
Upgrading broadband customers to superfast products

Changes to quality of service regulation on Openreach



STATEMENT:

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1. Overview

This document sets out technical changes to certain regulations that require Openreach to install new broadband connections within a set period of time. These changes will enable broadband companies to upgrade their customers to faster broadband products more efficiently.

Demand for faster, more reliable broadband connections is growing rapidly. Openreach has told us its wholesale customers want a more efficient and cost-effective way to upgrade existing retail customers to higher-speed products. So, Openreach – in consultation with its wholesale customers – has developed a new installation process that will allow providers to upgrade their standard broadband customers to superfast broadband products in batches. This voluntary process enables upgrades to be done in batches at a given street cabinet, and at a lower price per line. Openreach calls this service the ‘Bulk Grouping provision capability’. The cost reduction is derived from the engineering efficiencies created by bulking jobs at a cabinet level.

The process used involves communications providers grouping together orders for their customers in batches and giving Openreach the details when they are ready to place orders. To take advantage of this, Openreach plans to offer orders using the capability under different contractual terms, which accommodate lengthier lead time. Openreach has confirmed that the capability is currently in a trial period which started on 28 October 2019. This is ahead of a full launch, subject to the results of the trial.

Orders using the capability would fall under Ofcom’s existing quality of service regulation and Openreach’s proposal could lead to a potential breach of these obligations. Therefore, Openreach has requested a change in our quality of service regulation to exclude orders that use the new capability. Openreach has also offered to provide information about orders that use the capability so we, and its customers, can monitor the impact.

We consulted on our proposals to agree to Openreach’s request in November 2019.

What we have decided

We have decided to agree to Openreach’s request, given that a more efficient and cost-effective upgrade process would benefit people and businesses. This means orders completed using Openreach’s ‘Bulk Grouping provision capability’ would be exempt from certain quality of service regulation requirements for the remainder of the 2018-2021 review period.

We will monitor Openreach’s service performance, using information collected from Openreach about orders using this process. We remain open to imposing additional standards on these orders in the future if we consider it appropriate.

2. Exemption from certain quality of service regulations

- 2.1 This section sets out our decisions and reasoning on Openreach’s proposal that orders for Generic Ethernet Access-Fibre to the Cabinet (GEA-FTTC) products, using its new ‘Bulk Grouping provision capability’, should be exempted from the regulated First Available Appointment Date (FAD) standard and associated key performance indicators (KPIs).

Openreach’s request to Ofcom

- 2.2 Openreach has developed a commercial proposal that will allow providers to upgrade their customers on Wholesale Line Rental (WLR) plus Shared Metallic Path Facility (SMPF) and Metallic Path Facility (MPF) products, to GEA-FTTC (including Single Order GEA) products in batches at the cabinet, outside of normal business-as-usual processes. Openreach has told us that this new Bulk Grouping process has been created in collaboration with its wholesale customers to provide a route for them to generate cost savings when upgrading existing lines.
- 2.3 Openreach has explained to us that this process is triggered by communications providers (CPs), rather than end-user customers, which is normal with an upgrade. Orders that are placed using the Bulk Grouping provision capability are not delayed by Openreach rather the process used is that CPs will bulk existing end customer orders and give Openreach the details when they are ready to place orders.
- 2.4 To accommodate the new batch system, Openreach has to alter the contractual service level agreement (SLA) for orders using the Bulk Grouping provision capability, to offer the first available appointment between 14 and 24 working days.
- 2.5 However, Openreach has advised us that this process would push the SLA beyond the existing level for the FAD standard, and could therefore impact on its compliance with this regulatory requirement.¹ Therefore, **Openreach submitted a formal request** to Ofcom setting out its Bulk Grouping provision capability proposal and its potential impact on our data collection – this was published alongside our recent consultation published on 25 November 2019.²

Our decision

- 2.6 We have decided to agree to Openreach’s request based on our analysis and taking account of the views expressed by the respondents to our consultation.

¹ Under Ofcom’s Quality of Service regulation, in 2019/20, Openreach must offer FADs to its customers within 12 days 90% (89% with force majeure allowance) of the time. This will tighten to 10 days in 2020/21

² Ofcom, November 2019. [Upgrading broadband customers to superfast products](#)

Stakeholder responses

- 2.7 We received 5 responses to the consultation.
- 2.1 Four respondents (i.e. Openreach, TalkTalk, FCS and a private individual) were supportive of our proposals to agree to Openreach's request. The three non-Openreach respondents were particularly supportive of information being provided on the performance of the new bulk service as Openreach has proposed to do on a voluntary basis. To that end TalkTalk suggested that Openreach also provide to provide the existing KPI (ii) data in more detail such that Bulk Grouping orders outcomes can be separately identified in addition to the voluntary KPIs it has already committed to provide as this would allow better monitoring of the service quality on the Bulk orders³.
- 2.2 CityFibre⁴ was the fifth respondent and the only one who raised some concerns with our proposals. In particular, CityFibre claims that our proposals would run the risk of promoting FTTC take-up and undermine investment incentives for FTTP deployment, including leading to a delay in migration of customers to FTTP which would leave customers worse off overall.
- 2.3 Openreach's response⁵ also included its suggested changes to our proposed definition of the 'Bulk Grouping process' definition that was set out in our proposed Direction accompanying our consultation. Openreach suggests that Ofcom adopts the following definition in order to clarify the role of the ordering CP in initiating the process.
- "Bulk Grouping process" means the process (known as the 'Bulk Grouping Provision Capability process' or similar names) under which a Third Party requests the provision of multiple GEA-FTTC services at a given street cabinet to be provisioned by the Dominant Provider on the same day when a single engineering visit to that cabinet can be arranged by the Dominant Provider.

Our assessment

- 2.4 We note Cityfibre's wider concern about any regulatory changes that might impact on any incentives for FTTP roll-out. However, the focus of this specific request by Openreach is a technical change to ensure that our QoS regulation continues to apply as intended but does not inhibit the efficient provision of regulated services.
- 2.5 One of the consequences of BT's SMP is that, absent regulation, it may not provide the quality of service that customers require. Inadequate Openreach quality of service can also undermine the effective functioning of the network access remedy due to the negative impacts on retail competition. Therefore, we imposed QoS regulation to deliver the quality of service customers require and ensure that the network access remedy facilitates

³ [TalkTalk response](#)

⁴ [CityFibre response](#)

⁵ [Openreach response](#)

- 2.6 effective downstream competition. It now appears that the current structure of our QoS regulation is impeding the introduction of a new service which has been requested by downstream CPs. Specifically, the new service would have the effect of artificially distorting Openreach's QoS performance.
- 2.7 In assessing BT's request, our concern is to ensure that our QoS regulation continues to operate as intended considering all the prevailing circumstances. Indeed, our QoS regulation is not intended to shape relative demand between regulated products but to ensure Openreach provides the quality of service that its customers require. The request from Openreach is not related to provision of this new service but merely to ensure that QoS regulation does not unnecessarily impede it .
- 2.8 We, therefore, do not share CityFibre's concerns about the risk it raises in this particular context. In our view, it would not be appropriate in this case to maintain QoS standards if they have the effect of unnecessarily preventing the introduction of a service that would otherwise be permitted and in doing so would act against the interests of Openreach's customers and ultimate end-consumers in terms of access to a regulated product. We remain, of course, committed to supporting investment in FTTP and other high capacity networks, and our policy proposals to that effect are set out in our recent Wholesale Fixed Telecoms Market Review consultation⁶.
- 2.9 We also note that the other non-Openreach respondents support our proposals in this context. They highlight the benefit of the new bulk service to Openreach's customers and make it clear that in their view this will have a positive impact on outcomes.
- 2.10 The Bulk Grouping provision capability is materially different from that provided on an individual order-by-order basis. The aim of the FAD standard was to ensure Openreach has resources available to meet its contractual commitments on quality of service. However, it was not intended to constrain Openreach's commercial discussions with its customers on alternative contractual terms offering an improved service to them. Accordingly, we consider that, in principle, there is a case for agreeing to Openreach's request.
- 2.11 We understand from Openreach that the Bulk Grouping provision capability would move the upgrade orders outside of its business-as-usual installation work, and that it does not require a visit to end-user premises. Therefore, the potential for this type of upgrade to impact the consumer negatively is minimised.
- 2.12 Accordingly, we have decided to agree to Openreach's request by directing Openreach to, in effect, exempt orders completed using the Bulk Grouping provision capability from the following regulations published in our Quality of Service Remedies Statement of 2018:
- a) the annual First Available Appointment Date (FAD) quality of service standard compliance assessments for the remainder of the Second Relevant Year and any Subsequent Relevant Year; and

⁶ Ofcom, January 2020. [Consultation: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26](#)

- b) three associated KPIs, namely: KPI (i) – Percentage first available date appointment availability, KPI (iv) – Average first available appointment date and KPI (vii) – Average installation time, for the remainder of the Second Relevant Year and any subsequent relevant Year.
- 2.13 We give legal effect to those decisions in our finalised Direction in Annex 1.
- 2.14 In relation to TalkTalk’s point around the provision of information, we note that the waiver request for the Bulk capability related solely to the First Available Date measure and there remains the same QoS obligations for repair or on-time provision measures as there is not expected be any change to / deterioration in performance against these measures for orders that are placed using the Bulk capability.
- 2.15 Further, we have been advised by Openreach that CPs have sufficient line identification information to monitor directly performance against orders placed via the Bulk capability facility, including performance in relation to fault and on-time provision performance.
- 2.16 Accordingly, we have not sought a further commitment from Openreach to report separately on repair or on-time provision for these orders.
- 2.17 Finally, we agree with Openreach’s suggested changes to the definition of the ‘Bulk Grouping process’ add further clarity and we have, therefore, decided to incorporate them into our finalised Direction at Annex 1.

Legal tests

- 2.18 Section 49(2) of the Communications Act 2003 (the 2003 Act) requires that we must not give a direction (such as our Direction at Annex 1), unless Ofcom is satisfied that to do so is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) in relation to what it is intended to achieve, transparent.
- 2.19 Given that our Direction would, in effect, exempt Openreach from complying with existing quality of service remedies, we have assessed the above-mentioned test in section 49(2) against our considerations of the same test when we imposed those remedies in 2018.
- 2.20 In particular, in our Quality of Service Remedies of 2018, we explained that the relevant directions were aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers by ensuring that telecoms providers have visibility of the quality of service that BT provides to itself and to other providers. Furthermore, we stated that those remedies would provide visibility to consumers about

BT's performance in the provision and maintenance of wholesale access services upon which it (and its retail telecoms providers) in many cases rely.⁷

2.21 We also considered⁸ that the directions met the criteria in section 49(2) in that the KPI Directions were:

- a) objectively justifiable, in that we had identified a need for transparency to ensure appropriate monitoring of BT's performance in relation to installations and repairs and to identify any concerning trends in relation to such performance, including any potential discrimination in the provision of network access (and to provide transparency to industry and consumers on such matters);
- b) not unduly discriminatory, as they were only for BT, and no other operator had been found to hold a position of SMP in the wholesale fixed access markets;
- c) proportionate, as they only required BT to publish the minimum information we consider is required to effectively monitor BT's quality of service performance and its compliance with the remedies we were imposing in relation to the provision of network access, its quality of service performance and non-discrimination. The KPI requirements were largely based on the existing requirements and, where we made changes and additions, this had been done only to the extent necessary to address new concerns, particularly with regards to compliance with the new quality of service standards we were imposing; and
- d) transparent, in that they were clear in their intention to ensure an appropriate level of transparency in the obligations we are imposing on BT.

2.22 Having considered the responses to our consultation, we remain satisfied that our Direction appropriately addresses the test in section 49(2) in light of our previous assessment of that test. In particular, our Direction is objectively justifiable, because, as considered above, orders processed using the Bulk Grouping provision capability are done on the request of communications providers who are willing to accept a reduction in timeliness for a specific provision process that offers in return cost and efficiency savings. We note that this process is expected to incentivise faster superfast and ultrafast rollout, which in turn would lead to better outcomes for consumers.

2.23 We also consider our Direction would be proportionate, because it would provide BT with a degree of flexibility, while ensuring that BT ensures an appropriate level of quality on products covered by the Bulk Grouping process through the commitment to provide information that will demonstrate transparency.

2.24 We also consider that our Direction is transparent, because it is clear on its face that our exemptions from the FAD quality of service standard and the specified KPIs would only apply to GEA-FTTC services provided by BT in the Second Relevant Year and in any Subsequent Relevant Year, if BT uses the Bulk Grouping process. As already noted above,

⁷ See paragraph 11.64 of the Statement

⁸ See paragraph 11.65 of the Statement

we have decided to incorporate Openreach's suggested changes to the definition of the 'Bulk Grouping process' in order to add further clarity.

- 2.25 For those reasons, we consider that our Direction further the interests of citizens in relation to communications matters and of consumers in relevant markets by promoting competition, in accordance with our general duties set out in section 3 of the 2003 Act. We also consider that, in giving this Direction, we are acting in accordance with the six Community requirements set out in section 4 and our duty to take account of relevant European Commission recommendations for harmonisation in section 4A of the Act.
- 2.26 On 29 October 2019, the Secretary of State for Digital, Culture, Media and Sport designated the Government's [Statement of Strategic Priorities](#) for telecommunications, the management of radio spectrum and post (SSP). Under section 2B(2) of the 2003 Act, Ofcom must have regard to the SSP when carrying out our functions relating to (among others) telecommunications and we have had such regard in giving this Direction.
- 2.27 Finally, we note that, for reasons already explained in our consultation, we have decided to give our Direction at Annex 1 without submitting our proposed Direction for EU consultation with the European Commission, BEREC and other Member States' regulatory authorities.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.

A1. Direction

OFCOM'S DIRECTION, IN ACCORDANCE WITH SECTIONS 49 AND 49A OF THE ACT AND PURSUANT TO CONDITION 11 OF THE WLA SMP CONDITIONS, FOR THE PURPOSE OF MODIFYING THE APPLICATION OF CERTAIN DIRECTIONS OF 28 MARCH 2018 RELATING TO QUALITY OF SERVICE

BACKGROUND

- (A) Following market analyses carried out by Ofcom, Ofcom published⁹ on 28 March 2018 a Statement entitled 'Quality of Service for WLR, MPF and GEA: Statement – Statement on quality of service remedies'. At Annex 1 to that March 2018 Statement, Ofcom published a notification giving four directions to impose requirements on BT pursuant to Ofcom's powers under the NMR SMP Conditions and the WLA SMP Conditions in accordance with section 49 of the Act.
- (B) In particular, since this Direction only relates to GEA services provided by BT falling within the scope of the WLA SMP Conditions, it suffices to note that Condition 11 of the WLA SMP Conditions provides—
- “11.1 The Dominant Provider must comply with all such quality of service requirements as Ofcom may from time to time direct in relation to network access provided by the Dominant Provider pursuant to Conditions 1 and 2 (as applicable).*
- 11.2 The Dominant Provider must publish all such information as to the quality of service in relation to network access provided by the Dominant Provider pursuant to Conditions 1 and 2 (as applicable), in such manner and form, and including such content, as Ofcom may from time to time direct.”*
- (C) Specifically, the four directions referred to in **recital (A)** above were—
- (a) a direction relating to quality of service standards in the provision of network access to WLR, MPF, and GEA-FTTC services ("**Direction 1**");
 - (b) a direction relating to transparency and the publication of KPIs for WLR;
 - (c) a direction relating to transparency and the publication of KPIs for MPF, Shared Access and GEA services ("**Direction 3**"); and
 - (d) a direction relating to removal of the cap on the time period in relation to which daily compensation is available when providing network access.
- (D) This Direction only concerns matters to which Direction 1, Direction 3 and Condition 11 of the WLA SMP Conditions relate.

⁹ Ofcom, March 2018. [Statement: Quality of service for WLR, MPF and GEA](#)

- (E) Section 49A(6) of the Act provides that Ofcom must consider every representation about its proposal made to Ofcom during the consultation period specified in its notification required under section 49A(3), and have regard to every international obligation of the UK (if any) which has been notified to Ofcom for the purposes of section 49A(6) by the Secretary of State. Section 49A(7) of the Act also provides that, where the proposal is not of EU significance, Ofcom may then give effect to the proposal, with any modifications that appear to Ofcom to be appropriate.
- (F) In that regard, it should be noted that—
- (a) on 25 November 2019, Ofcom published a notification of its Direction in accordance with section 49A(3) of the Act;
 - (b) on 14 January 2020, Ofcom sent a copy of that proposal to the Secretary of State in accordance with section 49C(1)(a) of the Act;
 - (c) Ofcom invited representations about the Direction set out in that notification by 5pm on 23 December 2019. Ofcom received five responses and it has considered every representation received about the Direction duly made to it;
 - (d) the Secretary of State has not notified Ofcom of any international obligation of the UK for the purpose of Ofcom giving effect to the Direction; and
 - (e) Ofcom considers that the Direction is not a proposal of EU significance, and therefore the requirements in section 49B do not apply.

DIRECTION

1. Ofcom hereby directs, in accordance with sections 49 and 49A of the Act and pursuant to Condition 11 of the WLA SMP Conditions, that the application of Direction 1 and Direction 3, respectively, shall be modified as follows (and Direction 1 and Direction 3 shall be read and have effect accordingly)—
 - (a) Quality of Service Standard 1 set out in **paragraph 2 of Direction 1** shall not apply to GEA-FTTC services in the Second Relevant Year and in any Subsequent Relevant Year, if—but only if—the GEA-FTTC services in question are provided by the Dominant Provider using the Bulk Grouping process; and
 - (b) the following three KPIs shall not apply to Street Cabinet Appointments for GEA-FTTC services, if—but only if—the GEA-FTTC services in question are provided by the Dominant Provider using the Bulk Grouping process—
 - (i) **KPI (i)** (*Percentage first available date appointment availability*) set out in **Schedule 1 to Direction 3**;
 - (ii) **KPI (iv)** (*Average first available appointment date*) set out in **Schedule 1 to Direction 3**;
 - (iii) **KPI (vii)** (*Average installation time (Appointed Orders)*) set out in **Schedule 1 to Direction 3**.

2. For the avoidance of doubt, relevant Quality of Service Standards set out in **Direction 1** and relevant KPIs set out in **Direction 3** that are not referred to in paragraph 1 above shall continue to apply to the Dominant Provider's provision of GEA-FTTC services.
3. This Direction shall take effect on the day it is published.
4. The effect of, and Ofcom's reasons for making, this Direction are set out in the accompanying statement.

OFCOM'S DUTIES AND LEGAL TESTS

5. Ofcom is satisfied that, for the reasons set out in the accompanying statement, this Direction satisfies the general test in section 49(2) of the Act in that this Direction is—
 - (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - (b) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (c) proportionate to what it is intended to achieve; and
 - (d) in relation to what it is intended to achieve, transparent.
6. In giving this Direction, Ofcom has considered and acted in accordance with the relevant duties set out in sections 3 and 4 of the Act and the duty to take account of relevant European Commission recommendations for harmonisation in section 4A of the Act. In accordance with section 2B(2) of the Act, Ofcom has also had regard to the Government's Statement of Strategic Priorities for telecommunications, the management of radio spectrum and post (as designated on 29 October 2019) in giving this Direction.

INTERPRETATION

7. Except insofar as the context otherwise requires and as defined in paragraph 8 below, words or expressions shall have the meaning as they have been ascribed (as relevant) in Direction 1 and Direction 3 respectively, and otherwise any word or expression shall have the meaning it has for the purpose of Condition 11 of the WLA SMP Conditions.
8. In this Direction—
 - (a) "**Act**" means the Communications Act 2003 (2003 c 21);
 - (b) "**BT**" / "**Dominant Provider**" 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 by section 1159 of the Companies Act 2006;
 - (c) "**Bulk Grouping process**" means the process (known as the 'Bulk Grouping Provision Capability process' or similar names) under which a Third Party requests the provision of multiple GEA-FTTC services at a given street cabinet to be provisioned by the Dominant Provider on the same day when a single engineering visit to that cabinet can be arranged by the Dominant Provider;

- (d) “**Direction 1**” and “**Direction 3**” each has the meaning given to it in **recital (C)** to this Direction;
 - (e) “**GEA-FTTC**” means Virtual Unbundled Local Access provided through the Dominant Provider’s GEA services over its FTTC network; for the avoidance of doubt, GEA-FTTC includes for present purposes the Dominant Provider’s GEA-FTTC product where only a broadband service is being provided (known as ‘Single Order GEA’ or ‘SOGEA’);
 - (f) “**KPI**” means key performance indicator;
 - (g) “**Ofcom**” means the Office of Communications;
 - (h) “**Second Relevant Year**” means the period starting on 1 April 2019 and ending on 31 March 2020;
 - (i) “**Street Cabinet Appointment**” means an arranged appointment in respect of an Order that requires an engineering visit by the Dominant Provider to a street cabinet rather than to the end user’s premises in order to become a Completed Order;
 - (j) “**Subsequent Relevant Year**” means the period starting on 1 April 2020 and ending on 31 March 2021, and following 31 March 2021, every 12-month period beginning on 1 April and ending on 31 March; and
 - (k) “**WLA SMP Conditions**” means the SMP conditions appended to Ofcom’s statement entitled “*Wholesale Local Access Market Review: Statement*” and dated 28 March 2018.¹⁰
9. For the purpose of interpreting this Direction—
- (a) headings and titles shall be disregarded;
 - (b) expressions cognate with those referred to in this Direction shall be construed accordingly; and
 - (c) the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

Signed by



David Clarkson

Competition Policy Director, Competition Group

A person duly authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

29 January 2020

¹⁰ For the WLA SMP Conditions, see the statutory notification published in Annex 33 to [Ofcom’s statement](#)