 31 March 2022, repeating thereafter for periods of 12 months from 1 April to 31 March (inclusive).

A2. BT letter: Proposed changes to broadband USO reporting

A2.1 We have published [BT's letter](#) alongside this statement.