



**Service levels
Benchmarking study and analysis**

PHASE 1 REPORT

July 2013

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Structure of the report

This report and what it will cover

The following report provides an analysis of the Service Level Agreement (**SLA**) and Service Level Guarantee (**SLG**) regimes applicable to Unbundled Local Loop (**LLU**) and Wholesale Line Rental (**WLR**) services, provided by incumbent telecommunications operators, in certain countries. We have selected:

- UK
- Australia
- Denmark
- Germany
- New Zealand
- France
- Belgium
- Netherlands
- Ireland, and
- Spain

It is not an exhaustive study but seeks to draw out some examples of regulatory best practice and highlight key elements of the regimes in various countries and the impact the regimes may have on absolute performance in those countries. We also undertook a review of three other regulated sectors in the UK: electricity, water and post to draw out analogies from those sectors.

The remainder of this report is structured as follows:

- A short summary of the report and its genus and focus;
- An executive summary of our findings;
- A brief explanation of LLU and WLR, SLAs and SLGs and some of the core features of SLA and SLG regimes and the order journey for these services, in particular, the elements of the order and fault repair journey to which SLAs and SLGs may attach. We have included a summary of the UK LLU journey here as an example and to provide a concrete example of the application of SLA and SLG regimes in practice;

- Summary tables of the key findings by country including absolute performance by country to draw correlations between the regimes¹;
- A more detailed explanation, for LLU and for WLR respectively, of how service levels regimes have been developed in each country, as well as the service levels for ordering, delivery and connection and any SLGs that apply when the provider fails to meet those service levels. This includes details of publicly available enhanced service levels that may be available to customers (typically at a charge). We also set out the reporting regime that applies in each country and what the service levels are in respect of fault reporting and repairs, and any SLGs that apply when the provider fails to meet those service levels. We also cover the various enforcement mechanisms available to regulators and customers for breaches of the rules and committed service levels;
- The prices payable for LLU and WLR in each of the countries to allow for some price comparison of the basic level services².

The report is based on publicly available information, supplemented where possible with further information gathered from interviews with national regulatory authorities (“NRAs”) and/or market players in some of the jurisdictions selected. Given limitations on the information publicly available in respect of certain countries, we cannot guarantee the completeness of the information contained in the report.

¹ Absolute performance here refers to outcomes rather than compliance with the regime in place, e.g. absolute delivery time from moment of order.

² All prices in Euros were converted using the ECB spot rates as of 12 June 2013.

Executive Summary

There is clearly a widening recognition of the critical importance of effective SLAs and SLGs in a fully functioning regulated market place. In particular, that they are a core element of an effective regulatory environment and a natural corollary of the right to secure services from a regulated provider where market power is identified. However, the extent to which these issues are being addressed effectively is very mixed. In particular, these are third generation regulatory issues (the first generation being access to a service, the second being price point determinations and the third being effective delivery commitments and compensatory mechanisms – i.e. SLAs and SLGs). In many jurisdictions, undue reliance was and is placed by NRAs on non-discrimination to deliver enhanced outcomes.

Unless all three elements are present however, there will not be effective regulatory outcomes. In particular, there is little point in an effective SLA and SLG regime if the service offering or price points mean that the wholesale offering is not fit for purpose. In one regime identified, the SLA and SLG framework represents one of the more advanced in the survey but the regulatory product determination and price points mandated have led to entrants abandoning the services. Conversely, there are jurisdictions where ineffective SLA and SLG regimes have rendered the actual product determination less effective and substantially reduced the effectiveness of the initial regulatory product determination.

Effective regulatory intervention is the core element that seems to drive best absolute performance in delivery and fault repair. Absolute performance in this context means both performance against the agreed SLA and SLG and absolute times to deliver and repair services.

Detailed regulatory efforts are needed to drive forward effective SLA and SLG regimes and in those best performing jurisdictions, various steps have been taken to drive enhanced performance, from the setting of the penalty regime, regulatory interventions in the negotiation process, availability of SLAs and SLGs across the whole order and service journey, including on access to systems, as well as restrictions on carve outs from the application of the regime, and transparency of performance to ensure market players have visibility on actual delivery – without which no action can take place to remedy any failings.

We identified around forty separate elements which are found in the average order and service journey and thus could be susceptible to the application of a specific SLA and SLG regime.

None of the regimes studied provides SLA and SLG coverage across the full range of the order and service journey, but some are materially more comprehensive than others.

There is little consistency or clarity across regimes as to the underpinning rationale of any service level intervention. This in itself leads to inconsistent application of the rules, reduces transparency for market players and increases uncertainty. There appear to be a range of goals, including replicating the commercial outcome that would be expected in a commercially negotiated contract in a competitive market (a rationale which underpins many costing determinations), incentivising better absolute performance, compensating loss or simply applying non-discrimination principles.

Transparency on the rationale underpinning interventions and developing regulatory practice in this area will drive better outcomes.

There is a strong and developing focus on non-discrimination – see for example the focus on Equivalence of Inputs in the proposed Commission Recommendation on Non-Discrimination and Cost Orientation³. There is also a recognition, particularly among competitive carriers, that non-discrimination alone will not deliver services at the required levels to service their needs and they would often seek out a combination of non-discrimination, almost as a backstop but something more akin to a mechanisms that more closely replicates a competitive supply contract. This, however, is more difficult to define but is critical. The obligations on many SMP carriers to offer “fair and reasonable” terms for regulated services could well be interpreted in this light.

There needs to be a greater focus on mechanisms to incentivise better quality performance. In many of the findings below, there is clearly not a sufficient incentive to deliver and fault repair commitments in particular are being missed. Non-discrimination provisions are obviously not delivering the performance improvements sought. Incentives to better performance that rely on more than the wishes of the incumbent’s retail arm seem to be key in such instances.

Those regimes with the best absolute performance appear to have arisen as a result of a material review of the service issues in that country and a structural response to the problem, rather than via ad hoc product development cycles and interconnection disputes.

There also needs to be much greater clarity on when NRAs will take enforcement action in the face of poor performance. Whilst the priority is to ensure that appropriate SLAs/SLGs are in place, in the absence of clarity about when the regulator will intervene, such intervention is less likely, more challengeable and will not provide sufficient incentive to enhance performance. For example, more guidance is needed on when penalties will be deployed for failure to implement performance enhancements. In the other sectors we analysed, there has been substantially more intervention on absolute performance failings and in a number of cases, fines applied for non-performance of obligations. However, for this to be effective, regulators need to set out how they will use their powers and when.

Specific findings from our study

The core elements of SLA and SLG regimes are in place in most regimes but the mechanisms for their application, both in targets, penalties, and monitoring vary widely and this impacts substantially upon their effectiveness. The devil is in the detail here. The following attempts to draw out some highlights and lowlights.

Committed delivery times for LLU vary but average around 8.5 days (no appointment, in urban areas).

Compensatory payments for delivery failure for LLU also vary. These average around 12 Euros per day but there are various caps and caveats on these payments that make determining an average

³<http://ec.europa.eu/digital-agenda/en/news/draft-commission-recommendation-consistent-non-discrimination-obligations-and-costing>. See also two recent BEREC decisions citing failures to impose effective KPIs and transparency of same (including Finland in Cases FI/2012/1328-1329)

difficult. It is however the case that higher priced LLU services do not tend to demonstrate better delivery or fault repair levels.

On fault repair, there is a large divergence but there is a clear trend towards tiered service levels allowing for differentiated service repair levels. However, fault repair varies from around 24 hours up to 12 days. It is also apparent that this is the area (albeit based on the public data we have sourced) where performance is most divergent from SLA and SLGs. Absolute performance is generally substantially below the SLA – even in countries with otherwise relatively developed SLA regimes such as the UK.

Given the large number of elements to any SLA and SLG regime, it is not surprising that there are many variances between regimes. From our analysis, the greatest variances between countries occur in:

- The steps in the order journey that are dealt with by SLAs and SLGs. Some are comprehensive while others offer only rudimentary coverage of certain steps;
- Access to systems and interfaces by competitors with those systems as well as the extent to which availability of those systems is agreed and mandated;
- Transparency of KPI data and thus ability to monitor same and enforce obligations and identify issues with service more generally;
- Dealing with order validation and SLAs and SLGs on confirmation of order delivery, i.e. when an order is accepted and not left in limbo. A number of countries provide specific metrics on this but others do not. However, even in countries with specific metrics, there are issues around the ability of operators to avoid specific measures, e.g. by orders being put into specific categories outside of the SLA framework as is the case in the UK;
- The way the performance levels are set is critical and can be materially different e.g. a 90% target that means no SLA regime is in place for the other 10% of services being delivered can have a materially different incentive factor to one where all services are measured and the targets applied to all services without a cut off point for the last 10%;
- The scale of reciprocal penalties on operators (or carve-outs from service level targets) for failure to adhere to forecasting rules and/or failed visits/incorrect order forms which are extensive in certain countries and which seem to have an adverse impact on performance and enforcement of the regime, effectively driving a coach and horses through otherwise apparently wide ranging regimes. In the UK, concerns have been expressed by operators regarding changes introduced by Openreach in 2012, which mean that agreed service level targets do not apply where forecasts provided by operators prove to be inaccurate by more than a certain percentage threshold, and the impact this has on the effectiveness of the SLA/SLG regime ⁴;

⁴ See, in particular, the recent dispute between TalkTalk and Openreach regarding service levels for LLU services: http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01098/2nd_provisional.pdf

- Proactive payment of sums due and the ability to recoup these effectively without complex recoupment methodologies;
- The mechanisms under which the regulator will intervene and the stages in the process at which they will be involved in the commercial negotiation process which generally precedes any formal intervention;
- The mechanisms of oversight by regulators or third parties to ensure enforcement and the powers to act on a finding of breach and the legal basis for same. The availability of powers to deal with discrimination is more common but dealing with actual failures to deliver to absolute targets is less harmonised and exercised much less often; and
- The extent to which penalties are uncapped is materially different across jurisdictions. In some, there are set cap levels e.g. in the UK, but in others they are explicitly or implicitly uncapped or left unpredictable, often, we understand, as a means of encouraging compliance.

Notwithstanding the differences between different jurisdictions to many of the key elements of SLA and SLG regime, international best practice is developing on what an effective regime looks like. Hopefully this report will provide a useful addition to this debate.

We have also looked at three other regulated sectors in the UK – electricity, water and post - for any benchmark elements that we could draw from these on SLA and SLG regimes. In the case of electricity and water, it is clear that they have substantially more developed metrics and oversight on delivery and fault performance than is the case in the telecommunications sector. There are absolute performance and delivery measurements covering many of the elements of the order journey and the relevant regulators have been instrumental in setting these. It is also recognised that compensation payments are not sufficient to incentivise improved performance. For example, there has also been substantially more enforcement activity by the regulators in this space. For example, in the water sector, Ofwat imposed fines of between £0.47 million and £1.4 million on three separate water companies in 2008 for providing a sub-standard service to customers⁵. Mechanisms to incentivise quality of service improvements have also been built into the price control regime.

⁵ Thames Water was fined £1.4 million, Severn Trent was fined £1.1 million and Southern Water was fined £0.47 million.

LLU and WLR

Firstly, why LLU and WLR?

We selected WLR and LLU services as they are well established product sets aimed at market access in the telecommunications sector, widely used by competitive carriers, and thus a good proxy by which one can assess the effectiveness of present SLA and SLG regimes and draw out comparative elements. These analogies should also hold good as regards the developing wholesale access services for FTTC/FTTP broadband services although differing service levels may well apply.

What is LLU?

The unconditioned local loop service involves the rental (use) of an unconditioned (metallic) communications wire between the network boundary (on the end user's side) and a point at which the wire terminates. It is generally provided by the incumbent telecommunications operator to competing operators as a result of a regulatory determination by the national telecommunications regulator.⁶ Substantially more detail on this is included in the chapter on LLU.

What is WLR?

WLR allows a competing provider to rent the incumbent's telephone lines at regulated wholesale prices, in order to sell retail subscriptions to consumers with a single bill that generally includes line rental and the cost of calls. This method allows providers who have no access network to acquire subscribers. As for LLU, WLR is generally the result of a regulatory determination⁷.

What is an SLA?

For the supply of telecommunications services in a competitive market, an SLA is generally a part of the commercial services contract, and typically specifies the supplier's commitments in respect of delivery, levels of availability, serviceability, performance, operation, and other attributes of the service, for example, billing, and other operational matters. The level of service can be expressed in various ways, including an expected level, or a minimum standard of service. It should determine what happens in the event of those targets not being met. It should be measurable and demonstrable. Critically, it should allow wholesale customers to be informed on what to expect, while providing quantifiable targets so that they can service their own retail customer base. It may also specify publication obligations to allow measurements of the outcomes by the customer or third parties.

SLAs in a regulated environment are somewhat different and may be imposed by NRAs or negotiated under their auspices, and often form part of a reference interconnect offering. While these may not thus be "offers" or "agreements" in the strictest sense, we use this term throughout.

⁶Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop and Ofcom, *Review of the wholesale local access market*.

⁷ As footnote 5.

We have not focused on the effectiveness of any non-discrimination protections, although these are important but out of scope in the present Report. It should be noted however that the existence of (effectively policed and enforced) non-discrimination obligations may not necessarily deliver quality service outcomes as the provision of service on a non-discriminatory basis need not be that which is to be expected in a competitive environment, nor necessarily map the requirements of customers (except the retail arm of the incumbent). It relies on an assumption that the demands of the incumbent's retail arm will incentivise effective delivery. This has a number of risks. First it relies on the effective enforcement of the obligations by regulators and intervention by regulators to enhance KPIs. Second, the requirements of the incumbent's retail arm may not reflect those of competitive operators, for example on the service quality levels they would like for their particular customer base. Finally, there is a risk that any monies payable are simply regarded by the incumbent as an internal transfer, with the consequence that the obligations may not have a sufficiently disciplining impact. Simple non-discrimination may thus not reflect the outcomes that one would expect in a competitive market place or be deemed "fair and reasonable" terms of supply.

While the SLA sets out the supplier's commitments to provide services to certain agreed standards, the associated service level guarantee should specify the level of compensation that the customer would be entitled to should the service not be provided at the quality specified in the SLA. This may take the form of rebates or specific payments but it also should indicate if these payments are automatic or require to be claimed by the customer, and the process and burden of proof required to secure those payments as well as any caps or other limitations of liability on payment.

As Ofcom has stated, SLAs and SLGs form:

*"essential elements of any commercial contract as they provide the supplier with an incentive to deliver service to a pre-defined and, potentially, pre-agreed level of performance or compensate their customer accordingly."*⁸

The SLAs and SLGs also allow the end user a degree of comfort on the service quality they can expect and also clarity on such things as delivery dates. As such, in an environment of switching providers and competition, it can be a critical element in ensuring efficient switching between operators, and particularly from the incumbent to new entrants. In a regulated environment, intervention on these issues will often be important to replicate the position in a competitive market where suppliers would be competing on both price **and** service quality to secure business.

⁸Ofcom, *Service Level Guarantee: incentivising performance*, 20 March 2008.

The 'service' journey and the UK example

There are many factors that can be covered in an SLA/SLG regime.

We set out below some of the areas that are dealt with by SLAs and SLGs from our analysis as this helps to contextualise our findings.

In order to be effective, SLA and SLG regimes should be deployed across the whole of the order and service journey – just as they would in a competitive market place and a commercially negotiated contract environment – to ensure clarity of obligations and rights on both sides and what is expected of both parties.

In terms of the order journey (using LLU as a proxy), this can be broadly summarised in the following fashion, and in chronological order:

- Sales Validation processes, including line availability;
- Ordering processes and placement of orders including order receipt (and fault notification), and notification of any customer commit date (in UK, known as KCI, KCI1, KCI2 and KCI3 and CCD);
- Appointment process and visits, where appropriate;
- Actual delivery; and
- Fault repair.

Within each of these are critical sub elements, including:

- The timeframes for delivery against each metric;
- Monitoring of those timeframes and by whom;
- Order rejection and order delay criteria and monitoring and agreed timelines for same alongside the better known provisions on absolute delivery time; and
- Notification of successful delivery.

Then there are a range of key ancillary elements:

Agreed access to systems to allow for interaction between the supplier and customer which can include availability checkers, field force deployment systems, ordering databases, address tracker and also the relevant interfaces to ensure this is done effectively and agreed metrics governing the availability of these services (in effect, SLA and SLGs for access to these systems and services).

Then there are the enforcement and compensatory elements which include:

Scale of compensatory payments and the extent to which they are proactive, i.e. not requiring any burden of proof on the operator seeking payment.

This may also include carve-outs to the payment of such sums which can include force majeure, failure to meet forecasting requirements by the customer, achievement of certain performance targets by the supplier or occasionally reciprocal payments (e.g. failure to meet appointment date or forecasts). These tend to be controversial in their own right given the potential for these to materially impact the effectiveness of the SLA and SLG regimes if they are cast too widely.

Finally, there are oversight and enforcement mechanisms to ensure adherence to the rules including:

- Publication of KPIs and oversight of same (either via the regulator, a third or the contracting party);
- Mechanisms to seek redress or require improvements to the regime (for example via the regulator);
- Third party audit or intervention processes (possibly via the regulator);
- Then there are the imputations to the cost model for the particular product which may have implications for service delivery e.g. an imputed fault level or WACC level (which are beyond the scope of the present report);
- In total there are probably around 40 components to an effective SLA regime that will require to be covered, taking the stages and elements above.

The above processes, service levels and enforcement methods reflect what seem to be the core elements of an effective SLA and SLG regime based on our review and also what would be expected in a competitive market. They also align with the findings of BEREC in their Common Position on Remedies in the market for wholesale network access, revised in 2012⁹. In this paper, they call for transparent RIOs, active NRA engagement in the setting of SLAs and SLGs, proactive penalties, and KPIs set by NRAs and monitored effectively although detail on the specifics of an effective regime are not further elaborated. There are few empirical studies on sanctioning regimes and the application of powers to encourage effective supply but the most recent is by Professor Macrory, Regulatory Justice, Making Sanctions Effective, published in 2006¹⁰. As mentioned above, there is little public comparative work on SLA and SLGs in the telecommunications sector that we have identified in our research.

⁹http://berec.europa.eu/eng/news_consultations/whats_new/1274-the-revised-berec-common-positions-on-wholesale-local-access-wholesale-broadband-access-and-wholesale-leased-lines

¹⁰ www.berr.gov.uk/files/file44593.pdf

The UK regime and the SLA and SLG environment

There is little or no consistency between SLAs and SLGs applied to different services due to the piecemeal fashion that these have developed, and the developing recognition of their importance over time.

Therefore, in an attempt to put the above order journey in context, we have analysed the position in the UK and, in particular, the SLA and the SLG regime as it applies to the order journey for LLU services and the mechanisms by which such a regime was put in place and policed.

The UK service and order journey and over-arching regime

In the UK, the service journey begins with sales validation (i.e. the use of Openreach's Dialogue Services). This is then followed up with an order form filled out by the customer¹¹. Openreach will confirm or reject orders 98% of the time within 40 minutes and 95% within 30 minutes. This is known as the first of the Keeping Customer Informed Dates (KCI).

There are also commitment levels set for access to the equivalence management platform (EMP) and service credits for failure to achieve these.

The next step is delivery by a set date, which is chosen by the customer. For Migrations or Takeover orders, the delivery date cannot be less than 10 days following the order, but Appointed Provides or Re-starts can be delivered in less than 10 days following the order.

There are service levels applicable to responses to the order, but there are identified gaps in the time it takes to allocate that order – the so-called KCI2 process, which can lead to substantial delays in moving orders forwards, and for which there is no effective SLA process in place. In particular, the substantial number of orders automatically placed into KCI delay status has been flagged as an issue and these orders are then taken out of the scope of the relevant SLAs.

Service levels apply to appointments, including a penalty in the event Openreach misses the appointment.

In 2012, Openreach also introduced carve-outs for forecasting errors for new line provide, which mean that the service level targets do not apply where forecasts by operators prove to be inaccurate by more than a certain percentage. This appears inconsistent with Ofcom's conclusions in its 2008 statement on SLGs, in which Ofcom concluded that *"it is not appropriate or proportionate to contractually link forecasting and compensation arrangements"*¹².

There are penalties on providers in the event of missed appointments but not for other elements including missing forecasts.

There are wide ranging carve outs against payment of SLA and SLG penalties in the event of force majeure and for MBORCs. MBORCs are defined broadly, giving substantial scope for avoiding SLA/SLG requirements, particularly in the event of weather related incidents.

¹¹ The latest offers from Openreach can be found at <http://www.openreach.co.uk/orpg/home/products/llu/contracts/contracts.do>

¹² Ofcom, "Service level guarantees: incentivising performance", Statement and Directions, 20 March 2008, p13.

Caps apply to the payment of penalties in many of the core issues. These caps vary but are generally around 60 days¹³. Ofcom noted it perceived the need to limit compensation payments in the March 2008 statement¹⁴: *Service level guarantees: incentivising performance*. Ofcom considered that

... there is a balance to be struck between ensuring that appropriate compensation is paid in such a way as to incentivise performance and ensuring that in amending the SLG process Ofcom is not introducing unreasonable burdens on Openreach. Therefore, Ofcom has decided to amend its proposals with regard to WLR and to maintain a maximum limit of compensation on a per line basis¹⁵.

Finally there are SLAs in relation to fault repair with the option to buy enhanced service levels.

Basic fault repair service levels (SML 1 and SML 2), included by default in the line rental price, provide for 'end of next working day + 1' or 'end of next working day' commitments by Openreach to rectify faults. SML1 is the default care level for WLR services. SML2 is the default care level for LLU services. Customers can purchase enhanced service levels (SML 3 and SML 4) for annual rental charges ranging from £37.20 (€43.85) to £48.00 (€56.59). These service levels provide for quicker repair times (by 1pm next working day or within 6 hours). Exclusions to these SLAs include:

- the absence of the end user if he or she was needed to give Openreach access to the premises,
- if the customer rejects the first appointment slot,
- emergency or planned interruptions, and
- incorrectly reported faults and other exclusions listed at 11.2 of this report.

There are other elements of the LLU service journey including the provisioning of additional exchange space and other ancillary services related to the provision of LLU services. The service levels attributable to these vary dramatically and the effectiveness is hard to determine although there have been concerns over their effectiveness in driving timely delivery of services given the relative level of the SLGs against relative build costs of a new provide or the scale of customer loss or dislocation on competitive providers of a failure to achieve the proposed targets¹⁶.

A further concern expressed with regard to the current SLG regime is that compensation payments are not made proactively by Openreach.

¹³ See Chapter on LLU below for substantially more detail.

¹⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/slq/statement/statement.pdf>

¹⁵ Paragraph 4.21, *Service level guarantees: incentivising performance*

¹⁶ See commentary in <http://www.offta.org.uk/updates/otaupdate20130205.htm>

Monitoring of performance

Openreach's performance is monitored, in certain instances, by the Office of the Telecommunications Adjudicator¹⁷ (OTA) which publishes certain Openreach KPIs in terms of delivery and fault repair¹⁸. The Equality of Access Board also reviews certain metrics, with a focus on equivalence (i.e. non-discrimination)¹⁹.

The most recent KPI figures (January to May 2013)²⁰ show LLU repair and delivery falling below the target set level, on occasions below 50% for repair indicators. WLR repairs also fell short of the target, approaching the 50% line. WLR provisioning, however fared better, between 90% and 95%.

The process for setting or amending SLAs

The setting of SLAs and SLGs in the UK is generally left to commercial negotiation but with a regulatory backstop. There is no generic application of SLAs and SLGs to new product sets nor are there core principles applied to the relevant SLA and SLG regimes other than the very general concept that they should be "fair and reasonable".

There are enforcement powers on Ofcom to fine for breach of any direction under Ofcom's existing powers, although Ofcom has not taken any such action to date.

A dispute was brought by TalkTalk in December 2012 over the lack of effective SLA and SLGs for provisioning on LLU. Ofcom issued its provisional determination of this dispute on 28 May 2013²¹. Ofcom has provisionally concluded that the level of SLG payment offered by Openreach (and disputed by TalkTalk) is fair and reasonable (this marks a departure from Ofcom's initial provisional conclusions, in which it reached the opposite conclusion)²². Ofcom has also provisionally concluded that it would be inappropriate to require BT to give communications providers the benefit of terms which they have previously rejected and which Ofcom has subsequently concluded to be fair and reasonable. This arguably sets an unhelpful precedent for CPs, who argued during the dispute resolution process that Openreach has an incentive to prolong commercial negotiations.

Summary tables on the findings

In the summary tables below we seek to draw out the core elements of the study to allow a high level comparison of the various regimes.

We have focused on certain elements reflecting the order journey and key factors on reciprocal penalties and absolute performance (to the extent this is publicly available). We have not been able to include all the relevant sections of the order journey in the table. As such we have attempted to demonstrate what the core service provision looks like and if there is a publicly available enhanced delivery scheme we have elaborated on this too.

¹⁷<http://www.offta.org.uk/>

¹⁸<http://www.offta.org.uk/charts.htm>

¹⁹http://www.btplc.com/Thegroup/Ourcompany/Theboard/Boardcommittees/EqualityofAccessBoard/Publications/EAB_Annual_Report_2012.pdf

²⁰<http://www.offta.org.uk/charts.htm>

²¹http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01098/2nd_provisional.pdf

²²http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01098/LLU_SLAs.pdf

We have included the relative pricing of the services to enable a benchmark of the costs of the services. In particular, one can see that the relative pricing of LLU is around 8 Euros (averaged monthly rental based on ECTA January 2013 statistics from audit) in the EU area. This highlights that countries that would appear to have a more developed SLA regime with shorter absolute delivery and repair times do not appear to have higher LLU costs.

We have also looked at enforcement mechanisms and transparency and oversight models.

LLU summary comparison table

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
UK	Within (at least) 10 working days	<p>£8 (€9.43) per working day up to a maximum of 60 working days.</p> <p>If the service is delivered on time but is not functional, the customer is entitled to £16 (€18.86)/day compensation for a maximum of 60 working days (providing Openreach is notified within 8 days of delivery).</p>	<p>SML1 – end of next working day + 1 working day²³</p> <p>SML2 – end of next working day²⁴</p> <p>SML3 - In by 1pm fix the same day, in after 1 pm, fix the next working day²⁵</p> <p>SML4 - 6-hour repair²⁶</p>	<p>During any period from the date that the weekly reported KPI for LLU repair has been less than 95% for 12 consecutive weeks until a date that the weekly reported KPI for LLU repair has been 95% or more for 12 consecutive weeks the fixed compensation paid or allowed will be:</p> <p>for SMLs 2, 3, 4, 100% of 1 month MPF²⁷ / SMPF line rental²⁸ per day, or part day for a maximum of 60 consecutive working days (Fixed Compensation Period) for each MPF / SMPF not repaired within the SML period</p> <p>OR</p> <p>during any period, from the date that the weekly reported KPI for LLU repair has been 95% or more for 12 consecutive weeks until a date that the weekly reported KPI for LLU repair is less than 95% for 12 consecutive weeks the fixed compensation paid or allowed will be 100% of 1 month MPF / SMPF line rental per day, or part day for a maximum of 60 consecutive working days (Fixed Compensation Period) for each MPF / SMPF not repaired within the SML period.</p>	<p>MPF Expedite: delivery between 3-9 working days</p> <p>SMPF Expedite: delivery between 1-3 working days</p> <p>Flexible appointments</p>	<p>If an engineer attends a premises and the end user is not available, or the engineer cannot gain access, an abortive visit charge of £85, (€100.21) applies.</p>	<p>MPF rental: £84.26 (€99.33) per annum</p> <p>MPF connection charge (new service): £45.53 (€53.67)</p> <p>SMPF rental: £9.75 (€11.49) per annum</p> <p>SMPF connection: £30.65 (€36.13)</p> <p>MPF Expedite: £167.32 (€197.25)</p> <p>SMPF Expedite: £88.71 (€104.58)</p> <p>SML3: £37.20 (€43.85)</p> <p>SML4: £48 (€56.59)</p> <p>Also, Customer can purchase per occasion to get an expedite SML:</p> <p>SML1 → 2: £85 (€100.20)</p> <p>SML1 → 3: £585 (€689.65)</p> <p>SML1-4: £735 (€866.49)</p> <p>SML2 → 3: £500 (€589.45)</p> <p>SML3 → 4: £150 (€176.83)</p> <p>Flexible appointments: £12.50 (€14.74)</p>	<p>The main source of public data on Openreach performance is via the OTA KPI publication. See http://www.offta.org.uk/charts.htm. More detail is included in the body of the Report. Based on the data available, Openreach has been consistently falling short of meeting its service levels in particular on fault repair.</p>

²³Working day = Monday to Friday, 8am-6pm

²⁴ See footnote 1 above

²⁵ Working day = Monday – Sunday (including bank holiday) 7am – 9pm Monday-Friday and 8am to 6pm Saturday – Sunday

²⁶ Working day = Monday – Sunday, including bank holidays

²⁷ £84.26 (€99.33) per annum excluding VAT (effective as of 1 May 2013), available at

<http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=totid5BwFmkf9vLcBITRyZF9loRxWlB1KK6V7YWmlYAlMnGHsqdCOvzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D>

²⁸ £9.75 (€11.49) per annum excluding VAT (effective as of 1 April 2013), available at

<http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=LI%2BLzfp8sh2Y2DndjIRMoqOJDXc5GerAO5Bb9tNt8RgIMnGHsqdCOvzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D>

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
Australia	<p>Intact metallic path in place: 3 Clear Working Days.</p> <p>No Intact metallic path in place: between 10-30 Clear Working Days for remote and rural areas and between 5-30 Clear Working Days for all other areas .</p>	1 x List Price: monthly rental price for LLU at \$16.21 (€11.64) per month for bands 1-3 and \$48.19 (€34.60) for band 4.	<p>Band 1²⁹ and 2³⁰ – by the end of the first Clear Working Day after the Fault report is logged by Telstra.</p> <p>Band 3³¹ – by the end of 2 Clear Working Days after the Fault report is logged by Telstra.</p> <p>Band 4³² – by the end of 3 Clear Working Days after the Fault report is logged by Telstra.</p>	1 x List Price: monthly rental price for LLU at \$16.21 (€11.64) per month for bands 1-3 and \$48.19 (€34.60) for band 4.	N/A	N/A	<p>Monthly rental price for LLU at \$16.21 (€11.64) per month for bands 1-3 and \$48.19 (€34.60) for band 4.</p>	<p>Telstra reported the following variances³³ for the relevant Metrics:</p> <ul style="list-style-type: none"> - for Metric 14 (relating to a connection where there is an Intact metallic path in place): a variance of 4.59% - for Metric 15 (relating to a connection where there is no Intact metallic path in place): a variance of 9.32% - for Metric 16 (relating to fault repairs): a variance of – 5.59% if applying the ‘conditions’³⁴ and - 11.67% if not applying the ‘conditions’. <p>For the LLU Metrics, if Telstra finds a reporting variance of 2% or more in negative terms, then Telstra is required to investigate the causes of such failure and at the same time report to the ACCC and ITA Adjudicator an accompanying confidential report. The confidential report must set out, in detail, an explanation for the reporting variance, and if Telstra</p>

²⁹ CBD of the main States

³⁰ Within 108.4 kms of Band 1

³¹ with 6.56 or more services, but less than 108.4 services, in operation in a square kilometre area, which is not a Band 1

³² with 6.55 or less services in operation in a square kilometre area, which is not a Band 1

³³Variance refers to the difference between Telstra’s actual performance and its specified targets in the SSU.

³⁴Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra’s performance is measured against a fixed Service Level rather than measuring Telstra’s comparative performances for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra’s control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra’s ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user’s premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours’ notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
								determines that the variance is wholly or in part due to the 'conditions', the steps being taken to investigate and / or rectify the non-compliance, including an estimated time for rectification. For the above negative variances above 2% for Metric 16, Telstra's investigations indicated that the high workload and the volume of retail priority assistance ³⁵ tickets of work remain a key cause of the variance. The incorrect allocation of increased severity levels for some Telstra retail business tickets of work at a time when many wholesale business services were allocated standard priority levels may have also caused a flow-on impact on the resource availability for LLU fault repairs.
Denmark	20 business days (with a technician visit) 18 business days (without a technician visit)	kr123 (€16.49) for each delayed LLU connection subject to the following conditions: - failure to meet the delivery service level (95% of deliveries are on time and faultless)	Within 12 business days of the date of the report	kr123 (€16.50) for each delayed repair (applies only if TDC has failed to repair in 12 days or the resolution was unsatisfactory)	The customer can enter into a separate agreement with TDC for improved service levels subject to commercial negotiations between the parties but there are no standard enhanced service levels.	N/A	One-off connection charge: full loop: without technician kr329 (€44.12) / DKK 739 (€ 99.10) with technician- Monthly rental: full loop: €8.38	In January and February of 2013, TDC in Denmark exceeded its service levels for - delivering a service where delivery requires a technician at an average of 100% (95% within 20 business days target - in January, 95% were delivered in 17 days – in February in 5 days), and - delivering a service where delivery does not require a technician at an average of 96.6% (95% within 18 business days target – in January, 95% were delivered in 5 days – in February, 95% were delivered the next working day).

³⁵A statutory scheme that requires telecommunications providers to prioritise fault repairs for premises at which a medically ill customer resides.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
Germany	Within 7 business days of receipt of the order	1-10 business days delay, 10% of the installation fee ³⁶ More than 10 business days delay, 100% of the installation fee ³⁷ + 5 % of deployment fees ³⁸	Within 24 hours of receipt of the fault report	If the fault has not been cleared at 48 hours or less – €12.78 (per instance) If the fault has not been cleared after 48 hours – €25.57 (per instance)	N/A	N/A	One-off connection charge: €30.83. Monthly rental: full loop: €0.20; sub loop: €7.21	Deutsche Telekom's KPIs are not publicly available.
New Zealand	No real delivery time. Chorus will notify a customer of an RFS ³⁹ date within 6 consecutive days of receipt of the order, and will meet the RFS date at 90% of the time. No specified time from order.	Calculated on a per calendar month basis for each order at Penalty = A ⁴⁰ x B, where: A = the applicable penalty rate and B = the provisioning charge for the relevant order	There is no clear timeframe for this. Chorus will notify the customer of the expected restoration date within 8 Fault Restoration Hours of receipt of the fault, and meet the notified time at 90% of the time.	The performance penalty is to be calculated on a per calendar month basis in respect of each fault not restored within the notified restoration time and falling below the specified tolerance level; and is required to be calculated in accordance with the following formula: performance penalty = A x B, where: A = the applicable penalty rate x the MPF Service Monthly Charge ⁴¹	N/A	N/A	Individual new connection where site visit required: NZD 225 (€135.51); Individual new connection where no site visit required: NZD 74.83 (€45.07); Bulk rate for 20 or more new connections at the same exchange where no site visit required: NZD 56.12 (€33.80).	Based on Chorus' February 2013 performance, provisioning SLAs generally performed several points above the contractual average. It must be noted however that in terms of provisioning, Chorus is unusual in that no contractually defined delivery date is set, but rather Chorus only promises to provide a date (Ready for Service "RFS"). This was achieved 99% of the time within 6 days, beating the 90% SLA. 97% of orders were completed within the RFS date (SLA is 90% for this). Fault resolution follows a similar principle whereby only a promise to provide (within 8 hours) an expected restoration date binds Chorus. This too was done 99% of the time, 9 points over the SLA and the actual resolution within the expected restoration date took place 98% of the time (SLA is 90%).
France	Within 7	X*10% of LLU	2 days from the	If there is a fault	Customer can purchase	Penalty for		Delivery

³⁶€ 74.17, New connection without work at the end customer without work on street cabinet and € 94.97 New connection without work at the end customer with work on street cabinet.

³⁷ See footnote 1 above.

³⁸€ 108.41, new connection with work at the end customer without work on street cabinet, and € 123.92, new connection with work at the end customer with work on street cabinet.

³⁹ Ready for Service

⁴⁰Geographically De-Averaged Price – Urban Exchange: \$19.841 (€12.86) (Geographically De-Averaged Price – Non-Urban Exchange: \$36.63 (€23.7) Geographically Averaged Price: \$24.46 (€15.85).

⁴¹Geographically De-Averaged Price – Urban Exchange: \$19.841 (€11.95) (Geographically De-Averaged Price – Non-Urban Exchange: \$36.63 (€22.06) Geographically Averaged Price: \$24.46 (€14.73).

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	working days of the date of notifying the customer of the acceptance of the order (no service level for notification acceptance)	access subscription ⁴² capped at 2 months of LLU access subscription. The customer must claim the penalties else they are not paid.	date of receipt of a fault report unless a visit at the end user's premises is required. Customer can purchase a 4 hours downtime or 10 hours downtime fault SLA option.	within the provided LLU and the customer notifies France Télécom of the fault within 30 days of the delivery of the service, France Télécom will pay rebates as follows: : 4 hours < maximum downtime <= 5 hours: 2 months subscription to access ⁴³ and to the SLA ⁴⁴ 5 hours < maximum downtime <= 6 hours: 4 months subscription to access and to the SLA 6 hours < maximum downtime <= 7 hours: 6 months subscription to access and to the SLA 7 hours < maximum downtime: 12 months subscription to access and to the SLA These penalties are capped at 12 months subscription to access and to the SLA in a calendar year. Penalties are deducted from the amount due by the Provider. No penalties are due if the delay is not France Télécom's fault.	4 hours downtime or 10 hours downtime fault SLA option. These come in further tiers (10 WH SLA, 10 non-WH SLA and so on).	wrongful visit: €60 Penalty for wrongful visit – end user away from premises: €60 Penalty for visit refused by end user: €60 Penalty for visit organised via e-meeting but not confirmed in an order form: €41 Penalty for incorrectly drafted order form: €41	Monthly LLU subscription: €8.90 Enhanced service levels: 10 hours maximum downtime: €5.95 4 hours maximum downtime: €8.00 4 hours maximum downtime (outside of office hours): €22.00 4 hours maximum downtime for twisted pair: €10.61 4 hours maximum downtime (outside of office hours): €29.23 4 hours maximum downtime for twisted double pair: €13.19 4 hours maximum downtime (outside of office hours) for twisted double pair: €36.46	commitments are well met with 96.7% of orders completed before 7 days, the average length of time being 2.9 days. Fault resolution does not perform well with only 62.9% of the faults being resolved within the SLA. Only 1 month's worth of KPIs (January 2013) are currently published on France Télécom's website.

⁴² Full access: €8.90

Twisted pair full access: €17.80

Twisted double pair full access: €35.60

⁴³ full access: €8.90

full twisted pair access: €17.80

full twisted double pair access: €35.60

⁴⁴ full access Option 1 SLA: €8.00

full access Option 2 SLA: €22.00

full double pair access Option 1 SLA: €10.61

full double pair access Option 2 SLA: €29.23

full twisted double pair access Option 1 SLA: €13.19

full twisted double pair access Option 2 SLA: €36.46

sensitive access: €0.10

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
Belgium	<p>Where a visit is required: 95% within 10 working days, 99% within 20 working days</p> <p>Where a visit is not required: 95% within 8 working days, 99% within 18 working days</p>	<p>95% service level: €10 per calendar day (after the 10th working day timer has been reached)</p> <p>99% service level: €5 per calendar day (after the 10th working day timer has been reached)</p>	By the end of the second working day after receiving the fault report (day of the trouble ticket opening + 1)	150% of the daily rental fee per calendar day ⁴⁵	<p>Validate order within 30 minutes</p> <p>Improved kept appointments</p> <p>Free of charge modification of the requested service date</p> <p>Repair time: 4 hours (60% of the fault tickets resolved) 6 hours (80% of the fault tickets resolved) 8 hours (95% of the fault tickets resolved)</p> <p>Fault ticket handling: 24/24 hours, 7/7 days</p> <p>Intervention window: 24/24 hours, 7/7 days</p> <p>Initial feedback on the fault: within 1 hour of the fault ticket</p> <p>Follow up feedback: within 2 hours of the fault ticket. Subsequent feedback every hour thereafter until the fault is resolved.</p> <p>Note: additional compensation applies to failure to achieve the enhanced service levels (see section 7 of the report for details)</p>	N/A	<p>Raw copper installed by Belgacom: €25.44</p> <p>Raw copper installed by certified technician: €8.65</p> <p>Shared pair: €35,31</p> <p>Raw copper: €8,03 (monthly)</p> <p>Shared pair: €0,56 monthly</p> <p>Raw copper plus: €8,03</p> <p>Enhanced service levels:</p> <p>An initial set up fee of €2000.47 for the improved service levels. For any new lines to be added to the customer's 'account', Belgacom charges €8.23 per new line. In addition to this, Belgacom charges €7.11 per local loop for the improved fault repair service level.</p>	<p>Delivery service levels were exceeded by 2 – 3 points, with a particularly high percentage beyond the 30 minute period at 60% - 70% of orders being validated within 30 minutes.</p> <p>The basic fault repair service level is measured on the basis of the day that the fault is logged + 1 day. Belgacom has met these deadlines, typically, within 4 – 14 hours. Invalid faults tickets or faults that are found to have been created by the customer are not included within this calculation.</p> <p>For the improved service levels, whilst the most expensive option (4 hours downtime time) is only guaranteed at 60% of the time, in fact, Belgacom achieves this at 86 – 87% of the time. The cheapest option (8 hours downtime) is achieved at a high rate: 98% of the time.</p>
Netherlands	<p>New Line Service (NLS) type 1 : 8 business days NLS type 2 : 21 business days NLS type 3: 50 business days</p> <p>KPN is exempted from complying with the SLAs if the customer deviates from quarterly order forecasts it must provide to KPN.</p>	<p>If the delivery date is not met, then KPN will compensate the customer based on the number of delayed days (up to a maximum of 30 days)⁴⁶, as follows:</p> <p>1- 10 business days: €7 per business day 11- 20 business days: €14 per business day 21-30 business</p>	80% within 10 hours on a business day 95% within 20 hours on a business day 100% within 40 hours on a business day	<p>Compensation is paid as follows:</p> <p>Delay 1-10 days = €1 per working day ("WD")</p> <p>11-20 days = €2 per WD</p> <p>21-30 days = €4 per WD</p> <p>31+ days = no further compensation due but only remedy is cancellation of the order free of charge.</p>	<p>Enhanced fault repair:</p> <p>85%, within 8 hours (any day) 95%, within 24 hours (any day) 99.9%, within 48 hours (any day)</p> <p>Premium fault repair:</p> <p>85% within 4 hours 90% within 8 hours 95% within 20 hours 99.9%, within 48 hours</p>		<p>A non-recurring charge of €5.12 and a recurring charge of €2.29 (excluding VAT) per month. For the special category of premium service levels, the customer may pay a recurring charge of €5.12 (excluding VAT) per month.</p>	This data is not publicly available.

⁴⁵ Raw copper – € 8.03 monthly, shared pair – € 0.56 and raw copper plus € 8.03

⁴⁶ See above.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
		days: €28 per business day 31 business days or more: €0 per business day (only remedy available for faults exceeding 30 days is free of charge termination of the order)						
Ireland	10 Working Days	€12.70 per account affected per Working Day or part thereof of delay.	3 working days at 73% 6 working days at 92% 11 working days at 100%	When the 3 working days SLA is not met, the SLA penalty only applies to Days 4 to 6 of all tickets in breach. The 73% target mitigates the commercial impact of this article (see section 20.1 of the report for details on the formula for calculating the rebate) With the 6 working day SLA penalises Days 7 to 11 of all tickets in breach. The 92% target mitigates the commercial impact of this article. With the 11 working day SLA, Number of Faults subject to penalty C(4) (Count of all tickets closed on or after day 12)	Premium service levels provider: Report fault time – 24x7 Response time: 45 minutes Repair time with operator test results: 6 hours (clock) SLA target: 100% Note: additional compensation applies to failure to achieve the premium service levels (see section 19.3(c) of the report)	For a premium service: Monthly charge per ULMP Line: €9.65 Minimum contract (the minimum contract spend is €10,000 per annum from contract agreement): €10,000	Connection charge with successful completion (existing metallic path): €50.60 Connection charge with successful completion (new line): €92.39 (effective from 01/07/13, until then, free of charge) Monthly rental: €9.91	Figures for December 2012 show that the 10 working day commitment is met 95.79% of the time, very close to the 95.22% Eircom provides to its own subscribers. Fault repair after 11 days is met with 100% performance and both the 6 and 2 working days commitments are beaten at 99% performance each.
Spain	Anywhere between 4 (standard delivery)-45 days (depending on what components of the service need to be installed, this depends on the operator, and the arrangements that they have with the provider, e.g. co-location at the exchange)	A percentage based on the maximum fee	Incident of high priority : 6 hours Incident of medium priority: 24 hours Incident of low priority (other incidents): 72 hours	This percentage is twice the percentage of the time limit for delivery of the service: Penalty = 2 x Dr / Delivery Fee x share high (maximum service level rebate is 16% of the monthly (or periodic) charge.	Enhanced SLAs can be provided upon request.	Reverse penalties are due for wrongfully reporting a fault (meaning the fault is the customer's and not Telefonica's). Penalty when a technician wasn't dispatched: €101.31 from 8am to 10pm, €126.64 from 10pm to 8am. Penalty when a technician was dispatched: €111.46 from 8am to 10pm, €138.57 from 10pm to 8am.	Monthly rental figure: €8.32	This is not publicly available information but performance data is shared between the regulator, Telefonica and carriers.

WLR summary comparison table

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
UK	<p>Provision transfer orders: completed and available to use by midnight on the date provided in acknowledgment notice.</p> <p>Orders for provision of new supply: all orders for new supply will be completed and activated by midnight on the date provided in the acknowledgment notice.</p> <p>Appointments to be available within 13 days (if required).</p>	<p>1 month's line rental</p> <p>If an appointment is not available until:</p> <ul style="list-style-type: none"> •14-16 working days from the CP's order placement, BT will pay £2 (£2.36) per working day until the next available appointment from and including the 14th working day, or •17 working days or later, BT will pay £4 (£4.71) per working day until the next available appointment including the 14th working day. 	<p>SML1 – end of next working day + 1 working day⁴⁷</p> <p>SML2 – end of next working day⁴⁸</p> <p>SML3 - In by 1pm fix the same day, in after 1 pm, fix the next working day⁴⁹</p> <p>SML4 - 6-hour repair⁵⁰</p>	<p>1 month's line rental for each delayed day on a pro rata basis) capped at 60 days per affected line starting from the date of the fault</p>	<p>Can upgrade the SMLs at any time with a charge</p> <p>Flexible appointments</p>	<p>If an engineer attends a premises and the end user is not available, or the engineer cannot gain access, an abortive visit charge of £85 (£100.20) applies</p>	<p>SML3: 37.20 (43.85€) SML4: 48.00 (56.59€)</p> <p>Also, Customer can pay per occasion to get an expedited SML:</p> <p>SML1→ 2: £85 (£100.20) SML1→ 3: £585 (68.66€) SML1-4: £ 735 (€866.49) SML2→ 3: £500 (€589.45) SML3→4: £ 650 (€766.28) SML3→ 4: £ 150 (176.83€)</p> <p>Flexible appointments: £12.50 (€14.74)</p>	<p>The delivery performance for orders not requiring a technician visit has not been meeting the targeted SLAs, however, these have fallen short approximately 5% below the SLAs. This is in contrast with orders that require a technician visit for which Openreach has fallen at least 12 – 15% below the targeted SLA.</p> <p>For repairs, Openreach has been consistently underperforming the targeted SLA. This has descended to meeting the targeted SLAs at as infrequently as 60% in February 2013⁵¹.</p>
Australia	<p>Previous service available (i.e. reconnection of service) (Metric 1):</p> <p>Urban⁵² – 2 Clear Working Days⁵³</p> <p>Major Rural⁵⁴ – 2 Clear Working Days</p> <p>Minor Rural⁵⁵ – 2 Clear Working Days</p>	<p>1 x List Price^{57/58}</p>	<p>Urban – 1 Clear Working Day after the Fault report is logged by Telstra.</p> <p>Major Rural and Minor Rural – 2 Clear Working Days after the Fault report is logged by Telstra.</p> <p>Remote – 3 Clear Working Days after the Fault report is logged</p>	<p>1 x List Price^{59/60}</p>	N/A	N/A	<p>Monthly service fee of AUD22.84 (€16.40)</p>	<p>The following variances were reported:</p> <p>Metric 1: (-) business variance: 12.21% and (-) residential variance: 3.88%</p> <p>Metric 2: (-) business variance: 18.12% and (-) residential variance: 7.96%</p>

⁴⁷ Working day = Monday to Friday, 8am-6pm

⁴⁸ See footnote 1 above

⁴⁹ Working day = Monday – Sunday (including bank holiday) 7am – 9pm Monday-Friday and 8am to 6pm Saturday – Sunday

⁵⁰ Working day = Monday – Sunday, including bank holidays

⁵¹ <http://www.offta.org.uk/charts.htm>

⁵² means a township or community group of 10000 people or more.

⁵³ Means a working day commencing at 8 am of the next or preceding working day. Working day means any day other than a Saturday or Sunday or a public holiday.

⁵⁴ means a township or community group of more than 2500 people but less than 10000 people.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	<p>Remote⁵⁶ – 2 Clear Working Days, each from the relevant order date.</p> <p>New service (Metric 2):</p> <p>Urban – 5 Clear Working Days</p> <p>Major Rural – 10 Clear Working Days</p> <p>Minor Rural – 10 Clear Working Days</p> <p>Remote – 15 Clear Working Days, each from the relevant order date.</p> <p>Appointments between two particular times that are less than or equal to 4 hours apart = within 15 minutes of the appointment time</p> <p>Appointments between two particular times that are greater than 4 hours but less than 5 hours apart for Urban and Major Rural areas = by the end of the appointment time</p> <p>Appointments</p>		by Telstra					

⁵⁶ means a township or community group of 201 people or more but not more than 2500 people within a standard zone (as defined under the *Consumer Protection Act*).

⁵⁷ Note that this Service Level Rebate is payable each time Telstra fails to meet the relevant service level.

⁵⁸ Monthly service fee of AUD22.84 (€16.40)

⁵⁹ Note that this Service Level Rebate is payable each time Telstra fails to meet the relevant service level.

⁶⁰ Monthly service fee of AUD22.84 (€16.40)

⁵⁶ means a township or community group of less than or equal to 200 people or township or community group located outside a 'standard zone' (as defined under the *Consumer Protection Act*).

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	between two particular times that are greater than 4 hours but less than 5 hours apart for Minor Rural or Remote areas = within 45 minutes after the end of the appointment time							
Denmark	<p>Full automatic orders – day of order + 1 business day</p> <p>Orders that can be executed without a technician’s visit at the end user’s premise, and without digging or construction work – day of order + 6 business days</p> <p>Orders that can only be executed by technician’s visit at the end users place, but without digging or construction work – day of order + 12 business days</p> <p>Orders that can be executed either with, or without a technician’s visit at the end user’s place, but requires digging or construction work – day of order + 20 business days</p> <p>Orders that can only be executed by technician’s visit at the end user’s place, but either with or without digging or</p>	<p>Maximum liability is capped on a yearly basis as a function of the customer’s spend but there are no defined penalties for failing to meet service levels.</p> <p>Spend < 10million dk, max. liability is dk100,000 (€13,410.04)</p> <p>Spend >10million and <100million dk, max. liability is dk175,000 (€23,467.57)</p> <p>Spend >100million dk, max. liability is dk250,000 (€33,252.10)</p>	<p>Standard service level: - On site fault remedy procedure – 100 hours in average (based on TDC’s statistics) - Customer visit(booking intervals) - 4 and 8 hour intervals</p> <p><u>Business days 8am – 4pm package</u></p> <p>Fault reporting interval 12PM-12AM</p> <p>Customer visit (booking intervals) - 4 and 8 hour intervals</p> <p>Fault remedy/ debugging time – no information</p> <p>Fault remedy/ debugging time when major fault – max. next business day</p> <p>Fault remedy/ debugging time when minor fault – max. next two business days</p> <p><u>Business days 8AM-7PM package</u></p> <p>Reaction time Major – max 1</p>	<p>Maximum liability is capped on a yearly basis as a function of the customer’s spend but there are no defined penalties for failing to meet service levels.</p> <p>Spend < 10million dk, max. liability is dk100,000 (€13,410.04)</p> <p>Spend >10million and <100million dk, max. liability is dk175,000 (€23,467.57)</p> <p>Spend >100million dk, max. liability is dk250,000 (€33,252.10)</p>	<p>Various service level packages are available at different prices. They are categorised as follows with each including different fault resolution / remedy times:</p> <p>-Business days 8am – 4pm package Business days 8AM-7PM package Business days 8AM-8PM package All days 8AM-10PM package All days 8AM-10PM package</p>	<p>Business days 8AM-4PM dk35,00 (€4.69) Business days 8AM-7PM dk43,20 (€5.79) Business days 8AM-8PM dk91,20 (€12.23) All days 8AM-10PM dk139,20 (€18.67) All days 0AM-12PM dk180,00 (€24.14)</p>	<p><i>WLR Analogue</i> Monthly fee if no DSL services on the same line: dk134 (€17.97) per month (incl. 25% VAT)</p> <p>Monthly fee if DSL services on the same line: dk89 (€11.93) per month (incl. 25% VAT)</p> <p>Activation fee for new and existing lines: : dk950 (€127.40) (incl. 25% VAT)</p>	TDC was contacted and confirmed they do not publish KPIs for WLR.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	<p>construction work – day of order + 20 business days</p>		<p>work hour</p> <p>Reaction time Minor – max 5 work hours</p> <p>Fault reporting interval 12PM-12AM</p> <p>Fault remedy/debugging time – max next business day</p> <p>Fault remedy/debugging time when major fault – max. 11 work hours</p> <p>Fault remedy/debugging time when minor fault – max. next business day</p> <p><u>Business days</u> <u>8AM-8PM</u> <u>package</u></p> <p>Reaction time Major – max 1 work hours</p> <p>Reaction time Minor – max 4 work hours</p> <p>Fault reporting interval 12PM-12AM</p> <p>Fault remedy/debugging time – no information</p> <p>Fault remedy/debugging time when major fault – max. 10 work hours</p> <p>Fault remedy/debugging time when minor fault – max. next business day</p> <p><u>All days 8AM-10PM package</u></p> <p>Reaction time Major – max 1</p>					

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
			<p>work hours</p> <p>Reaction time Minor – max 4 work hours</p> <p>Fault reporting interval 12PM-12AM</p> <p>Fault remedy/debugging time – no information</p> <p><u>All days 8AM-10PM package</u></p> <p>Reaction time Major – max ½ work hour</p> <p>Reaction time Minor – max 2 work hours</p> <p>Fault reporting interval 12PM-12AM</p> <p>Fault remedy/debugging time – no information</p> <p>Fault remedy/debugging time when major fault – max. 4 work hours</p> <p>Fault remedy/debugging time when minor fault – max. next business day</p>					
Germany	Deutsche Telekom does not offer a regulated WLR product.							
New Zealand	<p>There is no predetermined delivery date, but only a promise to provide a Ready for Service (RFS) date within 6 hours of the deemed acceptance time of the order.</p> <p>Order acknowledgement within 4</p>	No liability arises from Telecom Wholesale's failure to meet service levels.	<p>No faults occurring within 5 days: target is 90%</p> <p>Acknowledge fault reports within half an hour of receipt: : 90%</p> <p>Provide RFS date within 8 hours of fault being reported: 90%</p> <p>Restore fault within RFS date: 90%</p>	No liability arises from Telecom Wholesale's failure to meet service levels	N/A	N/A	<p>Monthly rental: \$24.46 (€14.73) (geographically averaged price).</p> <p>\$0 if purchased with unbundled bitstream access.</p>	<p>Based on the figures published at Telecom Wholesale's own initiative (but not officially ratified by the Commerce Commission), the average fault repair performance is better for wholesale than for retail. Provisioning levels are between 97 and 98%, well above the 90% provisioning SLAs. A poor</p>

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	hours Rejection acknowledgement within 4 hours Confirm completion of order within 4 hours after completion		24/7 Online fault management availability: 99.8%					performance is noted for WLR if bundled with broadband (as low as 81%) but Telecom Wholesale explain this is due to an unfair performance metric. The average time to provisioning is 1 day which is fast (and better than retail which took up to 4.7 days in June 2012). The time to restore faults was on average 14 hours between March 2012 and March 2013, 1 hour less than for retail.
France	No later than 8 days from the date of acceptance of the order, 21 days for group orders	Delay in giving access to a single or group ISDN line → 10% of the WLR subscription per calendar day late, capped at 2 months' WLR subscription Delay in processing WLR order exceeding 30 days → 2 months' WLR subscription	For an analogue line: 48 hours (on working days only) from when the customer's notification is registered by France Télécom's support technician. For an ISDN line: 4 hours (on working days only) from when the customer notifies France Télécom (France Télécom's technical support working days only) ⁶¹	Maximum downtime 48 hours SLA delay (working days): 2 months' subscription per affected line, capped at 85% of the affected lines Maximum downtime 8 hours SLA delay (working hours): 4 months' subscription per affected line Maximum downtime 4 hours SLA delay for PSTN line (working days): 4 months' subscription per affected line	Analogue lines: 4 working hours (WH) maximum downtime (MD): €2.45/month 8 WH MD: €1.20/month 4 hrs 24/7 MD:€17.53/month 4 hrs 24/5 MD: €7.62/month ISDN (prices depend on whether line is a single line or a group of lines – prices listed in respective order): 4 hrs 24/7: €18/month - €13.40/month 4 hrs 24/5: €9/month - €6.70/month	Incomplete or faulty order form: €41,00 (prices excluding VAT) Lack of infrastructure: €60,00 End user not present when needed to provide access to premises: €60 End user refuses work to be done on premises: €60 Wrongful request for on-site technical support: €60 Price of travel to the premises as per the France Télécom price catalogue Wrongful notification of a fault to technical support per action : €125,77 Additional fee for order made by fax per action and per WLR access : €125,77 Fees for rejected quote for work to be	WLR Analogue Activation of new line: € 40 Activation of existing line: € 4 Monthly rental fee: €11.70	Residential orders The average delivery times on existing lines were exceeded by 6 calendar days in most cases (from 8 calendar days to 2 calendar days) and France Telecom managed to achieve a total of 98.1% of deliveries within 8 calendar days. Only 10 orders took more than 30 days to deliver. The average time to deliver services to premises which required some building work was 24 calendar days, and only 4.5% of orders were delivered in less than 8 calendar days, 187 took longer than 30 calendar days (note that France Telecom is not bound by any services levels for orders that require building works) France Telecom managed to only resolve 50.6% of faults within 2 working days, and a total of 1818 faults took longer than 3 working days Business orders

⁶¹ Working hours/days not defined in the offer.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
						carried out on end user's private lines, after WLR access has been granted per action : €176,00. Customers are liable to indemnify FT for unfulfilled future orders for which FT incurred costs.		The average delivery time was quite long – at 10 -11 calendar days and similarly the overall percentage of lines delivered on time was only achieved 72.7% of the time. resolution of faults within the service level timeframe was achieved at 80%
Belgium	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Netherlands	<p>WLR NLS type 1: X+12 business days, with an approved preferred date X+4</p> <p>WLR NLS type 1b: (with technician visit, relocation and combinations with MDF possible, at request) X+15, with an approved preferred date X+4</p> <p>WLR NLS type 2: X+15 business days, with an approved preferred date X+9</p> <p>WLR NLS type 2b: with technician visit: X+17, with an approved preferred date X+9</p> <p>WLR NLS type 3: (always requires a technician visit): X+50 business days, with an approved preferred date X+30</p>	<p>For failure to meet a standard delivery date, KPN must pay a penalty of: €1 every business day delayed, per order. The final date of delivery in relation to the scheduled date:</p> <p>€5 for the first business date delayed, per order</p> <p>€2 for every next business day delayed, per order</p>	<p>WLR LC Basic (Above ground): <10 Service hours80% <20 Service hours95% <40 Service hours100%</p> <p>(Underground): <1 Business day80% <2 Business days95% <5 Business day100%</p> <p>WLR LC Premium WLR HC Premium (Above ground):</p> <p><8 Clock hours 80% <24 Clock hours95% <48 Clock hours100%</p> <p>(Underground): <8 Clock hours80% <24 Clock hours95% <48 Clock hours100%</p>	<p>WLR Basic, €5 per 12 hours of faulty service outside of the service level period</p> <p>WLR Premium, €10 per 24 hours of faulty service outside of the service level period</p>	N/A	N/A	<p>WLR Digital Activation of new line: €33.72 (with technician) Activation of existing line: €3.20 Monthly rental fee: €13.11</p>	This is not publicly available data.
Ireland	98% ⁶² of orders to be	€12.70 per account	73% within 2 working days, 92%	Based on a detailed formula – see	N/A	N/A	Monthly rental: €92.39 (new	Ireland has the following

⁶²The percentage varies depending on the type of order placed, ranging from 80% to 98% to be completed within the above timeframe. Note that the order types are not defined in any publicly available documents.

Country	Delivery commitments	Compensation payments	Fault repair commitments	Compensation payments	Availability of enhanced service levels	Reciprocal penalties	Prices	Actual performance
	completed at 5pm on the day following the date of the order	affected per Working Day or part thereof of delay.	within 5 working days and 100% within 10 working days	section 20.1(a) of the report.			connection) Monthly rental: €17.75 (in situ connection)	performance rates against its service levels. On average, Eircom met 95.5% of targets (across all different order types) for delivery of the service. For the 2 day service level (target at 73%), eircom met 68.06%; for the 5 day service level (target at 92%), Eircom met 92.2% and for the 10 day service level (target at 100%), Eircom met 98.57%.
Spain	Connection or disconnection of WLR (without performance preselection), within 2 business days of receipt of order Connection or disconnection of WLR (with performance preselection), within 5 business days of receipt of order Connection or disconnection of WLR within 12 business days of receipt of order Connection of WLR and broadband services within 12 business days of receipt of order	€1.5 per late day €5 per late day for connection of broadband services	Complaint concerning provision of services : 2 working days Complaint concerning infrastructure: 2 working days Complaint concerning billing: 10 working days	Calculated as a percentage of the monthly recurring service fee. This percentage is double the percentage of the maximum time limit for resolutions.		Invalid faults that are reported in the following hours: 8am to 10pm: €101,31 (without dispatch) €111,46 (with dispatch) 10pm to 8am €126,64 (without dispatch) €138,57 (with dispatch)	WLR Analogue Activation of existing line: €2.23 Activation of new line: €79.23 Monthly rental fee: €11.19	No reports available on wholesale supply. The only reports available relate to retail supply.

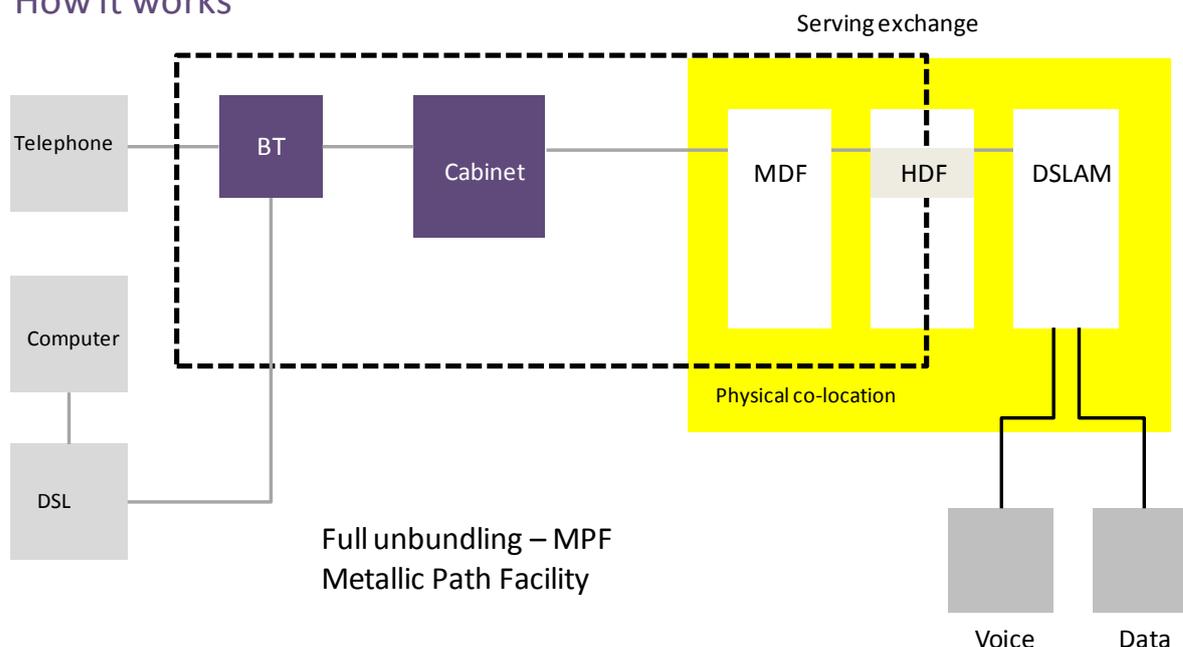
Unbundled Local Loop (LLU)

Ordering and provisioning

The following section describes the position, by country, on the ordering and provisioning process for LLU as well as details on the legal and enforcement regimes.

Local Loop Unbundling

How it works



The yellow zone is where service providers access the facilities of the local loop/copper network owner and install their equipment e.g. DSLAMs.

Source: Openreach

Local loop unbundling is based on the policy objective of enabling third party service providers to co-locate within, or on, the facilities of the incumbent copper loop network owner. Through such co-location, the service provider can rent access to the incumbent's copper lines, thereby securing access to the end user. The key feature of unbundling is that the service provider can, while securing access to the end user, deploy their own broadband technology on the copper line that delivers the service. This led to the deployment of ADSL technology via various vendor/hardware technologies, dependent on the service provider and thus competitive service differentiation.

It should be noted that LLU now exists in parallel to the deployment of higher speed VDSL technology into the local network, via fibre to the cabinet (FTTC) upgrades. This has led to three specific developments that relate to LLU:

1. The provision, in some jurisdictions (i.e. the UK) of "Simultaneous Provide" whereby FTTC/VDSL wholesale products may be provided by the local loop network provider in

parallel with LLU based products. These may be bundled within a specific wholesale price package⁶³;

2. With the deployment of FTTC/VDSL, there has been the emergence of sub loop unbundling. This allows the service provider to access the copper local loop at a site close to/at the point at which fibre upgrade reaches the cabinet of the local node of the copper network⁶⁴; and
3. The advent of FTTC-VDSL upgrade presents significant challenges to the extension of LLU regulation. As it stands, there is generally deemed to be no technological method of employing LLU within a FTTC/VDSL network.

⁶³ In the UK, simultaneous provide also exists for WLR and SMPF.

⁶⁴ In the UK, sub-loop unbundling existed prior to the introduction of Openreach's FTTC/VDSL product..

1 UK, Openreach

1.1 Setting the service levels

Openreach is required to provide LLU to all customers (Communications Providers or CPs) on terms which do not discriminate unduly between them and to do so on fair and reasonable terms and conditions.

Sections 3 and 4 of the Communications Act 2003 set out the general duties of Ofcom. In performing its duties, Ofcom must have regard to, among other things, the desirability of promoting competition in relevant markets. Section 4(9) contains an obligation to encourage compliance with obligations of access and interoperability.

Ofcom is empowered to set conditions in section 45, including a significant market power (**SMP**) condition. In doing so, the regulator must comply with section 47 which requires Ofcom to be able to objectively justify its decision, not unduly discriminate against others and make transparent and proportionate decisions.

In its 2008 report on SLAs⁶⁵, Ofcom justified its application of widened SLAs and SLGs on certain product sets, with the following conclusions:

3.60 *The General Principles that Ofcom has taken into account in reaching its final decision are as follows:*

- when agreed service levels are not met, make provision for compensation to be made based on a pre-estimate of an average CP's loss;
- ensure that CPs are entitled to make a claim for additional loss;
- pay compensation on a per event basis;
- ensure that compensation payments are made proactively; and
- efficient cost recovery should be permitted.

3.61 *Ofcom considers that a service level regime that met these General Principles is likely to be fair and reasonable. Therefore, Ofcom considers that it is appropriate to apply these General Principles in order to assess the fairness and reasonableness of Openreach's service level regime for WLR, LLU and Ethernet, and where necessary to require amendments to these arrangements.*

3.62 *These General Principles were not designed specifically to address the deficiencies with the SLGs considered as part of this review and therefore could apply equally to other products and services.*

3.63 *It is worth emphasising that SLGs need to be challenging to give appropriate financial incentives and that compensatory payments due need to be directly reconcilable to a specific fault or late provision and that they should be paid promptly after the event in question.*

The present LLU obligations stem from the Ofcom statement on wholesale local access, and are based on the SMP determination in that relevant market⁶⁶.

⁶⁵<http://www.ofcom.org.uk/consult/condocs/slg/statement/statement.pdf>

⁶⁶http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf (for the latest statement in 2010). For the most recent contracts, see <http://www.openreach.co.uk/orpg/home/products/llu/contracts/contracts.do>

SMP Condition FAA9 imposed on BT in the WLA statement includes a requirement for Openreach to provide LLU services (including MPF New Provide) on fair and reasonable terms and conditions.

The Undertakings entered into between BT plc and Ofcom in lieu of a reference under the Enterprise Act also contain a series of commitments by BT. These focus on EoI commitments for LLU products (see section 3.1.1(f)) and, as regards, FTTC, to provide SLAs (see section 5.54 of the Undertakings)⁶⁷.

Customers have consistently complained about Openreach's service levels and in particular, that there is insufficient financial incentive to maintain service quality. Customers have tried to negotiate these terms with Openreach, in the first instance; however, such negotiations have for the most part been unsuccessful. As a result, Ofcom and, to a lesser extent, the Office of the Telecommunications Adjudicator (**OTA**) have intervened to review customers' complaints and set any revised service levels or SLGs for Openreach. This resulted, inter alia, in the 2008 statement above where Ofcom reviewed Openreach's financial penalty arrangements following failed negotiations with customers and a referral from the OTA.⁶⁸

As a result of the above review, Ofcom required Openreach to amend the SLAs for LLU to improve the compensation payable to customers, including by paying compensation proactively, setting compensation caps at 60 full days per line per annum, removing the mutual exclusivity between compensation payments and the customer's forecasting and mandating Openreach to monitor its performance for late repair of faults and provisioning. The OTA has been involved in mediating on various issues also – see for example, on appointed order times⁶⁹. In this instance, the OTA helped put in place a new SLG for appointed orders (those which require an engineer visit), including a 13-day SLA and compensation levels⁷⁰. The OTA also reported that the level of late cancellations had been improved and that further scrutiny had been afforded to reducing the number of unnecessary appointments.

Going forward – remedies and rights in the UK:

Should a CP have an issue with the SLA or SLG regimes in place, it can theoretically seek out an Ofcom review similar to the 2008 review, which would aim to require widened or amended SLA and SLG provisions, albeit generally based on the SMP findings on Openreach. We understand however that repeated complaints have been made regarding Openreach's service performance for several years, but that it is only recently that Ofcom has initiated a comprehensive review of service performance⁷¹.

The CP could also institute a dispute before Ofcom, again based on a failure to reach a commercial agreement with Openreach and on which Ofcom would have to make a determination (although Ofcom has discretion to decline a dispute under certain circumstances and so there is no guarantee that Ofcom would intervene). See paragraph 0 of this report in relation to the recent dispute

⁶⁷<http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/bt/consolidated.pdf>

⁶⁸Ofcom, *Service level guarantees, incentivising performance*, Statement and Directions, 20 March 2008.

⁶⁹<http://www.offta.org.uk/updates/otaupdate20130205.htm>

⁷⁰<http://www.offta.org.uk/updates/otaupdate20130205.htm>

⁷¹ Ofcom, Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and remedies, 3 July 2013, p136

instituted by TalkTalk against Openreach regarding the terms of the SLA and SLG metrics for LLU⁷². The final determination for this dispute is due in July 2013.

Alternatively, should there be allegations of undue discrimination in favour of a downstream arm, a CP could seek out a determination to that effect (either via the dispute resolution process or by means of enforcement action by Ofcom), seek redress under the Competition Act, or address the issue via a complaint to the Equality of Access Board who oversee the Undertakings for BT and, to a certain extent, for Ofcom. Finally, there is the route of intervention via the market review process and the imposition of remedies including SLAs and SLGs as remedies to a finding of SMP.

1.2 Service levels

Openreach offers two variants of the LLU service:

- Metallic Path Facility (**MPF**); and
- Shared Metallic Path Facility (**SMPF**).

For both MPF and SMPF, Openreach will provide the service on the requested date as detailed on the order form by the customer for the provision or transfer of the service (**CRD**), which will also be deemed the date agreed between Openreach and the customer for the provision or transfer of the service (**CDD**). The CRD must be no earlier than ten working days from the placement of the order by the customer.

Note that for the SMPF, the CDD will be the CRD unless the removal of the pair gain or any electronic devices is required to provide the SMPF in which case Openreach will provide the earliest reasonably practicable date for the provision of the service and the date agreed by the parties (which will then be the applicable CDD).

When a customer places an order, Openreach must make an appointment for the installation of the service at the relevant premises within 13 working days from the date of the application. The appointment service level will not apply if the order falls within a bracket that is below or above the forecasted number for the relevant region within which the order is placed by 15%.

1.3 Service level guarantees

(a) *Failing to meet the provisioning service levels*

If Openreach fails to achieve the relevant activation service levels, it will pay the customer compensation in the following circumstances:

- if the actual provisioning of the service for which an order is placed on the tactical system (this can only be used for SMPF orders) is later than the Customer Anticipated Date (**CAD**); and

⁷² As noted above, Ofcom has retreated from its initial conclusion that the level of the SLG payment offered by Openreach was not fair and reasonable and has now provisionally concluded that an SLG payment of £2 falls within the range of reasonable values for a pre-estimate of loss.

- if the actual provisioning of the service for which an order is placed on the Equivalence Management Platform (**EMP**) is later than the Customer Commencement Date (**CDD**), or if the KCI3⁷³ message sent by Openreach is later than the CDD.

The level of compensation on each affected MPF or SMPF is £8 (€9.43) per working day or part working day for a maximum of 60 working days, calculated from the next working day after the CAD or the CCD (as applicable) and expiring on the actual date of provision of those MPFs or SMPFs or 60 consecutive working days, whichever is sooner (this is effectively a cap).

If the customer informs Openreach, within 8 working days of the delivery of the service, that the service is non-operational due to a fault, act or omission by Openreach, then Openreach will pay the customer £16 (€18.86) per working day or part working day for a maximum of 60 consecutive working days calculated from the next working day after the CAD or the CCD (as applicable) and expiring on the actual date of provision of those MPFs or SMPFs).

(b) Failing to meet the appointment service level

If Openreach fails to make an appointment available within the 13 working day window, and the first appointment made available is within 14 – 16 working days from the date of application, then Openreach will pay £2 (€2.36) per working day until the next available appointment is attended to, from and including, the 14th working day. If the next available appointment is offered after 17 working days of the date of the application, then Openreach will pay £4 (€4.72) per working day or part working day until the next available appointment is made available.

1.4 Enhanced service levels⁷⁴

(a) MPF expedite

In 2007, Openreach introduced an expedite product to enable customers to request an improved delivery date between working day 3 and working day 9 on MPF new connection requests. However, this is not something that the customer can request at the outset of the ordering process: the customer can only, upon receipt of a KCI2 (order confirmation) request an expedited order. Upon such a request, the Service Management Centre (**SMC**) will, during normal business hours, check the availability of appointments to determine whether or not the customer's CRD can be met, and will reappoint the order accordingly (to accommodate the expedited order).

If the customer's expedited order is only offered a delivery time of 11 days, then the customer can, free of charge, escalate the order request (no earlier than working day 10) for free.

(b) Charge

Customer must pay £140 (€165.04) per occasion for an expedite order. This charge will apply in addition to the normal connection charges.

⁷³Order completed message.

⁷⁴http://www.btinterconnect.com/llunbundle/briefings/Briefing__LLU094_06.pdf

(c) *SMPF expedite*

Openreach also provides an expedite product for SMPF in cases where the narrowband service already exists. The product will enable a customer to select a lead time between working day 1 and working day 3. For ordering and appointment making, the same process as the process for MPF (above) applies.

(d) *Charge*

Customer must pay £100 (€117.89) per occasion for an expedite order. This charge will apply in addition to the normal connection charges set out below.

1.5 Reporting / KPIs

The customer can enter into a contract with Openreach⁷⁵ for access to an online portal to determine Key Performance Indicators (**KPIs**). This entitles CPs access to the following online tools:

- Openreach analytics – customers can use this to view and monitor the progress of their orders and fault reports; and
- Openreach business information toolset (ORBIT) – this allows customer to see the data (the Openreach analytics) as a series of reports.

Through these online tools, customers can create reports on a daily, weekly and monthly basis, in respect of deliveries, order status, repeat faults, mean time to provision and volumes of jobs on a product by product basis.

1.6 Enforcement powers by the regulator

Ofcom derives its regulatory powers in the electronic communications sector from the Communication Act 2003, which implements the requirements set out in the EU Communications Directives. Ofcom has the power, among other things, to impose conditions and directions on providers with SMP and to resolve disputes between CPs and impose fines for non-compliance with regulatory requirements.

Ofcom set up an adjudication scheme⁷⁶ whose objective is to assist Openreach and other providers to set processes in terms of LLU delivery, including service levels (though only if this forms part of a dispute resolution). This is a voluntary scheme which providers can join, but are under no obligation to.

The Office of the Telecommunications Adjudicator (OTA) manages this. Their monthly publications⁷⁷ set out the activities of the OTA. The main role of the OTA is facilitation to encourage quick and effective agreement between the parties so as to avoid future disputes. The OTA is not allowed to set new policy or set charges.

⁷⁵ Openreach KPI Contract at <http://www.openreach.co.uk/orpg/home/products/serviceproducts/downloads/KPI%20Online%20Conditions.pdf>

⁷⁶ <http://stakeholders.ofcom.org.uk/telecoms/groups/telecoms-adjudication-scheme/annex5>

⁷⁷ <http://www.offta.org.uk/news.htm>

If there is a breach of a condition imposed by Ofcom (including SMP conditions), Ofcom has the power to impose fines.

Section 96(2) of the Communications Act 2003 in particular empowers Ofcom to impose fines for breaches of conditions. This can be up to a ceiling of 10% of the company's turnover. Ofcom has imposed a series of fines on authorised providers, and have a set of penalty guidelines in place to guide the imposition of such fines. The guidelines are very generic, albeit with a slightly more detailed section on fining powers under a specific broadcasting head⁷⁸. These fines include a fine⁷⁹ of around 3 million pounds on TalkTalk/Tiscali for billing irregularities.

To date, Ofcom has not taken any punitive enforcement action in relation to Openreach's service levels. Further clarity on when and how Ofcom's enforcement powers might be applied in the context of service level failings would be helpful.

⁷⁸<http://www.ofcom.org.uk/files/2010/06/penguid.pdf>.

⁷⁹http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01051/notification.pdf

2 Australia, Telstra

2.1 Setting the service levels

In Australia, the issue of SLAs was contentious for some time. Telstra's customers were by and large unhappy with service levels, and the regulator, the ACCC, was reluctant to intervene (largely due to the fact that the ACCC considered service levels to be a highly technical and organisation-centric issue, and as such left the issue for Telstra to determine with its customers). This changed when Telstra was required to structurally separate, and entered into a Structural Separation Undertaking (SSU) where it took on a wider dimension as it was negotiated with the ACCC and with inputs from third parties. The SSU commits Telstra to structurally separate by 1 July 2018, which will occur through progressive disconnection of fixed voice and broadband services of Telstra's copper and HFC networks, and subsequent migration of these services to the National Broadband Network (NBN). The SSU also sets out the measures for Telstra to implement in order to ensure transparency and equivalence in the supply of regulated services to its wholesale customers during the transition to the NBN.

The undertaking is predominantly aimed at ensuring equivalence of service between Telstra's own retail arm and third party wholesale customers. The SSU does many things to try and ensure effective and appropriate equivalence and transparency, but most notably, the SSU arguably enhances the service levels regime that Telstra provides to its customers by measures such as providing the option of automatic service level rebates, where Telstra fails to meet a committed functionality and availability service level metric for customers as well as requiring Telstra to submit equivalence and transparency reports to the ACCC to monitor Telstra's performance.

Through the SSU, Telstra has made a number of commitments in respect of implementing a number of systems and processes to manage orders, provision service requests and repair faults in an equivalent fashion. Telstra's assessments against these commitments are measured against performance metrics (Metrics) set out in the SSU. These Metrics will be used to determine if a rebate applies.

2.2 Service levels

Under the SSU, Telstra is required to report its performance against a number of service levels in order to ensure equivalence of treatment between its retail and wholesale arms. This includes specific service levels on ordering and provisioning of a number of various 'Regulated Services', which includes Unbundled Local Loop Sharing (**ULLS**, which will be referred to as LLU for the purposes of this chapter of the report).

In respect of WLR, Telstra's reporting requirement is relative rather than absolute. This means that Telstra is not required to report its performance of the service levels to its wholesale customers versus its performance in respect of its own retail arm. Rather, it is simply required to report on its performance against the service levels in the SSU (i.e. without comparing it to any other unit).

However in respect of LLU, Telstra reports data on an absolute rather than relative basis. Telstra explain this is due to the fact LLU is not purchased by Telstra's own retail arm, so any reporting can only be made on an absolute basis.

Telstra will apply the following activation-related service level metrics for measuring its performance:

- **Metric 14:** Telstra will complete 95% of LLU Individual Cutovers⁸⁰ on the Customer Requested Date⁸¹. This service level does not apply if there is any need for field work or exchange work in order to fulfil the activation. If there is an intact metallic path (see Metric 15), then the lead time is 3 Clear Working Days, however, if there isn't one, then the date of service would be the date of the individual cutover, which date cannot be earlier than the earliest dates in the Australian CommsAlliance code on LLU, which provides a range of service dates in respect of individual cutover requests, which are:
 - o for remote and rural areas, 10-30 clear working days; and
 - o for all other areas, between 5-30 working days.

As such, the earliest service date for non-remote and non-rural areas would be within 5 Clear Working Days of the receipt of the request for Individual Cutover and for remote and rural areas, within 10 Clear Working Days.

- **Metric 15:** The percentage of appointments for LLU Individual Cutovers offered according to the Service Level – where there is an intact⁸² metallic path at the relevant premises. For Band 1 and 2 exchanges only, if the customer requests, Telstra will offer an appointment that occurs 3 Clear Working Days⁸³ after the date the request for the LLU Individual Cutover is received. If the Customer Requested Date is greater than 3 Clear Working Days, that date becomes the applicable Service date.
- **Metric 20:** Telstra will complete 90% of Joint Completion Inspects (JCIs) on the Telstra Committed Day (TCD). The TCD for the JCI is the date agreed by Telstra and the wholesale customer, at which time representatives of both Telstra and the wholesale customer (or its agent or contractor) are able to attend the exchange building. Telstra will offer each wholesale customer a JCI appointment time which is not more than 15 business days after the date Telstra receives the JCI request. Where the date is not suitable for the wholesale customer, the TCD will be the next mutually suitable and agreed time (which date may also subsequently be varied by agreement). A JCI will be completed on a date, irrespective of whether the works which are the subject of the JCI are approved, rejected or subject to conditional approval.

⁸⁰Means the action taken by Telstra to complete a request for the provision of ULLS.

⁸¹ If the Service Level in metric 15 applies (when there an Intact metallic path at the premises), then it is the date offered according to metric 15. If the Service Level in metric 15 doesn't apply, then the Customer Requested Date is: (-) the first date requested by the Wholesale Customer for completion of LLU Individual Cutover; or (-) if the Customer Requested Date for an Individual Cutover is rescheduled or is missed due to an act or omission of the Wholesale Customer or its end user, the later date which is the rescheduled Customer Requested Date for that LLU Individual Cutover, provided that the Customer Requested Date is no earlier than the earliest date for LLU Individual Cutover applicable in the relevant geographic area specified in the LLU – Order Provisioning and Customer Transfer Code, as amended from time to time. **Individual Cutover dates:** for remote and rural areas, the Individual Cutover date is between 10 and 30 Clear Working Days from the date on which the customer notifies the provider of its request for ULLS, for all other areas, the Individual Cutover date is between 5 and 30 Clear Working Days from the date on which the customer notifies the provider of its request for ULLS.

⁸²Intact means a metallic path connected to the network boundary point at a premises where, according to Telstra records at the time Telstra receives a LLU Individual Cutover request in respect of that premises: (a) the path is being used to supply a BTS or LLUS; or (b) the path has recently been used to supply a BTS or LLUS and remains a complete circuit to the exchange but is currently vacant.

⁸³Means a working day commencing at 8 am of the next or preceding working day. Working day means any day other than a Saturday or Sunday or a public holiday.

2.3 Service level rebates

If the customer has entered into a Regulated Services SLA Deed with Telstra, and there has been a Reporting Variance,⁸⁴ then Telstra will pay the following rebates:

- For Metrics 14 and 15 (as relevant to LLU), 1x List Price, with the List Price being the amount equal to monthly access price for the supply of LLU in the relevant area prescribed by the ACCC in an access determination. The current access determination provides the monthly rental price for LLU at AUD 16.21 (€11.64) per month for bands 1-3 and AUD 48.19 (€34.60) for band 4.
- For Metric 20, an amount equal to the annual charge payable by the wholesale customer for a single rack space in the relevant exchange divided by 12.

(a) Method of payment

Rebates will be paid by applying a credit against the amount that is to be paid for the supply of the service. Telstra will determine the rebates for each quarter within 10 Business Days after the report for that quarter has been published.

If Telstra determines that rebates are payable for a quarter they will be credited to the wholesale customer as part of the next available billing cycle for that wholesale customer without the need for the wholesale customer to submit a claim.

(b) Exceptions to payment of rebates

Rebates will not be payable, if:

- the failure to meet the service level is due to:
 - any of the matters or events set out in the conditions⁸⁵ (the **conditions**)

⁸⁴Means in respect of the relevant Metric, when the E&T Performance Result reported in the relevant report shows a variance of 2% or more in negative terms against the minimum percentage performance thresholds of the service levels that are specified in respect of that Metric or if no minimum percentage performance threshold is specified for a Metric, it will be 90%.

⁸⁵ Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra's performance is measured against a fixed Service Level rather than measuring Telstra's comparative performance for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra's control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra's ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user's premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours' notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

- an act or omission of the customer
 - an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome
- the applicable Regulated Service to which the Service Level relates is used by the customer to supply a service to another service provider that is entitled to make a claim against Telstra in relation to the same set of events, such as a right of contribution under the provisions of section 118A of the Consumer Protection Act⁸⁶;
 - the wholesale customer is in breach of the terms of a wholesale contract under which Telstra supplies a Regulated Service to the customer or the terms on which the customer accesses or uses LOLO⁸⁷, Telstra may withhold payment of all rebates to the customer until that breach has been rectified in accordance with the applicable terms;
 - if the rebate is paid to the customer in error, Telstra may recover the amount of that rebate from a wholesale customer (including by applying a set-off against other rebates to be paid to that customer), and;
 - not payable where an order is unable to be processed after it has been received due to unavailability of LOLO (assessed under metric 21⁸⁸).

2.4 Reporting / KPIs

Each Quarter, Telstra must report to the regulator (the Australian Competition and Consumer Commission) and the Independent Telecommunications Adjudicator (ITA), a report (Operational Equivalence Report) that sets out:

- the Equivalency and Transparency (**E&T**) performance result for each Metric for that quarter;
- the result that would have been the E&T performance result for each Metric for that Quarter if the conditions in paragraph 3 of Schedule 10 (the conditions) were not applied;
- the performance against the E&T Metrics in relation to Wholesale Customers; and
- an explanation of how Telstra has applied the conditions calculating the E&T performance result for each Metric for that quarter.

The report must be provided to the ACCC and the ITA no later than two months after the end of the quarter to which it relates.

If the report shows a Reporting Variance,⁸⁹ Telstra will:

⁸⁶ S118A of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* provides that if Telstra (or another wholesale service provider) has contributed to the downstream supplier's failure to achieve any relevant *Customer Service Guarantees* (if applicable), as a result of which the end user makes a claim against the downstream supplier, then the downstream supplier will have a right to make a claim against the upstream supplier in respect of any secondary damages to the extent that that supplier has caused or contributed to the failure by the downstream supplier to achieve the service level.

⁸⁷ Telstra's business to business gateway system.

⁸⁸ Which has a service level of 98% calculated at (Total Time – Outage Time) / Total Time with an applicable rebate amount of AUD 5 (€3.60)x (Average Hourly Order Rate x Total Number of Hours Outage)

- promptly investigate the cause or causes of the non-compliant result;
- at the same time as Telstra provides the report for the quarter, it will separately provide to the ITA and the ACCC an accompanying confidential report setting out for each non-compliant result, a reasonably detailed explanation of the reasons for the Reporting Variance and in certain circumstances,⁹⁰ set out any steps being taken to further investigate and / or rectify the non-compliance, including an estimated timeframe for rectification.

(a) *Telstra's results for December quarter of 2012*

For the December 2012 quarter, Telstra reported the following variances for the relevant Metrics:

- for Metric 14 (the percentage of ULL individual cutovers completed on the customer required date): a variance of 4.59%
- for Metric 15 (relating to a connection where there is an Intact metallic path in place at the premises): a variance of 9.32%
- for Metric 16 (relating to fault repairs): a variance of – 5.59% if applying the ‘conditions’⁹¹ and -11.67% if not applying the ‘conditions’ (i.e. they fell below the threshold).

For the LLU Metrics, if Telstra finds a reporting variance of 2% or more in negative terms, then Telstra is required to investigate the causes of such failure and at the same time report to the ACCC and ITA an accompanying confidential report. The confidential report must set out, in detail, an explanation for the reporting variance, and if Telstra determines that the variance is wholly or in part due to the ‘conditions’, the steps being taken to investigate and / or rectify the non-compliance, including an estimated time for rectification.

For the above negative variances above 2% for Metric 16, Telstra’s investigations indicated that high workloads over the December quarter were the primary cause of the variance.

In its report to the ACCC, Telstra noted that during high workload periods the number of available slots to book tickets within the ticket completion date is limited. This has been a continuing area of

⁸⁹ In respect of the relevant Metric, when E&T result in the report shows a variance of 20% or more (in negative terms): (a) in the case of the relevant metrics to this study, against the minimum percentage performance thresholds of the target Service Level which is specified in the tables in this report or if no minimum percentage performance threshold is specified, then it will be 90%.

⁹⁰ If the failure is due to Telstra’s obligations under the equivalency and transparency measures specified in Schedule D of the SSU.

⁹¹ Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra’s performance is measured against a fixed Service Level rather than measuring Telstra’s comparative performances for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra’s control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra’s ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user’s premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours’ notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

concern for Telstra so to address this issue Telstra initiated a program to manage tickets of work that are at risk of missing the relevant service levels to enable those fault tickets to be identified and, where possible, to meet the applicable service level. The improved program commenced at the end of February 2013.

2.5 Enforcement powers by the regulator

The ACCC regulates competition and access issues in the telecommunications industry, as well as some consumer-related aspects relevant to the telecommunications industry. The *Competition and Consumer Act 2010* (CCA) is the primary legislative instrument through which the ACCC gains its enforcement powers.

The ACCC is responsible for overseeing the telecommunications-specific competition regime in Part XIB of the CCA. Section 151AK contains the 'competition rule,' which states that a carrier or carriage service provider (e.g. Telstra) must not engage in anti-competitive conduct. The ACCC may issue a competition notice in respect of anti-competitive conduct engaged in by a particular carrier or carriage service provider. A competition notice provides prima facie evidence of the matters described in the notice if used in subsequent proceedings.

Under the telecommunications-specific access regime in Part XIC of the CCA, the ACCC may designate a service as 'declared' meaning that the owner of the relevant infrastructure must supply that service on request to other carriers and carriage service providers. The ULLS has been 'declared' by the ACCC until July 2014. This means that as the owner of the legacy local loop in Australia, Telstra will be required to comply with any access determinations that are made by the ACCC in relation to its ULLS.

The SSU also provides a number of commitments relating to dispute resolution, including a commitment to establish an independent dispute resolution body. The Office of the ITA was established on 3 May 2012.

The ITA has power to resolve escalated non-price equivalence complaints that are brought under the SSU. An equivalence complaint can only be escalated to the ITA after it has been referred to Telstra by a wholesale customer and that wholesale customer rejects the Rectification Plan that has been proposed by Telstra. The ITA has authority to direct expenditure up to \$1 million (€718,029.72) to correct systems with a maximum \$10 million (€7,180,297.26) in any calendar year and an ITA determination will be final and binding on the parties under paragraph 14 of Schedule 5 of the SSU. The SSU also gives the ITA the option of referring a dispute to the ACCC for determination.

The ITA can also provide independent expert technical advice to the ACCC. This may include responding to matters referred to the ITA by the ACCC or a dispute or complaint by a wholesale customer under the Migration Plan.

If a wholesale customer requests, the ACCC can act as an alternative adjudicator to the ITA in resolving escalated equivalence complaints.

3 Denmark, TDC

3.1 Setting the service levels

Our research has not shown that the Danish regulator takes a proactive stance in setting service levels for the incumbent. Although TDC is required to publish a reference offer, the regulator points out on their website that its role is not to approve the offer.

3.2 Service levels

For a standard connection (which requires a visit by a technician), TDC will deliver the service within 20 business days from the date of the order. For a DIY connection (which does not require a visit by a technician), TDC will deliver the service within 18 business days from the date of the order.

TDC will aim to complete more, or at least, 95% or all deliveries within the above timeframes and to ensure that they are **faultless**. Delivery⁹² of the ordered service is considered to be **faultless**:

- when the installation is complete and the connection properly works when the technician leaves from the client's site; and
- when there are no defects in the product reported within 3 business days from the delivery date (repairing time of any defects reported and reported to TDC within 3 days from the delivery will be deemed to fall within the delivery period).

Unsatisfactory delivery

In general, unsatisfactory delivery from TDC means that TDC fails to deliver the ordered service within the given delivery period. There are two ways of remediation, which can only be used within 14 calendar days from declared delivery date:

- "Standard repairing" – under this remedy, the customer will have the right to claim for compensation in case of failure
- "Express repairing"⁹³

The customer can enter into a separate agreement with TDC for improved service levels that are superior to the service levels set out here, subject to commercial negotiations between the parties.

3.3 Service level guarantees

TDC will pay compensation to the customer in the following circumstances:

- failure to meet the delivery service level;

⁹² Services are delivered within the delivery period (a) when the installation work begins within the agreed period for the client visit and (b) when all installation work is done on the actual day, even if the work is finished after the normal working time.

⁹³ The customer may contact TDC's wholesale service desk by phone or email before 4pm, and a new installation will be organised for the next business day. All enquiries after 4pm will be considered to have been received on the following business day.

- failure to attend the agreed appointment at the allocated time at the end user's premises for delivery;
- failure to remedy a fault within 12 days or an unsatisfactory resolution; and
- if the service is unsatisfactory, and the customer is unable to use the service.

In the above circumstances, the customer is entitled to a sum of dk123 (€16.49) with VAT as compensation for each LLU connection with delays or unsatisfactory delivery. If there are several simultaneous faults in respect to the same LLU connection, those faults will attract a single payment.

3.4 Reporting / KPIs

In January and February of 2013, TDC exceeded its service levels for

- delivering a service where delivery requires a technician at an average of 100% (95% within 20 business days target - in January, 95% were delivered in 17 days – in February in 5 days), and
- delivering a service where delivery does not require a technician at an average of 96.6% (95% within 18 business days target – in January, 95% were delivered in 5 days – in February, 95% were delivered the next working day).

3.5 Enforcement powers by the regulator

The Danish Business Authority is the telecommunications regulator in Denmark since 1 January 2012, essentially a fusion of the previous Commerce and Companies Agency, Enterprise and Construction Authority, and the National IT and Telecom Agency.

The Danish Business Authority is a part of the Business and Growth Ministry with the Minister for Science, Technology and Innovation as the head of it.

The Danish Business Authority, the Minister for Science, Technology and Innovation, and the Telecommunications Complaints Board are empowered with the regulation of competition in the telecommunications market by the Act No. 169 of 3 March 2011 (Act on Electronic Communications Networks and Services).

The Act entitles the Danish Business Authority and the Minister for Science, Technology and Innovation to impose obligations on companies with significant market power. The Danish Business Authority carries out control to make sure that telecommunication companies live up to those standards.

In accordance with the Telecommunications Act, the Danish Business Authority carries out market analyses at regular intervals.

The Danish Business Authority supervises the incumbent's reference offer.⁹⁴

Chapter XI states the different sanctions and penalties that can be used to enforce obligations.

Section 33 on fines:

- In case TDC fails to submit information that the National IT and Telecom Agency or the Telecommunications Complaints Board may require, the authorities may impose enforcement fines on TDC for the purpose of enforcing compliance.
- If TDC as a USO (Universal Service Obligation) service provider fails to comply with a decision made by the National IT and Telecom Agency, or fails to pay the enforcement fines imposed, the National IT and Telecom Agency may withdraw the designation as USO provider.
- If TDC as a USO (Universal Service Obligation) service provider fails to comply with a decision made by the Telecommunications Complaints Board, or fails to pay the enforcement fines imposed, the Telecommunications Complaints Board may order the National IT and Telecom Agency to withdraw the designation as USO provider.

Section 34 on application of regulations:

- The Minister for Science, Technology and Innovation may lay down such rules as might be necessary to apply regulations issued by the European Communities in the field of telecommunications legislation, including rules on financial penalties or enforcement fines for failure to comply with regulations.

Section 35 on penalties:

- The amount of the fine, besides being fixed under the general rules of Part 10 of the Penal Code, shall also take into account the legal person's turnover during the last year before the judgment is obtained or a fine is imposed.⁹⁵

Enforcement in practice

In October 2011, the ex-regulator National IT and Telecom Agency notified TDC of a breach in their reference offer: no key performance indicators had been published on TDC's website even though TDC had committed to do so. The regulator published a decision requiring the incumbent to publish monthly KPIs for their LLU reference offer.

In January 2012 the Danish Business Authority assessed that TDC still did not live up to the expectations regarding the monthly publication of the KPIs and the following statement was made in a decision:

At the latest on the 31st of January 2012, TDC shall, in accordance with its commitment in the reference offer, publish monthly KPIs in relation to the firm's quality target of Service Level

⁹⁴<http://www.dba.erhvervsstyrelsen.dk/competitive-regulation-smp>

⁹⁵<http://erst.lovportaler.dk/ShowDoc.aspx?schultzlink=lov20110169#a9>

Agreements in their standard offer for LLU. If TDC does not publish the KPI within the given deadline the Danish Business Authority is entitled to impose periodic penalty payments.⁹⁶

There is no evidence that the Danish regulator outsources its obligations to third parties.

⁹⁶http://www.erhvervsstyrelsen.dk/file/268739/paabudsafgoerelse_ovf_tdc.pdf

4 Germany, Deutsche Telekom (DT)

4.1 Setting the service levels

Our research has not shown any proactive involvement on the German regulator's part in relation to service levels and we have approached the Bundesnetzagentur formally to seek out their comments on their engagement in this regard.

The legal obligation to enter into SLAs as part of their reference offer with retail providers is contained in the German Telecommunications Act, reflecting the requirements of the EC Access directive. The regulator is empowered to monitor DT's compliance with its reference offer and amend it if necessary, in particular if demand has changed significantly⁹⁷.

4.2 Service levels

Within 5 business days of receiving the customer's order, DT will inform the customer as to whether or not the requested date of service is feasible.

DT will install a service within 7 days of receipt of the order unless there is a later preferred date expressed by the customer, which date would need to be agreed between the customer and DT.

Unless the customer reports a fault in respect of the installed service, the service will be deemed to be successfully installed.

Exceptions

If any additional works need to be performed at the end user's premises or the end user is not available at the allocated time for installation, then the service levels do not apply.

4.3 Service level guarantees

If the installation is delayed by 1 – 10 business days: DT will pay customer 10% of the installation fee.⁹⁸

If the installation is delayed by greater than 10 business days: 100% of the installation fees⁹⁹ plus 5% of the deployment fees¹⁰⁰ for every additional business day.

4.4 Additional service levels

If a customer requests DT to provide it with certain information regarding ports, and DT fails to do so within 15 business days after receiving the request, then DT will pay the customer €500 for the delay (per instance).

⁹⁷Paragraph (6) of section 23 of Telecommunications Act (TKG)

⁹⁸ €74.17 New connection without work at the end customer without work on street cabinet and €94.97 New connection without work at the end customer with work on street cabinet.

⁹⁹ €108.41, new connection with work at the end customer without work on street cabinet, and €123.92, new connection with work at the end customer with work on street cabinet.

¹⁰⁰ See foot note 19 above.

If the information in response to the customer's request is inaccurate or insufficient, DT is also required to pay the customer €500 (per instance) unless DT can remedy the insufficiency or inaccuracy within 5 business days of being notified of such an insufficiency or inaccuracy.

4.5 Enforcement powers by the regulator

The German Regulatory Authority (Bundesnetzagentur) has been nominated to discharge the functions and exercise the powers assigned to it under the Telecommunications Act (TKG).¹⁰¹

Section 126 of the Act sets forth the general enforcement power of the Bundesnetzagentur. Where an undertaking is failing to meet its obligations by or under this Act, the Bundesnetzagentur shall require the undertaking to state its views and to take remedial action. The regulator may take necessary measures so as to ensure compliance. If the undertaking breaches its obligation seriously or repeatedly, the Bundesnetzagentur may prohibit the undertaking from providing services. In order to enforce the above measures, a penalty not exceeding €500,000 may be set out in accordance with the Administrative Enforcement Act.

Under section 127 of the Act, the regulator is entitled to request information. The operator is obliged to provide Bundesnetzagentur with all the information that is necessary for the compliance of this Act. Bundesnetzagentur may require information to monitor compliance with obligations with the Act.

Enforcement in practice

Our research has not produced any evidence that the regulator has used its powers to enforce DT's service levels obligations, though a large fine was imposed on the incumbent for discriminatory pricing on its LLU offer¹⁰². This fine was not imposed by the regulator, but instead by the European Commission.

4.6 Reporting / KPIs

Deutsche Telekom's KPIs are not publicly available.

¹⁰¹Section 116 of Telecommunications Act (TKG)

¹⁰²<http://www.cn-c114.net/575/a550408.html>

5 New Zealand – Chorus

5.1 Setting the service levels

The New Zealand Commerce Commission (**Commission**) issued a standard terms determination covering access by competing operators to the incumbent's unbundled copper local loop (**UCLL**) network on 7 November 2008 (the UCLL STD). The process followed the changes to the Telecommunications Act 2001 (the **New Zealand Telecommunications Act**) in 2006, which unbundled the local loop in New Zealand and introduced a standard terms determination process for the Commission to determine the standard terms of access to regulated products.

Under that process, the Commission issued the incumbent with a notice, pursuant to the New Zealand Telecommunications Act, requiring it to submit a standard terms proposal for the designated access service (in this case the UCLL service). Section 30F of the New Zealand Telecommunications Act permits the Commission, in calling for a standard terms proposal, to include in its written notice any additional requirements that it thinks fit to specify, having regard to any relevant matters (for example, the terms and conditions of any commercial agreement or regulated terms for any service in New Zealand or overseas).

The Commission determined that the standard terms proposal for UCLL must include a comprehensive service level agreement which, at a minimum, includes defined service levels for:

- provisioning (including 'request acknowledgement', 'notification of expected completion date', 'notification of rejection', 'confirmation of completion');
- fault management (including 'call answer' and 'restoration time');
- forecasting requirements;
- access seeker and Telecom deliverables; and
- proposed remedial actions and outcomes where Telecom does not meet its SLAs.

Prior to issuing its formal notice to the incumbent, the Commission published a draft notice and held a scoping workshop with interested parties. In that scoping workshop, the incumbent communicated its position that it did not object to the inclusion of service levels as part of the of the standard terms determination.

The Commission consulted on the service level terms as part of its wider consultation on the standard terms proposal. Submissions were received on the service level agreement component from the major access seekers (with Telecom, the incumbent, also commenting as part of the submission process).

The process for settling the service level agreement (as part of the full consultation on the standard terms determination) was as follows:

- Incumbent submits standard terms proposal (12 June 2007);

- Access seekers and incumbent to provide detailed submissions on standard terms proposal (by 28 June 2007);
- Commission reviews submissions and publishes draft standard terms determination and supporting draft decision (31 July 2007);
- Access seekers and incumbent provide submissions on draft standard terms determination (by 28 August 2007);
- Access seekers and incumbent provide cross-submissions on draft standard terms termination (by 12 September 2007);
- Conference held on draft standard terms determination (19 – 21 September 2007); and
- Commission publishes final standard terms determination and supporting decision (7 November 2007).

5.2 Service levels

Chorus will provide the following service levels:

- acknowledge the order¹⁰³: within 4 consecutive business hours¹⁰⁴ following receipt at 99%
- notify customer of the rejection of order¹⁰⁵ (if applicable): within 4 consecutive business hours following receipt time at 90%
- notify customer of the expected ready for service date:¹⁰⁶ within 6 consecutive business hours after the deemed acceptance time¹⁰⁷ at 90%
- complete the order right the first time¹⁰⁸: no faults¹⁰⁹ in work carried out to provision the order to occur within 5 Working Days¹¹⁰ at 90%
- meet the expected RFS date:¹¹¹ at 90%

5.3 Service level guarantees

Chorus will compensate the customer in the following circumstances (which relate to certain service levels set out above):

- **completing the order right the first time at 90%:** calculated on a monthly basis at 7% of the provisioning charge for the relevant service¹¹²

¹⁰³Relevant services: Connection Order, MPF Transfer Order, Other Service to MPF, Transfer Order, MPF Move Address Order, MPF Relinquishment
¹⁰⁴ means 8.00am to 5.00pm on any Working Day

¹⁰⁵Relevant services: same as above.

¹⁰⁶Relevant services: MPF Transfer Order, Other Service to MPF Transfer Order, MPF Relinquishment, MPF Move Address Order
 MPF New Connection Order

¹⁰⁷This is 4 consecutive business hours after the receipt of the order.

¹⁰⁸Relevant services: same as above number 8

¹⁰⁹ The fault must be a fault:(a) for which Chorus is responsible; and (b) that has been reported to Chorus within 5 Working Days of confirmation by Chorus of completion of the Order; and(c) that is found and required to be fixed. (it is not a "No Fault Found")

¹¹⁰ Not defined within the document.

¹¹¹ Relevant services: MPF Move Address Order, MPF New Connection Order, MPF Transfer Order, Other Service to MPF Transfer

¹¹² MPF New Connection Order = \$225 (€135.51) (individual new connection where site visit required) \$74.83 (€45.07) (individual new connection where no site

- **meeting the expected RFS date for the relevant service:** the penalty is to be calculated on a per calendar month basis in respect of each order¹¹³ where Chorus' performance falls below the specified percentage level, and is to be calculated as follows: Performance Penalty = A x B, where: A = the applicable penalty rate and B = the provisioning charge for the relevant order.

5.4 Reporting / KPIs

Chorus will provide the customer with a performance report each month. The report will be delivered or made available within 10 Working Days of the end of each calendar month in electronic format. The report will detail Chorus' performance and compliance with each of the Service Levels over the preceding month.

Chorus must provide the customer and the Commission with a consolidated report of its performance within 10 Working Days after the end of each calendar month.

The consolidated version of the report must be made available publicly on a Chorus website at the same time as it is provided to the customer and the Commission.

There are no consequences specified for not filing such reports.

The public versions of Chorus's performance reports are available on its website, here:

<http://www.chorus.co.nz/performance-reporting>

Chorus's performance against the service levels for the two key regulated copper services (UCLL and UBA) are reproduced below. The YTD imputed performance is the average performance over the 12 months to date.

Service level description	Target	Feb 2013 Performance	YTD imputed performance
Provide acknowledgment of receipt of each Order to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	99%	100%	100.0%
Provide notification of the rejection to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	90%	89%	94.8%
Provide notification of the expected RFS Date to the Access Seeker within 6 Consecutive Business Hours of the Deemed Acceptance Time	90%	99%	98.9%
No faults in work carried out to provision the Order to occur within 5 Working Days	90%	94%	93.3%
Complete the MPF Move Address, New Connection, Transfer Order or Other Service to MPF by the notified expected RFS Date	90%	97%	97.0%

visit required) \$56.12 (€33.80) (bulk rate for 20 or more simultaneous new connections at the same exchange where no site visit required)
 MPF Transfer Order = \$74.83 (€45.07) (individual transfer) \$56.12 (€33.80) (bulk rate for 20 or more simultaneous transfers at the same exchange)
 Other Service to MPF = \$74.83 (€45.07) (individual transfer) \$56.12 (€33.80) (bulk rate for 20 or more simultaneous transfers at the same exchange)
 MPF Relinquishment Order = no charge.

¹¹³See above number 20 for the relevant orders, and their respective charges.

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Service level description	Target	Feb 2013 Performance	YTD imputed performance
Complete MPF Relinquishment Order by the notified expected RFS Date	90%	98%	99.3%
Pre-qualification MPF orders acknowledged within 4 Business Hours following order receipt	90%	100%	100.0%
Complete the Pre-qualification Order and return the appropriate information to the Access Seeker within: <ul style="list-style-type: none"> for authorised and unauthorised automatic pre-qualification, 4 Consecutive Business Hours following receipt of the Order for a special manual prequalification investigation or a manual line test, 6 Working Days following receipt of the Order 	90%	98%	95.8%
Provide notification of the change of RFS Date to the Access Seeker within 6 Consecutive Business Hours of receipt of the request to change an existing Order (provided that the request is received at least 1 Working Day prior to the notified RFS Date)	90%	n/a	99.3%
Provide confirmation of completion of the Order to the Access Seeker within 4 Consecutive Business Hours after the Order has been completed	90%	100%	99.9%
Advise at least 5 Working Days before Planned Outage occurs	90%	No planned outages	No planned outages
Advise within 2 hours, on a 24x7 basis, of Chorus discovering or receiving notification of the Unplanned Outage	90%	96%	77.4%
Provide fault report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported	90%	100%	100.0%
Provide notification of the expected restoration time within 8 Fault Restoration Hours of the fault being reported	90%	99%	98.0%
Restore fault within notified expected restoration time	90%	98%	96.8%
Within 10 Working Days of each 6 month anniversary of the Determination Date, Chorus will provide a written rolling 3-year forecast report	100%	n/a	100.0%
Online Order and Tracking Management availability (24/7)	99.8%	96.1%	98.0%
Online Fault Management availability (24/7)	99.8%	99.8%	99.3%
Provide acknowledgment of receipt of each Order to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	99%	100%	100.0%
Provide notification of the rejection to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	90%	97%	96.1%
Provide notification of the expected RFS Date to the Access Seeker within 4 Consecutive Business Hours of the Deemed Acceptance Time	90%	98%	98.6%
Provide notification of the expected RFS Date, or provide confirmation of when Chorus will be in a position to provide notification of the expected	90%	100%	59.5%

Service level description	Target	Feb 2013 Performance	YTD imputed performance
RFS Date, to the Access Seeker within 4 Consecutive Business Hours of the Deemed Acceptance Time			
No faults in work carried out to provision the Order to occur within 5 Working Days of confirmation by Chorus of completion	90%	99%	99.0%
Complete the Order by the notified expected RFS Date	90%	94%	94.6%
Complete the Order by the notified expected RFS Date (Relinquishment and Handover Connection)	90%	87%	96.3%
Complete the acknowledgement of receipt within 4 consecutive Business Hours following the receipt of the Order	90%	100%	100.0%
Complete the Pre-qualification Order and return the required information to the Access Seeker within: 4 business hours for automated pre-qualification; and 6 working days for manual investigations	90%	100%	100.0%
Provide notification of the change of RFS Date to the Access Seeker within 4 Consecutive Business Hours of receipt of the request to change an existing Order (provided that the request is received at least 1 Working Day prior to the notified RFS Date)	90%	99%	97.8%
Provide confirmation of completion of the Order to the Access Seeker within 4 Consecutive Business Hours after the Order has been completed	90%	100%	100.0%
Advise at least 5 Working Days before Planned Outage occurs	90%	No planned outages	No planned outages
Advise within 2 hours, 24 hours a day, seven days a week, of Chorus discovering or receiving notification of the Unplanned Outage	90%	94%	92.2%
Provide report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported	90%	100%	100.0%
5 Provide notification of the expected restoration time within 4 Fault Restoration Hours of the fault being reported	90%	86%	83.3%
Restore fault within notified expected restoration time	90%	96%	83.3%
Percentage of OO&T availability to the Access Seeker	99.8%	99.6%	95.0%
Percentage of OFM availability to the Access Seeker	99.8%	99.8%	97.8%

5.5 Enforcement powers by the regulator

In addition to the contractual service levels offered to access seekers under a standard terms determination, the New Zealand Telecommunications Act provides that certain regulatory tools (including Standard Terms Determinations, such as the UCLL STD) are “enforceable matters”.¹¹⁴

The path for enforcement by the regulator (or a third party) is summarised in the Commission’s *Guidelines for enforcement under Part 4A of the Telecommunications Act 2001* as follows. For the avoidance of doubt, the UCLL STD is treated as a “Group A” enforceable matter in the flowchart below.

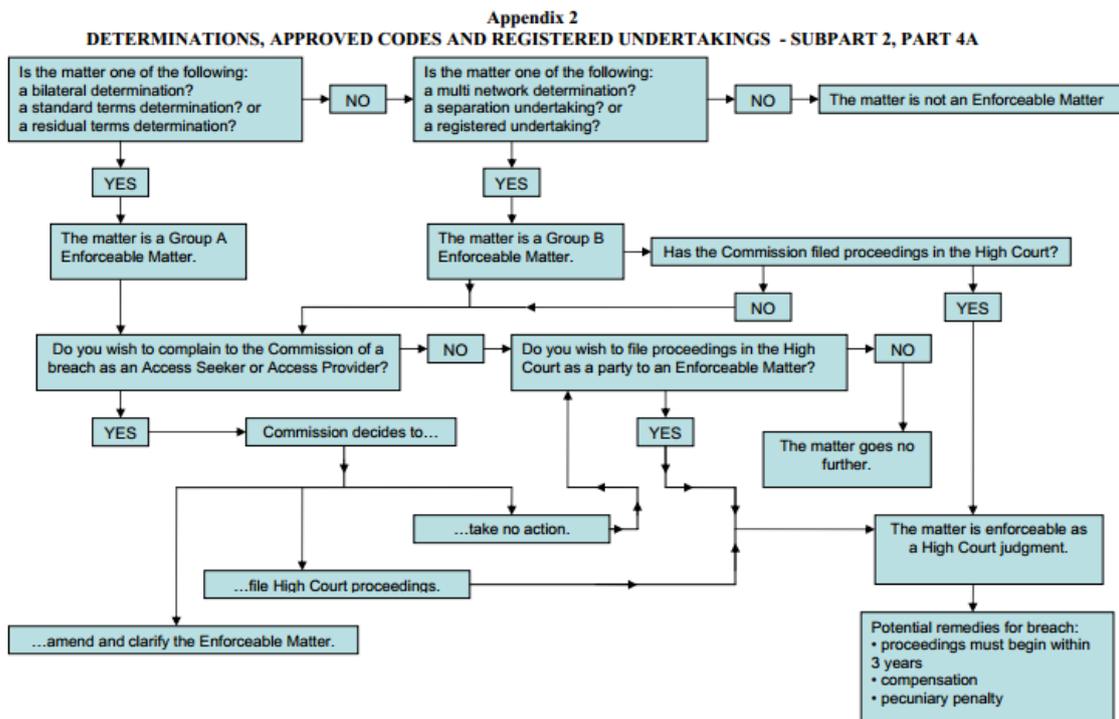


Figure 1 Summary of enforcement actions (Source: Commerce Commission guidelines on enforcement under Part 4A of the Commerce Act, July 2008)

¹¹⁴Telecommunications Act 2001, s 156N.

6 France – France Télécom

6.1 Setting the service levels

Service levels were already being set by the regulator in 2000. In a published recommendation¹¹⁵, Arcep wrote that in the spirit of non-discrimination, France Télécom should be providing wholesale products to third parties with identical timeframes to those which it delivers to its own retail arms. In the same document, it is also mentioned that requests for information by third party providers must be completed within 7 working days. Other delivery timeframes were set, 11 to 13 days for activation of the service.

Arcep noted in a 2004 consultation¹¹⁶ that SLAs should be attached to LLU orders. Paragraph E.2.2 of the consultation in particular outlined what the SLAs should include on a minimum basis: delivery times, migration times, maximum downtime and ancillary services timeframes.

In a 2008 consultation, Arcep judged that France Télécom was providing equivalent SLAs to its own subsidiaries and third party providers, but noted complex fault resolution cases were piling up. The regulator otherwise had little comments to make on FT's SLAs.

(a) Service levels

France Telecom will complete the orders within 7 working days¹¹⁷ from the date that it notifies the customer that its order has been accepted.

(b) Exceptions

The following exceptions apply to the above service level:

- the number of orders placed by the customer
- exceptional difficulties making the deadline impossible to meet (including those that require decongestion work)
- if the orders exceed the allowed number of orders per exchange (orders are limited to 100 per exchange over a 6 week period)
- the deadline is extended to 8 working days if it the order requires activating another component
- force majeure
- orders relating to sensitive line that is subject to protective measures, or
- the deadline is extended to 8 working days if it requires the activation of pre-requisite service elements - 8 days are not guaranteed in case of exceptional difficulties, force

¹¹⁵http://www.Arcep.fr/index.php?id=8455&tx_gspublication_pi1%5Btypo%5D=7&tx_gspublication_pi1%5BuidDocument%5D=134&cHash=f1900db2da18da815ede2b56cb5ce472

¹¹⁶http://www.Arcep.fr/uploads/tx_gspublication/consul-hautdebit.pdf

¹¹⁷ No alternative deadline or mutually agreed deadline offered in the contract.

majeure or impossibility of means or a required visit to the end user cannot be made within 8 days.

6.2 Service level guarantees (payable by France Télécom)

If France Télécom is delayed or misses an agreed appointment at the end user's premises, France Télécom must pay penalties to the customer, which penalties are calculated from the date of the agreed appointment.

If there is a delay in providing the LLU access (including if the delay is due to France Télécom missing an appointment), France Télécom will pay rebates, as follows:

X = number of calendar days' delay		Cap
Penalties	X*10% of LLU access subscription ¹¹⁸	2 months of LLU access subscription

If the delay in the supply of the service exceeds 30 calendar days, the penalty owed by France Télécom will be equal to 2 months' worth of LLU subscription fees. Penalties applicable to any given month (M) are only applicable if:

- the customer formally makes a claim for penalties to be paid; and
- the provider must communicate monthly forecasts every quarter, at the latest on the first day of the month preceding a given quarter, as well as partial monthly forecasts per county over the 3 months period in a given quarter.

If there is a fault within the provided LLU and the customer notifies France Télécom of the fault within 30 days of the delivery of the service, France Télécom will pay rebates as follows:

Penalty	Unit Amount €
Penalty for faulty total access	4*monthly price (ex VAT) for total access ¹¹⁹
Penalty for faulty twisted pair copper wire access	4*monthly price ¹²⁰ (ex VAT) for twisted pair copper wire access
Penalty for faulty twisted double pair copper wire access	4*monthly price ¹²¹ (ex VAT) for twisted double pair copper wire access
Penalty for faulty shared access	4*monthly price ¹²² (ex VAT) for shared access

Penalties exclude migrations, cancellations and orders relating to lines with multiplexed subscribers.

¹¹⁸ Full access: €8.90

Twisted pair full access: €17.80

Twisted double pair full access: €35.60

¹¹⁹€56

¹²⁰€17.80

¹²¹€35.60

¹²²€1.64

6.3 Ancillary service levels

(a) Availability tool

France Télécom will make the LLU availability tool available at 99.5% availability per calendar month. If the availability falls below this level then France Télécom will pay the following credits:

Availability	Amount
100%-99.5%	0 Euros
99.5%-98%	1 month free subscription
Less than 98%	2 months' free subscription

Subscription costs from €1,960 per month for a single subscription and from €3,920 per month for several subscriptions. Monthly penalties are capped to a sum equal to 2 months of subscription.

(b) Exceptions

The above service levels do not apply in the following circumstances:

- the parties have otherwise contractually agreed daily unavailability periods (at present, 1:30am to 4am every day except Monday from 1:30am to 6am)
- there is planned maintenance on France Télécom's IT systems, which will be notified to the customer at least 2 working days in advance
- disruptions caused by the customer's end users
- breach of fair use policy
- system attacks

(c) Error rate

France Télécom will ensure that the maximum error rate (when using the availability tool for LLU) is 5%. If France Télécom fails to achieve this, then it will pay the following penalties to the customer:

Error rate	Amount
0% - 5%	0 Euros
5% - 10%	1 month's free subscription
> 10%	2 months' free subscription

Monthly penalties are capped to a sum equal to 2 months of subscription. 1 month's subscription is €1,960 and €3,920 for multiple subscriptions.

6.4 Reverse penalties (penalties payable to France Télécom)

The following penalties are payable by customers in the following circumstances:

Type of penalty	Sum per unit in Euros
Penalty for wrongful visit – inadequate infrastructure (1) ¹²³	60
Penalty for wrongful visit – end user away from premises	60

¹²³To install a user's private lines

Type of penalty	Sum per unit in Euros
Penalty for visit refused by end user	60
Penalty for visit organised via e-meeting but not confirmed in an order form	41

The following penalties are payable by the customer in the case of incorrectly drafted order forms for LLU access:

Type of penalty	Sum per unit in Euros
Penalty for incorrectly drafted order form	41

This penalty is applicable in the following circumstances:

- the order form does not refer to the main contract, or contains information which contradicts that which was agreed between the parties
- the order form applies to a line which is not available in accordance with the main contract
- the order form applies to a line for which a tie cable is not feasible
- the order form applies to a line on which the customer identified an unavailable or non-existent socket
- the order form applies to a line which is already the subject of a previous order in progress
- the order form applies to an unavailable or non-existent address
- the customer fails to confirm his total access or migration order form if the said form would automatically terminate a sensitive access.

6.5 Reporting / KPIs

Arcep has imposed a number of reporting requirements for France Télécom to comply with, including measuring and publishing the relevant quality of service indicators (i.e. performance against the service levels) for LLU.¹²⁴

As such, France Télécom publishes reports on matters, including average delivery times, amount of orders completed per 30 days (existing and new lines), fault rectification rate, fault restoration deadline, number of faults not resolved after 3 days (existing and new lines). The reports are provided in respect of residential and business customers. Further, in respect of fault rectification, they are provided in accordance with the relevant tiers. However, there are no consequences for France Telecom from not publishing the reports and France Télécom has only published data for January 2013.

¹²⁴Arcep, Article 17 of Decision 2008 – 0835.

6.6 Enforcement powers by the regulator

Arcep is the French telecommunications and postal services regulator.

Legal basis for existence

French telecommunications law is codified in a single code¹²⁵. Article 36 provides for the existence of Arcep, its powers to take decisions on matters of interconnection and network access, arbitrate disputes and issue fines to providers up to 3% of their turnover per year.

Article 38-1 of the Code imposes on providers who have significant market power the obligation to publish reference offers and gives the regulator the right to make changes to these. Article 38-3 also gives the right to apply for the suspension or permanent cancellation of Arcep's decisions before the Council of State.

Arcep is free to determine its own statutes and procedures which providers must follow (article D288) and is empowered to reach agreements with them (article D290).

As such, non-compliant providers are never given less than a month to comply following a formal notice, notice which Arcep can publish at its discretion.

The provider can then either comply and escape any further action, or is given no less than 10 days to present a formal case to the regulator. This will then be heard by the regulator and a fine may follow depending on its decision.

Enforcement in practice

The process by which Arcep makes the incumbent comply is by way of publishing decisions and issuing France Télécom with formal notices. According to Arcep's own brief regulatory history of local loop unbundling, the issue of formal notices to comply only took place in the early 2000s¹²⁶. We must note however there is little transparency in the regulator's work given that it is under no obligation to publish its formal notices to France Télécom. It follows that the process by which the regulator monitors France Télécom and compels the incumbent to comply with the terms of its reference offers is not an entirely visible one.

Some publications must however be validated in the Journal Officiel¹²⁷ which is France's legislative repository for the public and where publications take effect as the publisher having given formal notice (similar to the London Gazette in England). None of these however contain information pertaining to a fine against France Télécom but they do show evidence of Arcep's decisions being given executive assent.

Whilst France Télécom has been the subject of many fines, these appear to result from litigation before the competent competition courts and competition authorities rather than before the regulator. The latter has fined a competitor of France Télécom before (Numéricable, €5 million) for ignoring a formal notice, but it appears France Télécom has not suffered similar treatment.

¹²⁵<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070987>

¹²⁶<http://www.Arcep.fr/?id=6989>

¹²⁷<http://www.Arcep.fr/index.php?id=8193>

Enforcement of terms of reference offers

Hence there appears to be no 'hard' procedure followed by the regulator to enforce France Télécom's obligations, nor does Arcep make its formal notices to France Télécom visible or available on its website. It seems to be down to affected providers to make a case before the competent courts.

7 Belgium, Belgacom

7.1 Setting the service levels

In 2000, the Belgian Institute of Postal services and Telecommunications (**BIPT**) published an LLU reference offer. However, at the time, it did not make a ruling on service levels and left it up to Belgacom to present it with a regime to review. In 2003, following a complaint by a customer, BIPT intervened to examine the meaning of a paragraph regarding the calculation of time in Belgacom's BROBA reference offer.

Importantly, BIPT imposed the requirement for improved service levels upon Belgacom. In 2004, BIPT required Belgacom to produce a basic SLA document, which Belgacom then did. The BIPT approved this version of the document, and it came into force on 1 April 2004. Notwithstanding this, BIPT noted that aspects of the document such as penalties due for late ticket closure needed to be introduced as well as the introduction of escalation procedures and testing.¹²⁸

Since then, BIPT has had an active role in reviewing and revising the service levels, including:

- in 2004, it made 50 changes to the service levels on the basis that they were not clear enough, or to enhance certain service levels in order to provide a level playing field for customers. In particular, BIPT criticised Belgacom for attempting to limit access to improved service levels¹²⁹.
- in 2006, in response to a trend of deterioration in delayed supply, BIPT imposed an improved forecasting regime to help (Belgacom) prevent delays¹³⁰.

7.2 Service levels

Belgacom will provide the following service levels:¹³¹

- validate the order: immediately (50% within 30 minutes, 95% within 2 working days and 99% within 5 working days¹³²)
- make an appointment slot available:
 - o where a visit is required: 95% within 11 working days, 99% within 22 working days
 - o where a visit is not required: 95% within 9 working days, 99% within 19 working days
- complete the order:¹³³
 - o where a visit is required: 8 working days

¹²⁸BIPT decision on Belgacom's interconnection offer (2004)

¹²⁹BIPT decision on SLAs in LLU reference offer (2004)

¹³⁰BIPT decision on LLU SLAs and forecasting (2007)

¹³¹ Belgacom is exempted from complying with the SLAs if the customer does not spread its orders evenly. The maximum daily volume must not exceed 10% of the total orders for that month.

¹³² A working day is from 8am to 4:30pm excluding weekends and bank holidays. 'Belgacom' holidays are 2 January and 26 December.

¹³³ This SLA is only available for orders made via the XML interface.

- where a visit is not required: 10 working days

The absolute deadline in any of these cases is 45 days.

Further, Belgacom will provide the following service levels for installation of equipment (e.g. time cables, splitters, vertical and horizontal OLO blocks etc):

- 15 working days (where all conditions are fulfilled, i.e. available floor space and sufficient spaces within MDF)
- 40 working days (in case there are no cable trays or place within the MDF)
- construction work for adapting the building: on quotation (e.g. in case of congestion of the MDF, extensive extension works may be needed)

Availability of LLU lines

Belgacom will provide the following services levels for customers who have subscribed to the Improved SLAs only.¹³⁴

Availability	<p>99.94% for $n \leq 1500$ lines in improved SLA 99.95% for $1500 < n \leq 2500$ lines in improved SLA 99.96% for $2500 < n \leq 5000$ lines in improved SLA 99.97% for $n > 5000$ lines</p> <p style="text-align: center;"><i>Where n = number of lines inter-beneficiary</i></p>
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7.3 Service level guarantees

If Belgacom fails to achieve the installation service levels specified above, Belgacom will pay penalties as follows:

- 15 day service level: €200 per working day of delay
- 40 day service level: €300 per working day of delay
- where quotation for construction is needed: €400 per working day of delay

If Belgacom fails to achieve the order completion timeframes, Belgacom will pay penalties as follows:

- 95% service level: €10 per calendar day (after the 10th working day timer has been reached)
- 99% service level: €5 per calendar day (after the 10th working day timer has been reached)

In case the guaranteed maximum availability is not provided, and there are >100 related pairs concerned, then the beneficiary is entitled to 5% of yearly rental fee multiplied by the number of lines subject to Improved SLAs.¹³⁵

¹³⁴ One-off fee: €2000.47. Activation: €8.23. Switch to basic/improved SLA (either direction): €8.23. Monthly fee: €7.11.

7.4 Improved service levels

(a) Service levels

Belgacom offers a range of improved service levels under its most recent reference offer¹³⁶. Belgacom will charge the customer a onetime fee of €10 per customer visit in order to provide the following improved service levels:

- validating the order (accepting or rejecting it) upon receipt: 30 minutes (if manual treatment of the order is required, 2 working days)
- improved percentage of kept appointments: calculated as a percentage of appointments kept by dividing the number of improved service level orders for which customer appointments are kept by the number of improved service level orders having at least one customer visit. If one appointment has not been kept, the whole service level is considered not to have been met, and a penalty applies.¹³⁷
- free of charge modification of the requested service date (if different to the initial requested date)

(b) Penalties

If Belgacom misses an appointment for an improved service level order, as per above, Belgacom will pay the customer €40 per missed appointment.

7.5 Reporting / KPIs

BIPT requires Belgacom to publish a list of KPIs. Belgacom will charge the wholesale provider €25.14 for the production of SLA documented reports.

The incumbent publishes wholesale KPIs on its website¹³⁸. Using the most recent figures for 2013, our analysis is that the overall performance is very strong but industry members have commented that the reason for this high performance can largely be attributed to Belgacom's main SLA exclusion which exonerates the incumbent from meeting service levels for order made outside of the forecasts. In other words if a provider notifies Belgacom it will order 1,000 unbundled lines in a given month, but in fact orders 2,000 (due to customer demand for instance), then Belgacom does not have to meet service levels for 900 of the 1,000 extra orders¹³⁹.

It is worth noting that we understand that the Dutch incumbent KPN operating in Belgium, may no longer purchase regulated LLU products from Belgacom, preferring to enter into commercial agreements with the Belgian provider.

¹³⁵ Raw copper – €8.03 monthly, shared pair – €0.56 and raw copper plus €8.03

¹³⁶http://www.belgacomwholesale.be/wholesale/gallery/content/documents/bruo/BRUO_approved_BIPT_03042012.zip

¹³⁷Note that if the end –user was not present, or the appointment could not be kept due to the end user, then

¹³⁸http://www.belgacomwholesale.be/wholesale/en/jsp/dynamic/productCategory.jsp?dcrName=perfor_indic

¹³⁹ Paragraph 14 of the Basic SLA reference offer

Belgacom is committed to validating 50% of orders within 30 minutes, 95% within 2 working days, and 99% within 5 working days. In this respect, Belgacom has in fact exceeded these levels by 2 – 3 points, with a particularly high percentage beyond the 30 minute period at 60% - 70% of orders being validated within 30 minutes.

On provisioning, Belgacom beats its SLAs. The order validation SLAs are all well above their contractual levels. The final delivery deadline which is 10 days in the SLA is met on average in 4.9 days in practice, half the published SLA. The longer 20 day SLA (to be met at 99% of the time) is on average met after 12 days.

The above timelines apply to orders requiring an end user visit. For the simple orders not requiring one, not a single SLA was breached (99.1% of orders delivered on time).

Customer helpdesk calls are answered extremely quickly, on average within 18 seconds. Only 0.1% of customers had to wait longer than 15 minutes to have their calls answered in February and 0% in January.

Web-based tools were also available beyond their contractual availability periods, 12 hours being the maximum downtime allowed per month. The Open Calendar tool, used to book appointments for end user visits, was down for 9 hours 15 minutes in January which is the longest unavailability period recorded for 2013 so far. By contrast, the XML ordering tool experienced no downtime whatsoever in January.

The basic fault repair service level is measured on the basis of the day that the fault is logged + 1 day. Belgacom has met these deadlines, typically, within 4 – 14 hours. Invalid faults tickets or faults that are found to have been created by the customer are not included within this calculation.

For the improved service levels, whilst the most expensive option (4 hours downtime time) is only guaranteed at 60% of the time, in fact, Belgacom achieves this at 86 – 87% of the time. The cheapest option (8 hours downtime) is achieved at a high rate: 98% of the time.

7.6 Enforcement powers by the regulator

Legal basis for existence

The BIPT derives its regulatory powers from a 2003 Royal Decree¹⁴⁰ which gives it the power to resolve disputes, launch investigations, consultations and make formal requests for information. The BIPT is given the power to issue fines in Article 21, paragraph 2 and can fine infringing companies up to 5% of their turnover per year, but never above €12.5 million. The Decree defines infringement very widely as being a failure to observe legal or regulatory requirements that come under the regulator's scrutiny.

A later Decree¹⁴¹ reiterated the BIPT's mission and powers given to it to ensure choice for consumers, fair competition and non-discrimination. Part III of the Decree empowers the regulator to intervene in disputes between service providers and impose obligations on them if it is necessary

¹⁴⁰<http://www.bipt.be/ShowDoc.aspx?objectID=957&lang=en>

¹⁴¹<http://www.bipt.be/GetDocument.aspx?forObjectID=951&lang=fr>

for the purposes of fair competition. This part of the Decree also allows the regulator to carry out market analyses and consider providers to have significant market power (“SMP”).

The powers to impose the publication of reference offers on providers who have SMP, separate accounting, cost transparency, are all contained in this Decree.

Enforcement in practice

Before issuing a fine, the BIPT will publish its decisions and impose obligations on the concerned provider. This publication will contain a deadline for compliance.

If the affected provider does not observe the deadline, the BIPT will nevertheless hear its arguments before taking further action. Depending on the outcome of that hearing, the regulator may issue a fine and a new deadline for compliance.

So far the BIPT appears to use fines as a last resort as only a small number have ever been issued against Belgacom.

The most notable ones include a €800,000 fine for failing to properly inform consumers of a change in the terms of their internet subscriptions.¹⁴² The document sets out the procedure which the BIPT followed prior to imposing the fine:

The regulator first issued Belgacom with a non-compliance notice which also invited the incumbent to communicate its reasons for the alleged breach.

The BIPT responded disproving Belgacom’s answers, attempting to prove their consumers had been treated fairly despite apparent paperwork compliance failings.

Another letter by Belgacom followed, reiterating reasons why they believed they were compliant but the BIPT stood firm and communicated the amount of a possible fine to the provider as well as a summons to a hearing. A meeting took place and the fine was issued thereafter. The 2003 Decree gives the regulator 60 days to publish its decision following such meetings.

According to a national newspaper¹⁴³, the fine was reduced to €500,000 but the BIPT has not published any evidence of this.

Other fines include:

- a 2006 fine regarding the failure to pass on cost decreases of mobile termination rates¹⁴⁴(€3,090,000)

- a €66.3 million fine in 2009 for abuse of a dominant position, by way of discrimination between offers for consumers and wholesale on the mobile market¹⁴⁵.

Enforcement of terms of reference offers and outsourcing

¹⁴²<http://www.ibpt.be/GetDocument.aspx?forObjectID=3304&lang=fr>

¹⁴³http://www.rtf.be/info/economie/detail_belgacom-a-mal-informe-ses-internautes-500-000-euros-d-amende?id=6802683

¹⁴⁴<http://www.ibpt.be/GetDocument.aspx?forObjectID=2858&lang=fr>

¹⁴⁵ Belgacom appealed this fine and there is no published document on the regulator’s website on this fine so it is likely still being disputed in court.

There is no evidence that the BIPT outsource their obligations to third parties.

With regards SLAs and other obligations, the BIPT has never sought any other method of enforcement other than publishing decisions which Belgacom implements.

Issues can be raised in an operational working group which the BIPT has confirmed to us is effective at resolving issues. By default the BIPT won't intervene but it can step in if no resolution is found through the working group process which includes senior BIPT members.

8 The Netherlands, KPN¹⁴⁶

8.1 Setting the service levels

According to the BEREC 2011 monitoring report on broadband common positions¹⁴⁷ a non-discrimination obligation is applied to LLU in the Netherlands. There is an explicit obligation to ensure that services provided to the SMP player's own business are identical to those supplied to third parties. The reference offer includes a variety of service levels, and access seekers may submit a reasonable request for other service levels. There is an SLA in place, and compensation is provided for services which fall below such levels. However, the terms are specified by the SMP operator. KPIs relating to the service levels are available and published. These do allow comparisons of service levels to the downstream business compared with third parties.

According to the 2009 ECTA Regulatory Scorecard, the LLU reference offer at that time did include SLAs and associated penalties, but these did not include a full business-grade specification¹⁴⁸.

8.2 Service levels

KPN will deliver the services in accordance with the following service levels:

- New Line Service (NLS) type 1¹⁴⁹: 8 business days
- NLS type 2¹⁵⁰: 21 business days
- NLS type 3: 50 business days

If NLS1 can be delivered, then KPN will plan for an activation date, which date will be the same date as the date requested by the customer. If KPN needs to deliver NLS2 or NLS3, then the order will be scheduled to a later date.

KPN will provide the following service levels in relation to the reliability of the delivery timeframes (set out above):

- NLS1, correct delivery on the planned date – 92%, second attempt at correct delivery date: 98%

8.3 Service level guarantees

If the planned dates are not met, KPN will compensate the customer based on the number of delayed days (up to a maximum of 30 days)¹⁵¹, as follows:

- 1 – 10 business days: €1 per business day
- 11-20 business days: €2 per business day
- 21-30 business days: €4 per business day

¹⁴⁶http://www.kpn-wholesale.nl/media/214334/2012_06_26_parameter_schedule_per_30-8-2012.pdf

¹⁴⁷ http://berec.europa.eu/eng/document_register/subject_matter/berec/download/1/219-berec-monitoring-report-on-broadband-com_1.xls
<http://www.ectaportal.com/en/REPORTS/Regulatory-Scorecards/Regulatory-Scorecard-2009/>

¹⁴⁹Can only be enabled on the MDF or MDF and CDF.

¹⁵⁰Same as NLS1, but with a maximum number of 3 splices on the provisioning cable.

¹⁵¹It is unclear what happens after 30 days. Although we have not analysed the wholesale supply contracts, it is likely that after 30 days, the customer may have a right of termination for delayed supply.

- 31 business days or more: €0 per business day (only remedy after 21 days is cancellation of the order free of charge)

If the delivery date is not met, then KPN will compensate the customer based on the number of delayed days (up to a maximum of 30 days)¹⁵², as follows:

- 1- 10 business days: €7 per business day
- 11- 20 business days: €14 per business day
- 21-30 business days: €28 per business day
- 31 business days or more: €0 per business day (only remedy after 21 days is cancellation of the order free of charge)

If an order has been delivered more than 15 days after the planned date of the order, the customer has the option to cancel the order, in which case, KPN will not charge any installation or cancellation fees.

8.4 Reporting / KPIs

KPN provides reporting documents to its customers. Service and maintenance KPIs are reported monthly on a mutual basis (both the customer and KPN keep track of the performance and compare results). The same process takes place with service availability statistics, but this data is only exchanged twice a year.

Monthly KPIs relating to ordering and provisioning are provided to the customer by KPN.

KPN must provide monthly reporting in respect of its service level performance within 10 calendar days of the end of the month to which the report relates. A customer may submit an objection in respect of the relevant report within one calendar month of receiving the report, and KPN must respond to 95% of objections within two calendar months of receipt of the objection.

KPN's KPI data is not publicly available.

8.5 Enforcement powers by the regulator

The regulator states on its website¹⁵³ that it is empowered to carry out dawn raids, impose fines and make orders and directions to prevent further breaches. This is consistent with the kind of powers EC law sets out in the relevant directives. The legal basis for these powers is contained in the Establishment Act of the Netherlands Authority for Consumers and Markets 2013.

In practice there have been instances of the ACM taking action against the incumbent in relation to their reference offer. In July 2010¹⁵⁴ the regulator decided that KPN's reference offer was deficient in some respects. The mechanism relied on by the regulator in this case was article 6a.9 of the Dutch Telecommunications Act which provides that it can only impose the publication of a reference offer on the incumbent which can be modified if the regulator judges it to be inadequate in terms of the conditions attached to the provision of access, which by implication includes SLAs.

¹⁵²See above.

¹⁵³<https://www.acm.nl/en/about-acm/mission-vision-strategy/our-powers/>

¹⁵⁴<https://www.acm.nl/nl/download/publicatie?id=10066>

KPN was told to publish quarterly wholesale KPIs that should include at least the total amount of delivered services, products delivered for each participant and service levels.

Due to repeated failure by KPN to publish these KPIs prior to 2010, the incumbent was fined €25,000/day in breach, capped at €250,000.

Another decision¹⁵⁵ relates to the provision of leased lines. In a dispute between Tele2 and KPN, the regulator ordered KPN to align some of its service levels in accordance with Tele2's demands.

Specifically, Tele2 complained that in order to sell leased lines, they were entirely dependent on procuring LLU lines from KPN – in itself this was not the nature of the complaint, but rather the fact that service levels that applied to KPN's leased line products were better than those applicable to LLU which Tele2 was relying on to sell their own brand of leased lines. Despite a request by Tele2 to KPN to align their service levels, the incumbent failed to produce a satisfactory offer and Tele2 referred the dispute to the regulator. The latter's decision was to give effect to Tele2's request, namely to resolve 90% of faults within 4 hours, and 100% of faults within 8 hours. Furthermore it was noted that KPN's delay in responding to Tele2 constituted a breach of a 2011 market analysis decision which imposed the obligation on KPN to respond to requests for information in a timely manner.

¹⁵⁵<https://www.acm.nl/nl/download/publicatie/?id=10361>

9 Ireland

9.1 Setting the service levels

Irish regulator Comreg's first significant attempt at setting service levels for local loop unbundling came in 2001 in the form of an Information Notice¹⁵⁶. This document outlined the history behind this, namely that following Eircom's publication of a reference offer, the regulator found SLAs were not part of this offer and directed the incumbent to publish one by May 2001. Very detailed requirements for service levels are contained in this document. Each aspect was discussed in this 50-page notice: provision of information, provisioning, penalties, fault repair. A benchmarking exercise was carried out, comparing SLAs in other European countries to come up with a similar set of SLAs.

Scrutiny went on the following year. In a review of Eircom's reference offer¹⁵⁷, Comreg noted that SLAs were still lacking in some respects, in particular the absence of penalties for failure to meet service levels.

Since then a number of developments have taken place in relation to service levels and the provisioning of LLU in general which demonstrate close scrutiny by the regulator. A LLU code of practice was being discussed in 2008¹⁵⁸ and on-going discussions have been underway between the players in this space on the terms of the offer.

9.2 Service levels

Eircom wholesale provides the customer with the following service levels:

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
DRL ¹⁵⁹ Order Type	Advice of completion of the accepted order by 1700 on the first working day ¹⁶⁰ following the working day the request was recorded on the UG ¹⁶¹ .	98% of requests in accordance with performance metric.	€12.70 per account affected per working day or part thereof of delay.
ULE ¹⁶² Order Type	Advice of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded	97% of request in accordance with performance metric.	€12.70 per account affected per Working Day or part thereof of delay.

¹⁵⁶<http://www.comreg.ie/fileupload/publications/odtr0137.pdf>

¹⁵⁷<http://www.comreg.ie/fileupload/publications/odtr0236.pdf>

¹⁵⁸<http://www.comreg.ie/fileupload/publications/ComReg0811.pdf>

¹⁵⁹Data Request Line

¹⁶⁰ The time between 09:00 – 17:00 on any day other than Saturdays, Sundays, or Public Holidays as defined in the Second Schedule to the Organisation of Working Time Act, 1997

¹⁶¹Unified Gateway

¹⁶²Not defined.

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
	on the UG.		
Order Validation PU ¹⁶³ - Acceptance or rejection of an order for Unbundled Local Metallic Path (ULMP) ¹⁶⁴	Advice of acceptance of the order by 1700hrs on the Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Order Validation PUI - Acceptance or rejection of an order for ULMP	Advice of acceptance of the order by 1700hrs on the Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Delivery			
Delivery Notification PU - Provision of ULMP on a Working Line	Advice of completion of accepted order by 17:00 on the fifth Working Day following Order Submission ¹⁶⁵	95% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Delivery Notification PUI - Provision of ULMP on an in situ Line	Advice of completion of accepted order by 17:00 on the fifth Working Day following Order Submission	95% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Delivery Notification CHP – Re-jumpering of the LLU service to new pins on the OAO block.	Advice of completion of accepted order by 17:00 on the fifth Working Day following Order Submission	95% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Delivery Notification Convert - Provision of ULMP on a former Line Share line	Advice of completion of accepted order by 17:00 on the fifth Working Day following Order Submission	95% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
Delivery Notification PUS - Provision of ULMP on a New Line or Spare Path	Advice of completion of accepted order by 17:00 on the tenth Working Day following Order Submission	80% of validated Orders will have Delivery Notification sent in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.

¹⁶³Not defined.

¹⁶⁴The Unbundled Local Metallic Path service

¹⁶⁵The submission of a LLU order by an LLUO via the UG

9.3 Compensation

Please note that compensation is set out in the table above, in section 9.2.

9.4 Payment of credits

Eircom will provide providers with penalty statements one month in arrears with the statement being reconciled between the parties during 3 months of the quarter with payment made in the next billing cycle. Providers can dispute Eircom's calculation of penalties¹⁶⁶.

9.5 Reporting

Eircom is subject to the following reporting regime:

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
Submission of monthly provisioning performance metrics to the customer'	Provide performance metrics to the customer 20 days following the end of the month.	In accordance with metric.	Default Interest ¹⁶⁷ rate as per Access Agreement on all penalties due.
Submission of quarterly repair performance metrics to the customer	Provide performance metrics to the customer one month following the end of the quarter.	In accordance with metric.	Default Interest rate as per Access Agreement on all penalties due.

Eircom will be responsible for monitoring and measuring performance metrics and will report on the agreed metrics to the operator on a monthly basis for provision and a quarterly basis for repair. Provisioning performance reports will be provided within 20 Working Days of the end of the month. Repair performance reports will be provided within one month of the end of the reporting quarter.

KPIs were the object of a 2011 consultation¹⁶⁸ which ComReg initiated, inviting responses from BT, Vodafone, Eircom and others. The key point of this consultation was to require Eircom to publish KPIs in order to demonstrate equal treatment of its own customers, retail arms, and other providers, by providing figures relevant to each type of product. The essence of the responses to the consultation was consensual rather than adversarial, with all parties (including Eircom) broadly agreeing to ComReg's suggestions.

As evidenced by the publications on Eircom's website, the incumbent has followed ComReg's decision to the letter and published KPIs in the format dictated in the report.

Eircom's regulatory KPIs are published on their website in two different places:

¹⁶⁶<http://www.eircomwholesale.ie/Products/Access/Documents/LLU-Standard-SLA-v11/>

¹⁶⁷ Euribor + four (4%) (3 month rate) applied to amount in default.

¹⁶⁸<http://www.comreg.ie/fileupload/publications/ComReg1145.pdf>

- Eircom regulatory information¹⁶⁹; (covering July 2011 to December 2012) and
- Eircom wholesale¹⁷⁰ (July 2012 to September 2012).

October to December 2012 KPIs show an overall very high performance in relation to the 2 working days in-situ delivery (87-99%). Crucially, Eircom's publications set out the KPIs for retail and wholesale side by side and no tangible difference can be seen in the levels of fault resolution and delivery for both markets. If any pattern is to be seen, it is that wholesale KPI's tend to be a point above retail KPIs.

July - September 2012 fault repair data shows a very high rate of compliance (between 90% and 100%) with only one metric falling at 83.68% ('no line tests results provided' in under 3 days). KPIs for other quarters demonstrate a consistently strong performance.

These SLAs are underwritten by SLGs, in accordance with the BEREC Common Positions¹⁷¹ (December 2012). See section 9.2 above for a table of these penalties.

9.6 Enforcement powers by the regulator

Legal basis for existence

The Commission for Communications Regulation ("ComReg") was created by section 6 of the Communications Regulations Act 2002.

Section 10 of the Act outlines ComReg's general powers which include the power to investigate complaints in relation to supply and access of telecommunications networks and to monitor providers' compliance in the same respect.

Part 3 of the Act sets out the regulator's enforcement powers which include the right to carry out dawn raids.

Section 45 in the same Part 3 allows ComReg to fine companies up to €4 million or 10% of their turnover in the previous financial year (whichever is the greatest).

ComReg's enforcement provisions are set out in Regulations 19 to 23 of the Access Regulations. These give ComReg the power to notify an undertaking of its failure to comply with a decision, regulation or other requirement, and request it to comply within a deadline and/or offer a response. If ComReg finds the non-compliance to be continuing, the High Court can be asked to make an order for a declaration of non-compliance, an order for remedy or a fine.

Enforcement in practice

The national regulator publishes a Wholesale Compliance Annual Report on its website¹⁷². ComReg begins investigations following a complaint, amongst other sources. The complaint does not

¹⁶⁹www.eircom.ie/regulatoryinformation

¹⁷⁰

<http://www.eircomwholesale.ie/Products/Access/Local-Loop-Unbundling/>

¹⁷¹[http://berec.europa.eu/files/document_register_store/2012/12/20121208163628_BoR_\(12\)_127_BEREC_COMMON_POSITION_ON_BEST_PRACTICE_IN_REMEDIES_ON_THE_MARKET_FOR_WHOLESALE.pdf](http://berec.europa.eu/files/document_register_store/2012/12/20121208163628_BoR_(12)_127_BEREC_COMMON_POSITION_ON_BEST_PRACTICE_IN_REMEDIES_ON_THE_MARKET_FOR_WHOLESALE.pdf)

¹⁷²http://www.comreg.ie/publications/wholesale_compliance_annual_report_2012.542.104311.p.html

necessarily have to be from an industry member, since a consumer complaint may alert the regulator to wholesale practices it monitors.

The procedure then followed is outlined on this diagram taken from the 2009 report:



Amongst the documents published by ComReg, some offer primary evidence of enforcement action taken in relation to Eircom's reference offers.

As recently as December 2012, the regulator put Eircom on notice of a breach of the Fault Repair timescales for its WLR offer¹⁷³.

This notice alleged that Eircom was discriminating between its wholesale and retail customers by repairing faults faster for the latter. ComReg gave the incumbent 5 weeks to comply with its obligation of non-discrimination. Failure to do so would result in the regulator applying to the High Court for an order.

An older 2008 notice¹⁷⁴ relates to another breach of Eircom's non-discrimination obligations. Eircom was accused of using a broadband metrics tool (Sync Checker) for its own retail customers and wholesale divisions but not making it available for third party providers. As a result, these had to create a ticket and wait for the contractual SLA timelines to take effect before expecting fault resolution; Eircom could resolve faults much quicker by bypassing the ticket creation system and access Sync Check directly and thus treated its own retail and wholesale arms better than third party providers. Eircom was given a month to make representations or remedy the breach¹⁷⁵.

¹⁷³http://www.comreg.ie/_fileupload/publications/ComReg12140.pdf

¹⁷⁴http://www.comreg.ie/_fileupload/publications/ComReg0895.pdf

¹⁷⁵ There appears to be no related publication following this notice so it's likely Eircom complied and no further action was taken.

Failure to publish the terms and conditions for a new telephony wholesale product was also picked up by the regulator in 2008, but no document is available to account for this notice of non-compliance¹⁷⁶.

ComReg has also been known to execute its threats of referring matters to the High Court in 2009. This took place in relation to Eircom's alleged and continued non-compliance with bundled products. However the matter was settled before litigation ended¹⁷⁷.

ComReg appears to have outsourced some of its obligations in the past¹⁷⁸.

According a recent governance document, the regulator outsources its audit and support functions¹⁷⁹ but no mention is made of other forms of outsourcing.

¹⁷⁶http://www.comreg.ie/about_us/comreg_issues_a_notification_of_non-compliance_to_eircom.43.933.whatsnew.html

¹⁷⁷http://www.comreg.ie/_fileupload/publications/ComReg0979.pdf

¹⁷⁸ Paragraph 3.63: http://www.comreg.ie/_fileupload/publications/ComReg1018.pdf

¹⁷⁹ [http://www.oireachtas.ie/parliament/media/committees/pac/correspondence/2013-meeting691701/\[PAC-R-797\]-Correspondence-3C.2.pdf](http://www.oireachtas.ie/parliament/media/committees/pac/correspondence/2013-meeting691701/[PAC-R-797]-Correspondence-3C.2.pdf)

10 Spain, Telefonica

10.1 Setting the service levels

Telefonica is required to supply LLU in Spain as a regulated service. The telecommunications regulator, Comisión del Mercado de las Telecomunicaciones (**CMT**) has the right to vary the LLU offer by issuing a resolution, which Telefonica is required to take into account and revise its offer accordingly. The first LLU offer was published in 2000, and since then, the CMT has required Telefonica to revise the offer a number of times, including in response to requests by other operators requesting Telefonica to improve its service levels. For example, in 2008, Colt wrote a submission to the CMT complaining about various aspects of the service levels offered by Telefonica in response to which CMT issued a resolution, including a number of service levels, which it then required Telefonica to adopt as part of its service levels regime within the LLU offer.¹⁸⁰ Since then, there have been a number of other resolutions issued by the CMT in relation to improving Telefonica's service levels.¹⁸¹

Upon receipt of an order through the Telefonica web system, Telefonica will notify the customer as to whether or not it accepts or rejects the request within 24 hours of receipt of the request.

There are SLAs which guarantee the provision of services within a set number of working days (ranging from 5 – 45 days with 5 days being a simple in situ delivery). Initial services include co-location, signal delivery, access connections, backhaul, bitstream connections, mass migration, cabling etc. The time allocated to providing the services usually begins to run once Telefonica has received the request or once the access offer has been formally accepted and the project has begun. Please note that the service level documents do not provide a provisioning time for the complete service and as such, there is no specific service level on how long it takes to activate a service from the exchange. There is a table in the original RIO document which sets out the elements of the service. For example, if there is an existing co-location agreement at a particular exchange, then co-location is not the rate determining step in the overall service level.

According to the BEREC 2011 monitoring report on broadband common positions¹⁸² a non-discrimination obligation is applied to LLU in Spain. However, it does not expressly require identical treatment of the SMP operator's downstream arm compared with third parties. The reference offer includes variants of service levels, and access seekers may submit a request for further variants. SLAs and compensation are included in the reference offer under terms specified and approved by the NRA. Published KPIs are available, which allow the comparison of service levels between the incumbent's retail arm and third parties.

According to the 2009 ECTA Regulatory Scorecard, KPIs have been published against LLU service levels since 2006¹⁸³.

¹⁸⁰http://www.cmt.es/c/document_library/get_file?uuid=4a362e64-7c64-4c8d-8bc7-195953b7bb7d&groupId=10138

¹⁸¹http://www.cmt.es/c/document_library/get_file?uuid=599d129b-2d90-49b5-bc87-49afac259f78&groupId=10138, May 2010.

¹⁸² http://berec.europa.eu/eng/document_register/subject_matter/berec/download/1/219-berec-monitoring-report-on-broadband-com_1.xls
<http://www.ectaportal.com/en/REPORTS/Regulatory-Scorecards/Regulatory-Scorecard-2009/>

10.2 Service level guarantees

Failure to meet the time guarantees for the initial services incurs a penalty in favour of the authorized operator calculated as a percentage of the registration fee for the service, according to this table:

Service	Length of Delay (in days)	Penalty
Prolongation of the pair, indirect access connection and torque relocation	Up to $0.2 \times T_{\max}^{184}$	$D_r^{185} \times 6\%$ fee high ¹⁸⁶
	From $0.2 \times T_{\max}$ to $0.5 \times T_{\max}$	$D_r \times 10\%$ fee high
	From $0.5 \times T_{\max}$	$D_r \times 16\%$ fee high
Collocation, signal delivery, laying of cabling, characterisation torque, high pPAI and pPAI-D, development project	Up to $0.25 T_{\max}$	$D_r \times 2\%$ fee high
	From $0.25 \times T_{\max}$	$D_r \times 3\%$ fee high
Mass migration	Up to $0.2 \times T_{\max}$	$D_r \times 6\%$ fee high
	From $0.2 \times T_{\max}$ to $0.5 \times T_{\max}$	$D_r \times 10\%$ fee high
	From $0.5 \times T_{\max}$	$D_r \times 16\%$ fee high
Mass migration (in addition to the above)	Up to 10 days	(ADSL price TESUA minimum) $\times 0.196 \times 24 \times 0.2 \times$ (Number of pairs included in the application)

10.3 Reporting / KPI

Telefonica has an obligation to publish in its web-based information and provisioning system, on a monthly basis, information on actual performance against its service levels. The Ministry of Industry compiles and publishes reports in relation to performance by Telefonica (and other operators) on its website but wholesale KPIs are not available to the general public.¹⁸⁷

¹⁸⁴ T_{\max} is the guaranteed delivery time for providing each service.

¹⁸⁵Number of working days the provision was late after the guaranteed delivery time.

¹⁸⁶It is likely that the translation 'fee high' actually means maximum fee, but this is not certain.

¹⁸⁷See www.mityc.es/telecomunicaciones/es-ES/Servicios/CalidadServicio/informes/Paginas/Informes09.aspx.

10.4 Enforcement powers by the regulator

The regulator (CMT) was created by Real Decreto-Ley 6/1996. This statute was modified various times, but now the General Telecommunication Statute determines the functions and competence of CMT, such as the establishment and supervision of specific obligations of telecommunications providers. CMT can resolve disputes and has the power to arbitrate them.

CMT's powers are determined in Art. 48 of General Telecommunication Statute 32/2003, on the 3th of November.

Title VIII of General Telecommunication Statute determines the enforcement right in Articles 50 to 58, such as the enforcement rights of CMT and fines to providers which include 5-year disqualification of the company in case of very serious breach and fines up to 20 million Euros.

Enforcement in practice

The CMT has published a number of resolutions related to LLU on its website.¹⁸⁸

One of these relates to service levels of the SDSL signal.¹⁸⁹ Colt Telecom had requested the top margin of SDSL signal service level to be raised to 5.7 Mbit/s, which is defined in the management plan of LLU. The resolution was approved by CMT on the 10th of January 2008.

The process followed by the CMT was the following: Colt Telecom sent a written request to CMT to set out a resolution relating to a particular request, in this case to increase the upper tier of a service level. CMT initiated the administrative process and informed the affected parties, with the opportunity to reply to the allegations. The CMT studied the question (in this case CMT looked at the situation in other countries and the interference level of SDSL sign to 5.7 Mbit/s), then set out a binding resolution.

Decision: (p. 16)

CMT sets forth the following: it approves the increase of the SDSL sign and compels Telefónica to publish the modified LLU Offer in 3 working days and gives a deadline for Telefónica to implement the modifications determined by CMT.

Another example is that of a dispute between Telefonica and Jazz Telecom in relation to time scales determined in the LLU offer.¹⁹⁰

CMT realised during an inspection that Telefónica didn't comply with the obligations imposed by the previous resolution.

CMT considers that it is necessary to impose a fine on Telefónica if it doesn't comply with the obligations in time. CMT considers that it has to compel Telefónica to fulfil its obligations set out in the resolution. According to the 6th additional provision of the General Telecommunication Statute,

¹⁸⁸http://www.cmt.es/detalle-oferta-oba?p_p_id=101_INSTANCE_1Two&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-3&p_p_col_count=1&_101_INSTANCE_1Two_struts_action=%2fasset_publisher%2fview_content&_101_INSTANCE_1Two_urlTitle=oba-2007&_101_INSTANCE_1Two_type=content&redirect=%2fvigente-oba

¹⁸⁹http://www.cmt.es/c/document_library/get_file?uuid=068dfeac-96d0-4361-b30b-85e4d9d6ac7c&groupId=10138

¹⁹⁰http://www.cmt.es/c/document_library/get_file?uuid=3d558248-46b6-4488-9ac3-849bab513f8d&groupId=10138

the CMT has the right to impose a fine on a daily basis from €100 to €1,000 to ensure the fulfilment of the imposed obligations.

Outsourcing

According to the General Telecommunication Statute, the CMT doesn't outsource its responsibilities to third parties.¹⁹¹

Though the CMT has the right to inspect the compliance of the obligations it imposes in a resolution, there is no specific audit organisation to inspect the service levels of wholesale services in Spain, although in case of retail services the providers are obligated to enter in contracts with independent audit companies to inspect the published data about the service levels to the final users.

¹⁹¹http://www.cmt.es/c/document_library/get_file?uuid=0d6bcc9f-52dc-4549-9140-3c909787b4b8&groupId=10138

Faults

The following section sets out the position as regards fault repair in each of the benchmarked countries.

11 UK, Openreach

11.1 Service levels

Openreach will repair faults in accordance with the relevant Service Maintenance Level (**SML**) following the receipt of a fault report from a customer. There are a number of SMLs, which the customer can purchase, as specified below:

Feature	Service Maintenance Level 1 (Annual Rental) in £ ex VAT	Service Maintenance Level 2 (Annual Rental) in £ ex VAT	Service Maintenance Level 3(Annual Rental) in £ ex VAT	Service Maintenance Level 4 (Annual Rental) in £ ex VAT
LLU MPF	Not applicable	Included in line rental	37.20 (€43.85)	48.00 (€56.59)
LLU Shared MPF	Not applicable	Included in product rental	37.20 (€43.85)	48.00 (€56.59)
Relevant repair time	End of next working day + 1 working day (working day = Monday to Friday, 8am-6pm)	End of next working day (working day = Monday – Saturday 8am-6pm)	In by 1pm fix the same day, in after 1 pm, fix the next day (working day = Monday – Sunday (including bank holiday) 7am – 9pm Monday-Friday and 8am to 6pm Saturday – Sunday)	6-hour repair (working day = Monday – Sunday, including bank holidays)

A customer may choose to purchase expedited service levels on a per occasion basis, as follows:

Feature	Per occasion (excluding VAT)
Expedite repair from Service Maintenance Level 1 to Service Maintenance Level 2	£85 (€100.20)
Expedite repair from Service Maintenance Level 1 to Service Maintenance Level 3	£585 (€689.65)
Expedite repair from Service Maintenance	£735 (€866.49)

Feature	Per occasion (excluding VAT)
Level 1 to Service Maintenance Level 4	
Expedite Repair from Service Maintenance level 2 to Service Maintenance Level 3	£500 (€589.45)
Expedite Repair from Service Maintenance Level 2 to Service Maintenance Level 4	£650 (€766.28)
Expedite Repair from Service Maintenance Level 3 to Service Maintenance Level 4	£150 (€176.83)

A customer may enhance their fault repair service at the time of reporting a fault, however, if a fault is 'in flight', then the customer cannot choose an Expedite Repair service level to apply to that fault.

If the customer reports the same fault within 72 hours of it being closed on the system, it will be treated at the same expedited SML of the original fault, and the customer will not be charged for the Expedite Repair in that situation.

If a customer decides to permanently upgrade an SML, the lead time is 24 hours.

Flexible appointments

A customer could purchase flexible appointments (Monday to Saturday, 7am-8am, Monday to Friday 6pm-9pm and Saturdays 8am-6pm) for a fixed charge of £12.50 (€14.74).

11.2 Exclusions

Under the following circumstances, the service levels for fault repair may be extended:¹⁹²

- if Openreach is unable to access the end user premises at the agreed time
- if Openreach is unable to proceed because the customer is unavailable to respond to Openreach inquiries in relation to the fault
- if the customer does not accept the first available appointment by Openreach
- for some fault of the customer or a third party or the end user, BT is unable to comply with its obligations

The service levels for fault repair do not apply in the following circumstances:¹⁹³

- if the failure to achieve the service level is due to a planned or emergency interruption
- if the failure to achieve the service level is due to an inaccurate fault report or the fault report is not reported in accordance with the fault reporting provisions
- if the customer has failed to complete a line test, or
- the customer has failed to ask the End user the required structured diagnostic questions to assist with clearing the fault

¹⁹² Openreach, LLU Reference Offer, part VI, Service Levels and Fixed Compensation, section 3.4

¹⁹³ Openreach, LLU Reference Offer, part VI, Service Levels and Fixed Compensation, section 3.4

11.3 Reverse compensation

If Openreach has organised for a technician or an engineer to attend an end user's premises, and that engineer is unable to gain access to the premises, the end user is not ready for the work to be completed or the person who has placed the order is not available, then, Openreach will charge the customer an abortive visit charge of £85 (€100.20) per visit per engineer.

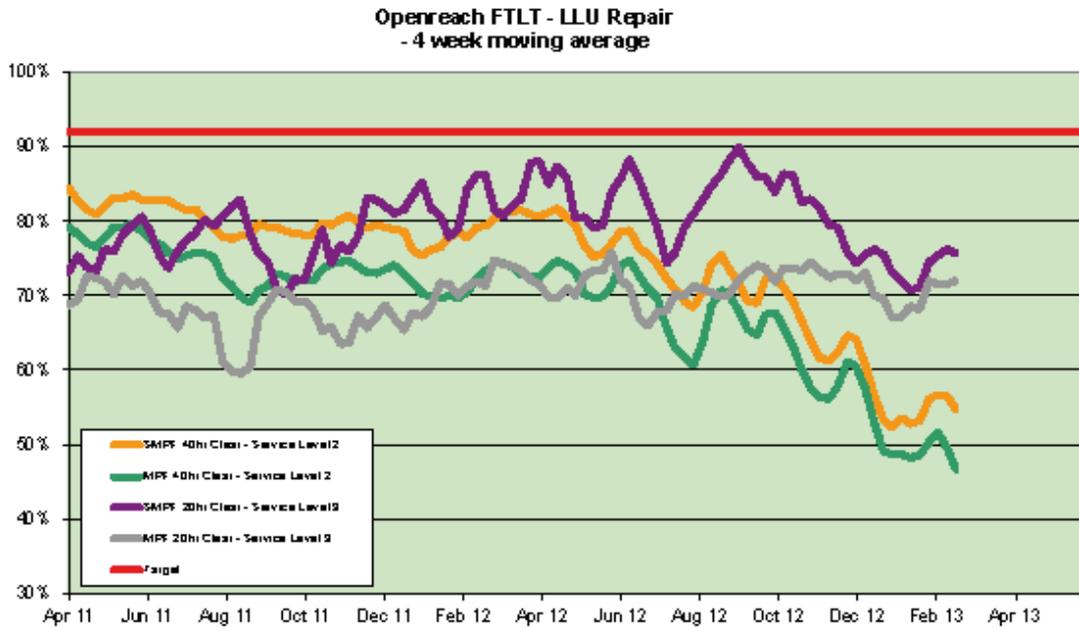
11.4 Compensation

If Openreach fails to meet the fault repair timeframes as applicable in respect of the relevant SML, then Openreach will compensate the customer for the period commencing immediately on the expiry of the SML period and expiring on the completion of the repair or after 60 consecutive working days whichever is the earliest:

During any period from the date that the weekly reported KPI for LLU repair has been less than 95% for 12 consecutive weeks until a date that the weekly reported KPI for LLU repair has been 95% or more for 12 consecutive weeks the fixed compensation paid or allowed will be as follows:

SERVICE MAINTENANCE LEVEL	PRODUCT	FIXED COMPENSATION UNTIL REPAIR COMPLETED
SERVICE MAINTENANCE LEVEL 2	MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each MPF not repaired within the Service Maintenance Level period
SERVICE MAINTENANCE LEVEL 2	Shared MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each Shared MPF not repaired within the Service Maintenance Level period
SERVICE MAINTENANCE LEVEL 3	MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each MPF not repaired within the Service Maintenance Level period
SERVICE MAINTENANCE LEVEL 3	Shared MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each Shared MPF not repaired within the Service Maintenance Level period
SERVICE MAINTENANCE LEVEL 4	MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each MPF not repaired within the Service Maintenance Level period
SERVICE MAINTENANCE LEVEL 4	Shared MPF	100% of 1 month MPF line rental per day, or part day for a maximum of 60 consecutive Working Days for each SMPF not repaired within the Service Maintenance Level period

The following diagram shows a significant shortfall in Openreach's performance in respect of its fault repair service level commitments for both MPF and SMPF:¹⁹⁴



¹⁹⁴ Source: OTA

12 Australia, Telstra

12.1 Service levels

Service levels will be measured on the basis of the percentage of faults rectified within the relevant service levels:

- Band 1 and 2 – by the end of the first Clear Working Day after the Fault report is logged by Telstra.
- Band 3 – by the end of 2 Clear Working Days after the Fault report is logged by Telstra.
- Band 4 – by the end of 3 Clear Working Days after the Fault report is logged by Telstra.¹⁹⁵

Metric 16 will not apply where a site visit to the customer's premises is required to determine whether a fault is the cause of the service difficulty.

12.2 Service level guarantees

If the customer has entered into a Regulated Services SLA Deed with Telstra, and there has been a Reporting Variance, then Telstra will pay the following rebates:

- For Metrics 14 – 16 (as relevant to LLU), 1x List Price, with the List Price being the amount equal to monthly access price for the supply of LLU in the relevant area prescribed by the ACCC in an access determination. The current access determination provides the monthly rental price for LLU at AUD 16.21 (€11.64) per month for bands 1-3 and AUD 48.19 (€34.60) for band 4.

Rebates will be paid by applying a credit against the amount that is to be paid for the supply of the service. Telstra will determine the rebates for each quarter within 10 Business Days after the report for that quarter has been published.

If Telstra determines that rebates are payable for a quarter they will be credited to the wholesale customer as part of the next available billing cycle for that wholesale customer without the need for the wholesale customer to submit a claim.

Exceptions to payment of rebates

Rebates will not be payable if:

- the failure to meet the service level is due to:
 - any of the matters or events set out in the conditions¹⁹⁶

¹⁹⁵ Metric 16 will be measured from the date and time the Fault call was logged by Telstra (in Telstra's information technology systems) to the date and time the technician records that the Fault is repaired. If the call date and time is after 5pm, the baseline for calculating the Service Level moves to 9am the next Working Day.

¹⁹⁶ Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra's performance is measured against a fixed Service Level rather than measuring Telstra's comparative performance for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra's control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions,

- an act or omission of the customer
 - an event or circumstance which is beyond Telstra’s reasonable control and which Telstra could not reasonably have avoided or overcome
- the applicable Regulated Service to which the Service Level relates is used by the customer to supply a service to another service provider that is entitled to make a claim against Telstra in relation to the same set of events, such as a right of contribution under the provisions of section 118A of the Consumer Protection Act¹⁹⁷.
 - the wholesale customer is in breach of the terms of a wholesale contract which Telstra supplies a Regulated Service to the customer or the terms on which the customer accesses or uses LOLO, Telstra may withhold payment of all rebates to the customer until that breach has been rectified in accordance with the applicable terms.
 - if the rebate is paid to the customer in error, Telstra may recover the amount of that rebate from a wholesale customer (including by applying a set-off against other rebates to be paid to that customer).
 - not payable where an order is unable to be processed after it has been received due to unavailability of LOLO (assessed under metric 21¹⁹⁸).

including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra’s ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user’s premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours’ notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

¹⁹⁷ S118A of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* provides that if Telstra (or another wholesale service provider) has contributed to the downstream supplier’s failure to achieve any relevant *Customer Service Guarantees* (if applicable), as a result of which the end user makes a claim against the downstream supplier, then the downstream supplier will have a right to make a claim against the upstream supplier in respect of any secondary damages to the extent that that supplier has caused or contributed to the failure by the downstream supplier to achieve the service level.

¹⁹⁸ Which has a service level of 98% calculated at $(\text{Total Time} - \text{Outage Time}) / \text{Total Time}$ with an applicable rebate amount of $\text{AUD } 5 (3.60) \times (\text{Average Hourly Order Rate} \times \text{Total Number of Hours Outage})$

13 Denmark, TDC

13.1 Service levels

All faults are to be resolved within 12 business days of the report of the fault.

Note that it seems that the customer can enter into a separate agreement with TDC for enhanced service levels that are superior to the service levels set out here – this is subject to commercial negotiations between the parties, and such terms are not published.

13.2 Service level guarantees

TDC will pay customer compensation in the following circumstances:

- failure to show up at the agreed time at the end users' premises for delivery
- failure to remedy a fault within 12 days or an unsatisfactory resolution
- if the service is unsatisfactory, and the customer is unable to use the service

In the above circumstances, the customer is entitled to a sum of dk123 (€16.49) with VAT as compensation for each LLU connection with delays or unsatisfactory delivery. If there are several simultaneous faults in respect to the same LLU connection, those faults will attract a single payment. Compensation is paid through a claim process.

14 Germany, Deutsche Telekom (DT)

14.1 Service levels

DT will resolve any faults within 24 hours of having received the fault if the fault has been reported within business hours of Monday to Friday 12 am to 6.30 pm. If a fault report is received outside of these hours, then such a fault report will be deemed to have been received on the following business day.

If the customer has failed to arrange an appointment with the end user or the end user is not available at the time of the appointment, then the above service levels do not apply.

14.2 Service level guarantees

If DT fails to resolve any faults in accordance with the above timeframe, then DT will compensate the customer in accordance with the following:

- if the fault has not been cleared at 48 hours or less – €12.78 (per instance)
- if the fault has not been cleared after 48 hours – €25.57 (per instance)

15 New Zealand – Chorus

15.1 Service levels

Chorus will provide the following service levels:

UCLL Service	Fault report receipt acknowledgement	Provide fault report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported	90%	An invalid fault report
UCLL Service	Notification of expected restoration time	Within 8 Fault Restoration Hours of the fault being reported	90%	
UCLL Service	Meet notified expected restoration time	Restore fault within notified expected restoration time	90%	

15.2 Service level guarantees

Chorus will pay compensation in the following circumstances (which relate to certain service levels set out above):

- **meeting the notified expected restoration time:** the performance penalty is to be calculated on a per calendar month basis in respect of each fault not restored within the notified restoration time and falling below the specified tolerance level; and is required to be calculated in accordance with the following formula: performance penalty = A x B, where: A = the applicable penalty rate x the MPF Service Monthly Charge¹⁹⁹, and
- B = the number of MPF Services detrimentally affected by the fault.

¹⁹⁹Geographically De-Averaged Price – Urban Exchange: \$19.841 (€12.86) (Geographically De-Averaged Price – Non-Urban Exchange: \$36.63 (€23.7) Geographically Averaged Price: \$24.46 (€15.85).

16 France, France Télécom

16.1 Service levels

For serious faults attributable to France Télécom: 2 days, unless it is a case of force majeure, if it requires a visit to the end user's premises or if the fault is incorrectly reported.

Option downtime SLAs of 4 hours (Monday to Saturday or 7-day for option 2) and 10 hours are available.

Enhanced SLAs for fault rectification are available if the customer wishes to pay additional amounts as follows:

- 10 hours maximum downtime: €5.95
- 4 hours maximum downtime: €8.00
- 4 hours maximum downtime (outside of office hours): €22.00
- 4 hours maximum downtime for twisted pair: €10.61
- 4 hours maximum downtime (outside of office hours): €29.23
- 4 hours maximum downtime for twisted double pair: €13.19
- 4 hours maximum downtime (outside of office hours) for twisted double pair: €36.46

16.2 Service level guarantees

Regarding subscription to the third SLA option (10 working hours downtime), failure by France Télécom to observe the maximum downtime for reasons attributable only to France Télécom entitles the Provider to penalties equal to 2 months subscription to access and to the SLA.

The aggregate penalties in a calendar year are capped at a sum equal to 12 months' subscription to access and to the SLA.

For subscriptions to the first SLA option (4 working hours downtime) or the second SLA option (4 hours 24/7), France Télécom's failure to observe the 4 working hours downtime SLA or the 24/7 4 hours SLA entitled the Provider to a penalty calculated as follows:²⁰⁰

²⁰⁰ The offer says these apply to full access but is silent on penalties relating to shared access.

- 4 hours < maximum downtime <= 5 hours: 2 months subscription to access²⁰¹ and to the SLA²⁰²
- 5 hours < maximum downtime <= 6 hours: 4 months subscription to access and to the SLA
- 6 hours < maximum downtime <= 7 hours: 6 months subscription to access and to the SLA
- 7 hours < maximum downtime: 12 months subscription to access and to the SLA

These penalties are capped at 12 months subscription to access and to the SLA in a calendar year.

Penalties are deducted from the amount due by the Provider. No penalties are due if the delay is not France Télécom's fault.

²⁰¹ full access: €8.90

full twisted pair access: €17.80

full twisted double pair access: €35.60

²⁰² full access Option 1 SLA: €8.00

full access Option 2 SLA: €22.00

full double pair access Option 1 SLA: €10.61

full double pair access Option 2 SLA: €29.23

full twisted double pair access Option 1 SLA: €13.19

full twisted double pair access Option 2 SLA: €36.46

sensitive access: €0.10

17 Belgium, Belgacom

17.1 Service levels

Faults will be resolved by the end of the second working day after receiving the fault report (day of the fault ticket opening + 1).

17.2 Service level guarantees

Basic fault penalties are applicable to a percentage of fault tickets as per the following table:

% wrongful repair	% repair for which penalties are payable
$X \leq 10\%$	99%
$10\% \leq X \leq 20\%$	95%
$X \geq 20\%$	90%

If Belgacom fails to carry out repairs within the service level timeframes, the customer is entitled to 150% of the daily rental fee per calendar day²⁰³.

17.3 Improved service levels

A customer can purchase and enter into an improved service level agreement for fault repairs, which would then provide the customer with the following service levels:

The fault ticket timer starts when Belgacom receives a fault mention based on the issue description communicated by the customer and ends at the closure of the fault ticket.	Service level
Repair timer	4 hours (60% ²⁰⁴ of the fault tickets resolved) 6 hours (80% of the fault tickets resolved) 8 hours (95% of the fault tickets resolved)
Fault ticket handling	24/24 hours, 7/7 days
Intervention window	24/24 hours, 7/7 days
Initial feedback on the fault	Within 1 hour of the fault ticket
Follow up feedback	Within 2 hours of the fault ticket
Subsequent feedback	Every hour thereon until the fault is resolved

²⁰³203 Raw copper – €8.03 monthly, shared pair – €0.56 and raw copper plus €8.03

²⁰⁴204 Percentages depend on the total number of fault tickets for raw copper and shared pair lines – wrongful requests for repair excluded.

Charges

Belgacom charges the customer an initial set up fee of €2000.47 for the improved service levels²⁰⁵. For any new lines to be added to the customer's 'account', Belgacom charges €8.23 per new line. In addition to this, Belgacom charges €7.11 per local loop for the improved fault repair service level.

17.4 Service level guarantees

Belgacom will pay compensation to the customer if it fails to achieve the improved service levels. Belgacom will set off any amounts payable against the customer's next invoice.

Type of repair timer	Compensation
< 60% in 4 hours	50% of the line monthly rental fee ²⁰⁶ per fault ticket closed in more than 4 hours
Between 60% and <80% in 6 hours	100% of the line monthly rental fee per fault ticket closed in more than 6 hours
Between 80% and <95% in 8 hours	150% of the line monthly rental fee per fault ticket closed in more than 8 hours

17.5 Additional service levels

In case Belgacom fails to meet the above service levels, Belgacom will compensate the customer in accordance with the following:

Number of related pairs	Compensation (in EUR)
< 100 or < 2 LEX/LDC concerned	0
> 100 and > 1 LEX/LDC concerned	5% of yearly extra rental fee ²⁰⁷ of the number of lines ordered by customer subject to improved SLA, with a minimum of €6500 with Improved SLA

²⁰⁵ Please note the exact wording in the reference offer: *One-time fee for configuration of systems and resources. The setup fee is to be paid one time only, for*

the first Improved SLA being BRUO or BROBA if they are requested at the same time.[BRUO = LLU and BROBA = bitstream]

²⁰⁶Which is for raw copper €8.03 per month, €0.56 for shared pair, and €8.03 for raw copper plus, plus (for improved SLA) an additional €7,11 per month pre local loop

²⁰⁷See footnote number 47 above.

18 The Netherlands, KPN

18.1 Service levels

KPN will provide the following response times to fault tickets:

- All tickets, 80% per month within 2 hours on a business day²⁰⁸
- Tickets after care, 99.9%, within 5 hours on a business day

18.2 Service level guarantees

Basic service contract

Solution time is exceeded with:	Penalty:
1–10 Service-hours	€7,00 per 10 Service-hours
1–20 Service-hours	€7,00 per 10 Service-hours
1–100 Service-hours	€7,00 per 10 Service-hours
101–200 Service-hours	€14,00 per 10 Service-hours

Premium service contract

Solution time is exceeded with:	Penalty:
1–16 clock hours	€10,00 per 16 clock hours
1–24 clock hours	€8,00 per 12 clock hours
1–480 clock hours	€8,00 per 12 clock hours

Special service contract

Solution time is exceeded with:	Penalty:
4–8 clock hours	30% of the relevant line for the previous 12 calendar months
8–clock hours	40% of the relevant line for the previous 12 calendar months
>12 clock hours	50% of the relevant line for the the previous 12 calendar months

18.3 Improved service levels

Customer can purchase improved service levels, in which case KPN will provide the following improved response times:

- All tickets 90%, within 1 hour (any day)
- Tickets after care 99.9%, within 3 hours (any day)

KPN will resolve the faults in accordance with the following:

²⁰⁸9am – 6pm

- All tickets (before and after care):
 - o 85% within 8 hours (any day)
 - o 95% within 24 hours (any day)
 - o 99.9% within 48 hours (any day)

KPN will also offer a 'special' category of premium service levels, which provides even faster resolution times, as follows:

- 85% within 4 hours
- 90% within 8 hours
- 95% within 20 hours
- 99.9% within 48 hours

(a) Charges

If customer wishes to purchase a premium service level, customer must pay a non-recurring charge of €5.12. In addition to this, customer must pay a recurring charge of €2.29 (excluding VAT) per month. For the special category of premium service levels, the customer may pay a recurring charge of €5.12 (excluding VAT) per month.

18.4 Service level guarantees

This information is not publicly available.

19 Ireland

19.1 Service levels

Eircom will repair faults as follows:

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
Resolution of ULMP Fault	Repair Time: 3 Working Days	Target 73%	<p>Where this SLA is not met, the SLA penalty applies to Days 4 to 6 of all tickets in breach. The 73% target mitigates the commercial impact of this article²⁰⁹.</p> <p>Number of Faults subject to penalty = $C(2) - C(1) * (1 - 0.73)$</p> <p>Penalty Days (multiplier) = $(\sum(5) - 3 * C(5) + 3C(6) + 3C(4)) / C(2)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 7 are deemed to have breached this SLA by the maximum 3 days.</p> <p>Service Credit 1 = (Number of Faults subject to penalty) * (Multiplier) * Penalty</p>
Resolution of ULMP Fault	Repair Time: 6 Working Days	Target 92%	<p>Where this SLA is not met, the SLA penalty penalises Days 7 to 11 of all tickets in breach. The 92% target mitigates the commercial impact of this article.</p> <p>Number of Faults subject to penalty = $C(3) - C(1) * (1 - 0.92)$</p> <p>Penalty Days (multiplier) = $(\sum(6) - 6 * C(6) + 5 * C(4)) / C(3)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 12 are as having breached this SLA by the maximum 5 days.</p> <p>Service Credit 2 = (Number of Faults subject to penalty) * (Multiplier) * Penalty</p>
Resolution of ULMP Fault	Repair Time: 11 Working Days	Target 100%	<p>Number of Faults subject to penalty $C(4)$ (Count of all tickets closed on or after day 12)</p> <p>Multiplier = $(\sum(4) - 11 * C(4)) / C(4)$</p> <p>Service Credit 3 = (Number of Faults subject to penalty) * (Multiplier) * Penalty</p> <p>Total Service Credit = Service Credit 1 + Service Credit 2 + Service Credit 3</p>

²⁰⁹ The 73% mitigation can only be construed to mean that no service credit is due if the 73% target is met. This is extracted from page 15 of the following SLA: <http://www.eircomwholesale.ie/Products/Access/Documents/LLU-Standard-SLA-v11>

19.2 Service level guarantees

The penalties are set out in the table above in section 19.1.

19.3 Premium repair service levels

(a) Key features

The premium repair service level agreement offers a fault repair time of 6 clock hours for ULMP. Operator test results are required to avail of the premium repair service for ULMP lines. The key features of the premium repair service level regime are:

- Report fault time – 24x7
- Response time: 45 minutes
- Repair time with operator test results: 6 hours (clock)
- SLA target: 100%

The premium service level is limited to 1000 ULMP lines across all operators, on a first come first served basis. Eircom will notify customer when space is limited.

(b) Prices

Component	Charge
Monthly charge per ULMP Line	€9.65
Minimum contract (The minimum contract spend is €10,000 per annum from contract agreement)	€10,000

(c) Penalties

If Eircom fails to achieve the premium service level, it will pay the customer a penalty of €22.06 [€12.41 + €9.65] per line out of service per day or part thereof.

(d) Reporting

Eircom will produce performance reports, on a quarterly basis, on the number of faults logged and the actual performance against the SLA target. Additionally Eircom will report on the number of lines under cover per customer on a monthly basis. These reports will be made available to all customers who have signed up lines to the premium repair service.

(e) Exceptions

The premium repair service levels do not apply in the following circumstances:

- where the fault is caused by, third party activities such as cable damage, or gunshot.
- where the fault is caused by severe weather conditions such as storms, flooding, fire or lightning
- where a fault occurrence is due to changes in end user-provided apparatus
- where the fault is not in the Eircom network i.e. customer non-fault
- where a fault is reported and no fault is detected when the service is tested from end to end.
- any period of scheduled outages notified to the Operator in accordance with the planned works procedure
- a failure by the Operator or its customer to allow access to premises or equipment when requested
- the customer or its customer failing to operate the service in accordance with Eircom terms and conditions for the provision of the service
- a failure of the customer to report the fault in accordance with the fault reporting procedures.

(f) Payment

Eircom will provide customers with penalty statements one month in arrears with the statement being reconciled between the parties during 3 months of the quarter with payment made in the next billing cycle. Customers can object to the Eircom's penalty liability.

20 Spain, Telefonica²¹⁰

20.1 Service levels

Telefonica will resolve any faults that have been reported by Telefonica to the customer within 2 working days.

The following service levels apply to faults that have been reported by the customer to Telefonica:

Level of priority ²¹¹	Maximum time to repair the service ²¹²
High priority incident ²¹³	6 hours
Medium priority incident ²¹⁴	24 hours
Low priority incident ²¹⁵ (other incidents)	72 hours

20.2 Service level guarantees

The maximum resolution time for clearing an incident will be 2 business days, except in the case of incidents involving an end user being unavailable at the time a technician attends to clear an incident (if applicable) in which case the maximum resolution time equals that of medium priority incidents.

Penalties in favour of the authorised customer for breaches of resolution time are calculated as a percentage of the registration fee for the service in question. This percentage is twice the percentage of the time limit for delivery of the service: $\text{Penalty} = 2 \times \text{Dr} / \text{Delivery Fee} \times \text{share high}$ (maximum service level rebate is 16% of the monthly (or periodic) charge and this is payable when the service is not restored within 150% of the committed time to repair).

²¹⁰ Contained within Annex 1 of Telefonica's Access Offer for local loops (OBA) available on the regulator's website at: http://www.cmt.es/c/document_library/get_file?uuid=9a617342-1ee1-4e3f-b326-89d0bf8a6e3f&groupId=10138

²¹¹ Please note that we think that this priority level is allocated by the customer, however, we are currently verifying this.

²¹² This time starts from the time that a service provider reports a fault to Telefonica.

²¹³ Service loss

²¹⁴ Loss of bitstream but not voice

²¹⁵ Everything that is not high or medium priority

20.3 Breakdown incidents

Priority Level	Maximum time of repair
High priority incidents ²¹⁶ (incidents re signal delivery, laying cables, pPAIs [point of indirect access] or that affect collocation equipment)	6 hours
Medium Priority Incidents ²¹⁷ (incidences in indirect access, isolation in full unbundled services, complete access and shared access)	24 hours
Low priority incidents ²¹⁸ (all other incidents)	72 hours

Breach of guaranteed time for resolution of breakdown incidents will result in a penalty in favour of the operator calculated as a percentage of the monthly fee for the service in question. This percentage is double the percentage of delay compared to the maximum repair time.

For medium priority incidents the calculations are as follows:

Service	Coefficient
Shared access	$P_{ac} = 4$
Fully unbundled access	$P_{ad} = 3$
Indirect access	$P_{ai} = 0.5$

20.4 Reverse penalties

If Telefonica dispatches its staff to fix a reported fault, and the fault turns out to be related to a customer fault, or the work cannot be completed because of some act or omission by the customer's personnel then the customer will pay Telefonica the following penalties:

Times	Penalty without dispatch (Euros)	Penalty with dispatch (Euros)
From 8:00 to 22:00	101.31	111.46
From 22:00 to 8:00	126.64	138.57

²¹⁶See footnote 81 above.

²¹⁷See footnote 82 above.

²¹⁸See footnote 83 above.

20.5 Additional service levels

Availability and breakdown of the loop

Guaranteed availability of the local loop is determined as follows:

$$\text{Availability of loop} = \left(1 - \frac{\text{hours unavailable}}{\text{hours of service}}\right) \times 100$$

Where 'hours unavailable' is the total number of hours of unavailability of accessed loops and 'hours of service' is the total number of hours of service provided. The following provides a guarantee of availability for specific services:

Service	Guaranteed availability of accessed loops
Fully unbundled access	99.94%
Shared unbundled access	99.90%
Indirect access	99.90%

Failure to comply with the guaranteed availability will result in a penalty which is double the amount of the monthly affected users for the time unavailable that exceeds the maximum unavailability period.

Maximum service interruption / outage time

Type of Service	Maximum time without service for user
Transfer of indirect access subscriber connection	30 minutes
Migration of pPAI connections	60 minutes

There appears to be no rebates or penalties associated with breaches of outage time.

Breakdowns/malfunctions of accessed loops

Service	Maximum number of breakdowns for accessed loops per quarter
Fully unbundled access	0.04
Shared unbundled access	0.06

Service	Maximum number of breakdowns for accessed loops per quarter
Indirect access	0.06

Web system service levels

The system uptime is 24 hours a day, every day of the year. Unavailability does not include scheduled maintenance and updates. Availability of the system is expressed in the following equation:

$$Availability\ web\ system = \left(1 - \frac{hours\ unavailable}{hours\ of\ service}\right) \times 100$$

Service	Guaranteed availability
Web system	99.75%

The maximum initial application load time for the web system service is 30 seconds. However, this can be exceeded if there have been version updates to the system. This is expressed in the formula:

$$load\ time\ (seconds) = \frac{3000}{Cb\ (kbit/s)}$$

Where Cb is a connection capacity above 32kbits/s but less than 256kbits/s. In these cases maximum time for initial charge of application is 120 seconds.

Loading web pages

Service	Page load time
Web system – loading a page with a list of less than 200 records	20 seconds
Web page that doesn't give a list of records	5 seconds

Wholesale Line Rental (WLR)

What is WLR?

Wholesale Line Rental (**WLR**) allows customers to rent access to the incumbent's narrowband services and associated features at the local switch, through which wholesale customers can resell services to end users. The end user can then connect to a telecommunications provider's public switched telephone network (a telephone network accessible by the public that provides switching and transmission facilities for making and receiving telephone calls using either analogue or digital technologies)²¹⁹, which provides the end user with a telephone number and enables the end user to make and receive calls, including local calls, national calls and international long distance. The customer can then provide the end user with a single bill, which includes the costs of the line rental and the telephone calls.²²⁰

Ordering and delivery

The following section provides a background by country on the first element of the WLR "service journey" – ordering and delivery.

²¹⁹ACCC, Wholesale Line Rental Declaration Extension, July 2009.

²²⁰ Ofcom, Wholesale Line Rental: Reviewing and setting charge ceilings for WLR services, Statement, 24 January 2006.

21 United Kingdom – Openreach

21.1 Setting the service levels

Openreach is the provider of WLR services in the UK. Openreach supplies the WLR services to wholesale customers in accordance with the terms set out in the *WLR Contracts*²²¹.

In 2002, the first basic WLR product (WLR1) was launched following the Director General of Telecommunications' publication of the statement *Protecting consumers by promoting competition: Oftel's conclusions*, which statement required BT to provide WLR services at a regulated price. In March 2003, the DGT published *Wholesale Line Rental: Oftel's conclusions*, in which it required that BT improve its WLR service offering. Then in December 2003, following the publication of the *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets ("Call Origination Market Review statement")*, the DGT continued BT's obligation to offer analogue WLR, but also extended the obligation to supply digital WLR services. As a part of its obligations in accordance with the SMP conditions, BT was required to provide details of service level commitments, namely the quality standards that each party must meet when performing its contractual obligation.²²²

Similarly to LLU, customers have in the past complained about Openreach's service levels and in particular, that there is insufficient financial incentive to maintain service quality. Customers have tried to negotiate these terms with Openreach in the first instance; however, such negotiations have for the most part been unsuccessful. As a result, Ofcom and the Office of the Telecommunications Adjudicator (**OTA**) have intervened to review customers' complaints and set any revised service levels or service level guarantees for Openreach. This resulted in the 2008 statement above where Ofcom reviewed Openreach's financial penalty arrangements for WLR (the same as LLU, see the Chapter on LLU) following failed negotiations with customers and a referral from the OTA.²²³ We have not repeated the criteria against which Ofcom reviewed the SLAs and SLGs.

21.2 Service levels

BT will accept 99% of orders and provide a KCI (Order Acknowledged) or an error message for WLR3 Wholesale Access within 1 hour of the order for at least 99% of orders and within 6 hours for 100% of the orders.

BT will send a KCI2 (Order Accepted) or a KCI delay message for at least 99% of orders during a calendar month, for WLR3 Wholesale Access within 6 hours of the KCI1 message. For 100% of such

²²¹Available at <http://www.openreach.co.uk/orgg/home/products/wlr3/contracts/contracts.do>.

²²² Schedule 1: The SMP services conditions imposed on BT under sections 45, 87, 88 and 90 of the Communications Act 2003 as a result of the analysis of the markets set out in paragraph 1(a) of this Notification in each of which BT has been found to have significant market power ("SMP conditions"), Part 2: The SMP Condition, AB4(i)(ii).

²²³Ofcom, *Service level guarantees, incentivising performance*, Statement and Directions, 20 March 2008.

orders, BT will send a KCI2²²⁴ or KCI delay message the midnight of the day after the KCI1 message is sent.²²⁵

For WLR3 Wholesale Access, in relation to orders requiring a desk based survey and for which the KCI1 message is sent before 4pm, BT aims to complete at least 99% of desk based surveys by midnight on the SMC working day following the day the KCI1 is sent.

For WLR3 Wholesale Access a orders requiring a field based survey for which the KCI message indicated the field based survey requirement is sent before 4pm, BT aims to complete 99% of field surveys for WLR3 Wholesale Access by midnight 2 Field Working Days after the KCI message is sent.

BT will implement at least 99% of WLR3 Wholesale Access and WLR ISDN2 orders:

- completed in a calendar month for either the provision of, or removal of, or changes to, a single Calling and Network Feature, which are not associated with an order for the transfer or new provision of a line²²⁶, within the time specified in the appropriate table²²⁷ or on a later date agreed by both parties. If BT provides a later date to the customer for the completion of the work other than at the customer's request and which has not been agreed by both parties prior to it being provided, then that will not constitute a later date agreed by both parties.
- completed in a calendar month which contain multiple requests in relation to single or multiple Calling and network Features, which are not associated with an order for the transfer or new provision of a line, within the time specified in the appropriate table²²⁸ for the relevant feature (within that order which has the longest lead time).
- For WLR3 Wholesale Access and WLR3 ISDN2 orders listed below with a target completion time of 'same working day', BT aims to implement 99% of orders received before 4pm, within 2 hours of the KCI2 being sent and 100% of orders by midnight on the SMC working day following the day the KCI2 is sent.
- Note that there are a number of calling and network features offered under WLR3 Wholesale Access (e.g. call waiting, call barring, etc), which each have target completion timeframes.²²⁹

Service Guarantees

Provision transfer orders: completed and available to use by midnight on the date provided in the KCI 2 or on a later date agreed by both parties (this is a **proactive guarantee**, see below for the special measures applicable to proactive guarantees).

²²⁴ Order committed.

²²⁵It is worth noting that the process for ordering is not governed by an SLA. Set targets have rarely been met, and as such the end-to-end ordering-to-provisioning process is significantly undermined due to poor ordering processes.

²²⁶Means in the case of (a) WLR3 Wholesale Access, a single analogue line comprising of either: (i) a single analogue line or (ii) a line within a multi-line group; (b) WLR3 ISDN30, a single channel within a 2Mb bearer; and (c) WLR3 ISDN2, a digital line consisting of 2 channels.

²²⁷ These are specified in tables A-C in the *Contracts for WLR3, Schedule 4, Service Level Agreement*

²²⁸ These are specified in tables A-C in the *Contracts for WLR3, Schedule 4, Service Level Agreement*

²²⁹ These are specified in tables A-C in the *Contracts for WLR3, Schedule 4, Service Level Agreement*

Orders for provision of new supply: all orders for new supply will be completed and activated by midnight on the date provided in the KCI2 or on a later date agreed by the parties (this is a **proactive guarantee**, see below for the special measures applicable to proactive guarantees).

21.3 Service level guarantees

(a) Implementation

If BT fails to meet these commitments, then the CP will be entitled to:

- Wholesale Access: 1 month's line rental per line
- Wholesale Digital Access: 1 month's line rental per line

Orders to establish or remove the debt management facilities "Outgoing Calls Barred", "Route to Credit Control", "Temporary Out of Service" and "Indirect Access Call Barring" completed in a calendar month will be implemented as set out below:

Product	%	Implementation period
WLR Wholesale Access	99%	2 hours of the KCI2 being sent or a later date being agreed between the parties
WLR ISDN2	99%	10 SMC working days of the KCI2 being sent, or a later date being agreed between the parties

100% of orders to establish or remove the debt management facilities "Outgoing Calls Barred", "Route to Credit Control", "Temporary Out of Service" and "Indirect Access Call Barring" completed in a calendar month will be implemented by midnight on the SMC working day following the day the KCI 2 is sent or at a later time agreed by both parties.

If BT fails to do the above, BT will compensate the CP provided the CP notifies BT:

- For WLR3 Wholesale Access within 8 hours

For the order being placed that:

- a KCI 1 for that order has not been received; or
- within 10 hours after midnight on the SMC working day following the day the KCI is sent, that a KCI3 for that order has not been received.

Compensation

BT will credit the BT call usage charges incurred on those lines on which BT has failed to implement orders for "outgoing calls barred" which are ceased within 2 months of the order being placed.

(b) Cease orders

Cease orders to be completed by midnight on the date provided in the KCI2 or on a later date agreed by both parties, and if BT fails, CP will be entitled to compensation provided the CP notifies BT as follows:

Product	%	Notification period
WLR Wholesale Access	99%	EITHER within 8 hours of the order being placed that a KCI 1 for that order has not been received; OR within 2 hours after midnight on the SMC working day ²³⁰ following the date the KCI 2 is sent, that a KCI 3 for that order has not been received
WLR3 ISDN	99%	EITHER within 8 hours of the order being placed that a KCI 1 for that order has not been received; OR within 2 hours after midnight on the SMC working day following the date the KCI 2 is sent, that a KCI 3 for that order has not been received

Compensation

BT will credit any BT line rental and call usage charges which are incurred on the line after the date BT has agreed with the CP to cease the line.

(c) *Cancel own or others' instructions:*

The following service levels apply:

Product	Percentage and notification period
WLR3 Wholesale Access Cancel Own and Cancel Other orders	At least 99% of instructions received before 4.00pm on the day before the activation date set out in the KCI2 of the cancelled order, will be implemented, provided BT is notified by 2.00am on the activation date of the cancelled order that the order has not been cancelled

Compensation

BT will credit the transfer fee on those orders on which the fee is incurred and credit any BT line rental, call usage charges and any engineering charges which are charged on the line, or channel, whichever is applicable, after the activation date set out in the KCI2 relating to the cancelled order. The CP will be entitled to compensation of £2.70 (€3.18) per line or channel, whichever is applicable and BT will credit the transfer back fee on those orders on which the fee is incurred.

(d) *Appointments*

BT will keep any appointment with end user, and provide the Flexible Appointments product (which is appointments in the early morning and evening, Monday – Friday and Saturdays)²³¹. If BT fails, the CP is entitled to compensation.

Compensation

The CP will be entitled to compensation of £40 (€47.15) for each missed appointment.

²³⁰ Means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom.

²³¹The terms of the Flexible Appointment product are not public.

(e) Appointment availability

Appointment will be available within 13 working days with the exception that if the CP submits their order for the region that is exceeding their forecast²³² for the forecast period²³³ by 15%, then the service guarantees for the appointments do not apply.

Compensation

If the first available appointment is:

- 14-16 working days from the CP's order placement, BT will pay £2 (€2.36) per working day until the next available appointment from and including the 14th working day.
- 17 working days or later, BT will pay £4 (€4.72) per working day until the next available appointment including the 14th working day.

(f) Retention of carrier pre-selection²³⁴

For 99% of orders which require Carrier Pre-Selection to be retained on a line, BT will reinstate Carrier Pre-Selection within 30 minutes of the completion of the transfer. If CP notifies BT within 2 hours of the CRD, the CP will be entitled to compensation (this is a **proactive guarantee**, see below for the special measures applicable to proactive guarantees).

Compensation:

Where the call of BT costs is higher (than the third party carrier pre-selection provider's rates), BT will credit the difference between the cost of BT calls and either the:

- where the CP uses a third party carrier pre-selection provider: the cost of those calls, or
- where the CP does not use a third party carrier pre-selection provider: the cost of the equivalent calls in the highest priced tier published in the BT Wholesale Call Commitment Package or alternatively, the cost of those calls to the CP.²³⁵

(g) Calling and Network Features²³⁶

For Calling and Network Features, BT will implement at least 99% of WLR3 Wholesale Access and WLR3 ISDN2 orders completed in a calendar month for either the provision of, or removal of, or changes to, a single Calling and Network Feature, which are not associated with an order for the transfer or new provision of a line, within the time specified in the appropriate table²³⁷ or on a later date agreed by both parties. If BT provides a later date to the Communications Provider for the

²³²Is a rolling 6 months forecast provided by the customer to BT quarterly in advance.

²³³Means 3 calendar months for which the forecast is provided.

²³⁴Means a service which enables certain outgoing calls to be routed via telecommunications networks which are not operated by BT

²³⁵Ofcom has accepted a compensatory element based on the losses for these services.

²³⁶These are specific calling features such as called party answer, caller display, reminder call, ring back, call waiting, call barring, three way calling, call diversion etc. Further details on these and the applicable service levels are specified in section 2.2 of the Openreach WLR Service Levels Schedule, at http://www.openreach.co.uk/org/home/products/wlr3/contracts/contracts/downloads/BT%203040c_WLR3%20Schedule%204%20Service%20Levels%20Issue_13_160113.pdf

²³⁷See tables A-C of the *WLR Service Levels Schedule*.

completion of the work other than at the Communications Provider's request and which has not been agreed by both parties prior to it being provided, then that shall not constitute a later date agreed by both parties.

BT aims to implement at least 99% of WLR3 Wholesale Access and WLR3 ISDN2 orders completed in a calendar month which contain multiple requests in relation to single or multiple Calling and Network Features, which are not associated with an order for the transfer or new provision of a line, within the time specified in the appropriate table²³⁸ for the feature within that order which has the longest lead time.

For those WLR3 Wholesale Access and WLR3 ISDN2 orders listed below with a target completion time of "same working day", BT aims to implement 99% of orders received before 4.00pm, within 2 hours of the KCI 2 being sent and 100% of orders by midnight on the SMC working day following the day the KCI 2 is sent.

Note that the above service levels on Calling and Network features are **proactive guarantees**. (See section 21.6(b) of this document for the special measures applicable to proactive guarantees).

Compensation

If a BT Calling or Network feature is taken as part of the service, then subject to any limitations, the customer will be entitled to:

- for WLR3 Wholesale Access and WLR3 ISDN3 an amount equal to 1 month's rental;
- for WLR3 ISDN30 an amount equal to 35% of 1 month's rental.

for the BT Calling and Network Feature for each day or part day that BT is late in repairing a continuous total loss of that BT Calling or Network feature or BT is late in providing that Calling and Network feature as part of a new provision order. If there is a continuous total loss of the ability to make or receive calls, the Communications Provider shall be entitled only to compensation for that failure. Compensation will not be paid on the BT Calling and Network Feature element of the service.

The Communications Provider shall not be entitled to compensation for the continuous total loss of a BT Calling and Network Feature which is provided either free of charge or where the only applicable charge is a one off connection charge with no further regular charge or where the only applicable charge is a per usage charge.

(h) Exclusions regarding the availability service levels (and associated compensation)

If BT issues a request to a CP for further information in relation to a particular order, for the number of whole or part hours taken for the CP to respond to BT, the corresponding number of working hours will be added to the times frames specified above.

The service level and compensation relating to the orders will not apply if:

²³⁸See footnote number 14.

- the failure by BT is due to the performance of the public internet;
- the failure by BT is due to the customer's own network or equipment or any other network or equipment outside the BT Network;
- the failure is due to a force majeure reason;
- the failure is due to a scheduled outage;
- the loss of service was caused by activity which removes or disrupts or attempts to remove or disrupt normal Systems service and/or systems security either intentionally or accidentally and this exclusion includes the time required to re-affirm or re-establish the normal systems service or systems security;
- emergency action is necessary;
- activity by BT is necessary to restrict the volume of orders including but not limited to system recovery; or
- disaster recovery activity is required to be undertaken by BT.

21.4 Reporting / KPIs

The customer can enter into a contract with Openreach²³⁹ for access to an online portal to determine Key Performance Indicators (**KPIs**). This entitles CPs to access to the following online tools:

- Openreach analytics – customers can use this to view and monitor the progress of their orders and fault reports;
- Openreach business information toolset (ORBIT) – this allows customer to see the data (the Openreach analytics) as a series of reports.

Through these online tools, customers can create reports on a daily, weekly and monthly basis, in respect of deliveries, Openreach promises, order status, repeat faults, mean time to provision and volumes of jobs on a product by product basis.

21.5 Ancillary service levels

(a) *Disconnection in error*

If BT disconnects in error, BT will pay:

- for the Wholesale line Access an amount equal to 1 month's line rental;
- for the Wholesale Digital Access Standard or Digital System per affected line, an amount equal to 1 month's line rental.

²³⁹ Openreach KPI Contract at <http://www.openreach.co.uk/orgg/home/products/serviceproducts/downloads/KPI%20Online%20Conditions.pdf>

- for each day or part day when the service is disconnected provided the CP notifies BT in writing that the service has been disconnected within 6 working days of any disconnection of end user, the following:

Product	Maximum compensation
Wholesale Access	For any one failure limited to 60 full days per line
Wholesale Digital Access	For any one failure limited to 60 full days per line

(b) *Service Level for WLR3 systems*

The Equivalence Management Platform (**EMP**) will be available 24x7, 365 days a year. Loss of service will be calculated each Measurement Period²⁴⁰ on a per customer basis. Loss of service is measured from the point at which the public internet meets the Equivalence Management Platform. Scheduled outages are excluded from the calculation of the availability.

If there is a loss of service, then BT will pay service credits in accordance with the formula specified in paragraph 4 of section B of the WLR Service Levels Schedule.²⁴¹

The following Dialogue Services will have the following target transaction completion times:

Dialogue service	Target average (mean) transactions time over one month
Manage line Test	45 seconds
Obtain Installation Details	15 seconds
Appointing	8 seconds
Manage line Plant Availability	8 seconds
Number Reservation	8 seconds
Number Portability	8 seconds

²⁴⁰Calendar month.

²⁴¹

http://www.openreach.co.uk/orpg/home/products/wlr3/contracts/contracts/downloads/BT%203040c_WLR3%20Schedule%204%20Service%20Levels%20Issue_13_160113.pdf

21.6 Rules regarding payment of compensation

(a) Maximum

The compensation payable for failure to achieve the service levels are set out above. It is important to note that there are limits on the compensation payable:

Product	Maximum compensation
Wholesale Access	For any one failure limited to 60 full days per line
Wholesale Digital Access	For any failure limited to 60 full days per line

(b) Method for payment

Except for the guarantees that are specified as **proactive guarantees**, immediate compensation will only be allowed if the customer notifies BT within 6 months of the failure giving rise to the compensation. For claims relating to the provision of Calling and Network features where evidence indicates a failure could not have been identified in the first 6 months after the provision, a customer may submit a claim up to 12 months after the Calling and Network feature provision order was submitted.

Compensation in such circumstances will be limited to the 3 months period prior to the compensation for the failure being claimed. Provisioning claims are submitted by the 13th day of the month and subject to a maximum limitation of 1,700 claims across all customers by this cut off point, and any compensation will be credited to the customer's next invoice.

For the **proactive guarantees**, BT must monitor its performance against the guarantees and compensate the customer proactively if it fails to meet the guarantee – that means that the customer does not need to make a claim. BT may offset any part of any compensation against any outstanding amounts due for the service which has not been paid by the customer.

(c) Exclusions

If BT issues a request for further information to the customer, the number of hours that it takes the customer to respond, will be added to the timescales specified in the relevant service level.

The service level and the compensation will not apply if:

- the failure by BT is due to the performance of the public internet;
- the failure by BT is due to the customer's own network or equipment or any other network or equipment outside the BT Network;
- through no fault of BT, BT is unable to carry out any necessary work at, or gain access to an end user's site or the customer fails to agree an appointment date or work is aborted by the customer or end user or a 3rd party that BT reasonably assumes to be in authority;
- the customer and BT agree a different timescale for performance of the service;

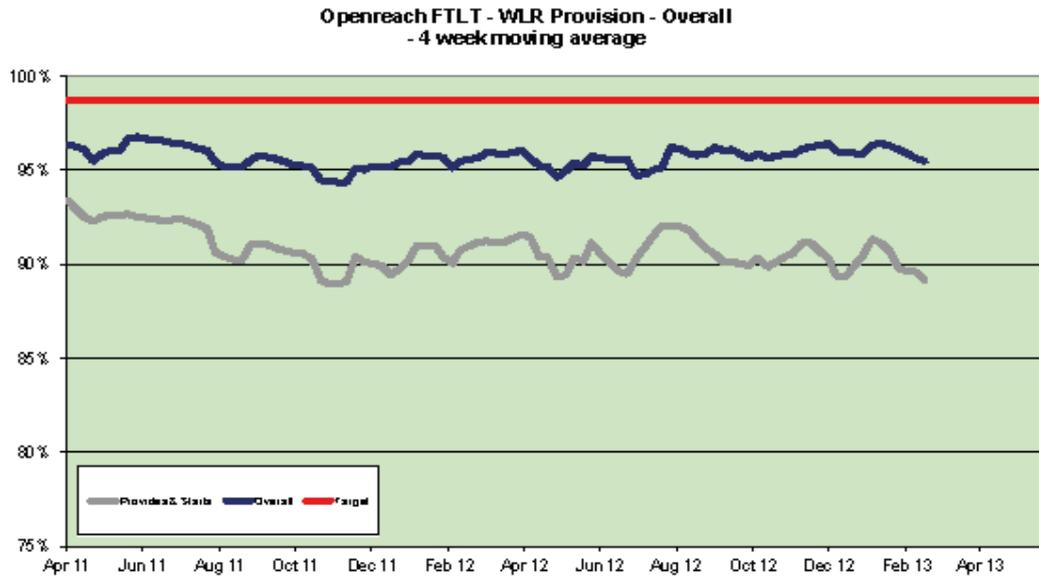
- the failure by BT is because reasonable assistance is required or information is reasonably requested or required by BT from the customer, end user or a third party and such assistance or information is not provided;
- through no fault of its own, BT is unable or is waiting to obtain any necessary permissions or consents required in connection with the performance of a particular service level;
- the failure is due to a reason covered by force majeure;
- the failure is due to the application of the geographic number porting process in accordance with that process;
- the failure is due to BT receiving a cancel own or cancel other instruction in relation to the affected order;
- during work to implement an order for a line, BT discovers that work is required which could not have been reasonably foreseen;
- the failure is due to a scheduled outage or an outage of the systems notified in accordance with the contract; or
- the failure is because an ancillary product is required.

21.7 Reporting

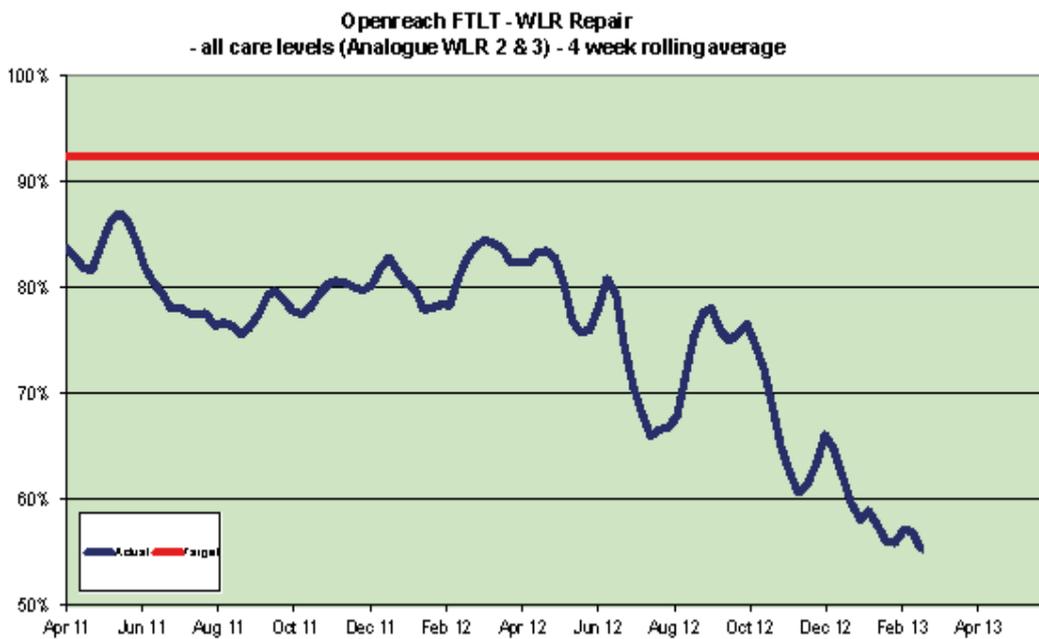
The OTA reported the following results on Openreach's performance regarding the delivery and repair of WLR services in 2013.²⁴²

The below diagram depicts the 'Right First Time' i.e. delivered on the agreed 'customer committed date'. The metric also delineates those orders which require an engineer visit (grey line) from those that don't. Please note that the blue line denotes the overall performance and the red line is the target SLA:

²⁴² Source: OTA, <http://www.offta.org.uk/charts.htm>



The following diagram shows Openreach’s performance against its repair service levels:



22 Australia, Telstra

22.1 Setting the service levels

The background on the Australian regime is set out in the LLU chapter.

22.2 Service levels

Pursuant to Telstra's Structural Separation Undertaking (**SSU**), Telstra is required to achieve a number of service levels metrics for WLR, as set out below. Prior to the SSU, these terms were predominantly commercially negotiated, and were subject to no oversight by the regulator.

Metric number 1, the percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the Service Level – previous service available for automatic connection (an In-Place Connection):

- Urban²⁴³ – 2 Clear Working Days²⁴⁴
- Major Rural²⁴⁵ – 2 Clear Working Days
- Minor Rural²⁴⁶ – 2 Clear Working Days
- Remote²⁴⁷ – 2 Clear Working Days, each from the relevant order date.

Metric number 2, the percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the Service Level - new service with available cabling and capacity where pre-provisioning work is not required:

- Urban – 5 Clear Working Days
- Major Rural – 10 Clear Working Days
- Minor Rural – 10 Clear Working Days
- Remote – 15 Clear Working Days, each from the relevant order date.

Metric number 3, the percentage of Basic Telephone Service orders provisioned in the relevant Quarter, on or by the Service Level - new service which requires additional cable or network capacity.

- Urban – 20 Clear Working Days
- Major Rural – 20 Clear Working Days
- Minor Rural – 20 Clear Working Days
- Remote – 20 Clear Working Days,

²⁴³ means a township or community group of 10000 people or more.

²⁴⁴ Means a working day commencing at 8am of the next or preceding working day. Working day means any day other than a Saturday or Sunday or a public holiday.

²⁴⁵ means a township or community group of more than 2500 people but less than 10000 people

²⁴⁶ means a township or community group of 201 people or more but not more than 2500 people within a standard zone (as defined under the *Consumer Protection Act*).

²⁴⁷ means a township or community group of less than or equal to 200 people or township or community group located outside a 'standard zone' (as defined under the *Consumer Protection Act*).

Metric number 4, for all locations: appointment between two particular times less than or equal to a 4 hour period – must be at the customer’s premises no later than 15 minutes after the end time of the appointment.

- Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer’s premises no later than the end time of the appointment.
- Minor Rural/Remote – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance – must be at the customer’s premises no later than 45 minutes after the end time of the appointment.

Note – Response time is the end time of the calculation. It represents the time that the technician arrived for the appointment and is dependent on Telstra workforce or contractors making a record of their arrival time.

The above service levels do not apply to interim orders²⁴⁸ or withdrawn orders²⁴⁹.

Metrics numbers 1-3 and 5 are measured from the date which Telstra receives a correct and valid application from the customer to the date recorded in Telstra’s relevant provisioning system as the date when all of the relevant stages for that service through which an order can pass are completed or the clearance date if there was a Fault on the connected service. Where the CRD (Customer Requested Date) or RCRD (Revised Customer Requested Date) is longer than the Service Level, then the CRD or the RCRD will be the Service Level (Telstra commitment date).

22.3 Customer Service Guarantee

The *Telecommunications (Customer Service Guarantee) Standard 2011* (a legislative scheme) provides a number of safeguards in relation to (a) connecting a service (b) repairing a fault or service difficulty and (c) attending appointments with customers.^{250,251} This only applies to consumers. The Guarantee explicitly excludes carriers and service providers.

The maximum time frame under the CSG Standard for connecting a service depends on whether the service is 'in-place' or not. An in-place connection can generally be activated by a telephone service provider at the local exchange without the need to visit the customer’s premises.

²⁴⁸ Means a request by a customer for the installation of a non-permanent working solution.

²⁴⁹ Means an order that has been withdrawn by the customer.

²⁵⁰ The Customer Service Guarantee does not apply to mobile or internet or to customer equipment with more than five phone lines.

²⁵¹ In certain circumstances, the CSG performance requirements do not apply to phone companies. These include situations where a customer accepts a phone company’s offer to supply an interim or an alternative phone service (such as a mobile handset) or a customer refuses a reasonable offer of an interim or an alternative service. Phone companies are not required to meet CSG time frames—during the period of a claimed exemption—where there are circumstances beyond their control, such as when natural disasters or extreme weather conditions cause mass disruptions of services. Examples of extreme weather conditions defined under Schedule 3 of the CSG Standard include: large hail, heavy rainfall, flash flooding, hazardous winds, lightning, blizzards, tornadoes, large waves and storm tides

Maximum time frames also depend on whether the premises are close to existing telecommunications infrastructure and the size of the population of the community where the service is located. The following table outlines the maximum time frames for connections at premises that are readily accessible to existing telecommunications infrastructure:

(a) *Maximum time frames for connecting services readily available to accessible infrastructure*

Connection type	Community location	Community size	Connection time (after receipt of customer's application)
In-place Connection	All	All	Within 2 working days
No in-place Connection (close to available infrastructure)	Urban	Equal to or more than 10,000 people	Within 5 working days
	Major rural	Between 2,500 and 10,000 people	Within 10 working days
	Minor rural and remote	Up to 2,500 people	Within 15 working days

(b) *Maximum time frames for connecting services not readily accessible to available existing telecommunications infrastructure*

Community location	Community size	Repair time
Urban	Equal to or more than 10000 people	End of next working date after report
Rural	Between 200 and 10000 people	End of second working day after report
Remote	Up to 200 people	End of third working day after report

(c) *Maximum timeframes for appointments*

Appointment period	Definition of missed appointments
Four hours or less	Phone company does not attend within 15 minutes of the appointment period
Between four and five hours	Phone company does not attend within the appointment period

22.4 Service level guarantees

(a) Rebates payable under the Structural Separation Undertaking

Telstra will enter into a Regulated Services SLA Deed with the customer on request if the customer wishes to participate in the Service Level Rebate scheme. Otherwise, a customer may choose to get the rebates under an existing service level agreement, seek an alternative arrangement with Telstra or continue to rely on their statutory service guarantee standards explained in more detail (a statutory service levels regime, see section (e) below), which is typically determined through commercial negotiations between the parties.

(b) Regulated Services SLA Deed

If there is a Reporting Variance²⁵² (see below for Telstra's obligation on reporting against its KPIs), then Telstra will pay rebates if Telstra and the customer have entered into the Regulated Services SLA Deed in Schedule 7 of the SSU. If there is no variance, then Telstra will not pay rebates. The amount of the Service Level Rebate is determined in accordance with the following:

For metrics 1 – 6: 1 x List Price²⁵³

Price List is an amount equal to the monthly access price for the supply of the WLR service in the relevant area that is prescribed by the ACCC in an access determination under statute²⁵⁴ from time to time.²⁵⁵ Where there is no access determination in force the monthly access price for the supply of the WLR service in the relevant service area in the previous access determination will prevail until a new interim or final access determination is published by the ACCC.

(c) Payment of rebates

Rebates will be paid by applying a credit against the amount that is to be paid for the supply of the service.

Telstra will determine the rebates for each quarter within 10 Business Days after the report for that quarter has been published (see below for KPI reporting).

If Telstra determines that rebates are payable for a quarter they will be credited to the wholesale customer as part of the next available billing cycle for that wholesale customer without the need for the wholesale customer to submit a claim.

(d) Exceptions

Rebates will not be payable if:

- the failure to meet the service level is due to:

²⁵² For the WLR Metrics, this means when the E&T Performance Result reported in the relevant report shows a variance of 2% or more in negative terms between performance for Wholesale Customer and Telstra's Retail Business Units.

²⁵³ Note that this Service Level Rebate is payable for each time Telstra fails to meet the relevant service level.

²⁵⁴ Division 4 of Part XIC of the CCA

²⁵⁵ Monthly service fee of AUD22.84 (€16.40)

- any of the matters or events set out in the conditions²⁵⁶;
 - an act or omission of the customer;
 - an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome.
- the applicable Regulated Service (WLR services are included in this) to which the Service Level relates is used by the customer to supply a service to another service provider that is entitled to make a claim against Telstra in relation to the same set of events, such as a right of contribution under the provisions of section 118A of the Consumer Protection Act.²⁵⁷
 - if the wholesale customer is in breach of the terms of a wholesale contract under which Telstra supplies a Regulated Service to the customer or the terms on which the customer accesses or uses LOLO (Telstra's web-based operational gateway system) Telstra may withhold payment of all rebates to the customer until that breach has been rectified in accordance with the applicable terms.
 - if the rebate is paid to the customer in error, Telstra may recover the amount of that rebate from a wholesale customer (including by applying a set-off against other rebates to be paid to that customer)
 - not payable where an order is unable to be processed after it has been received due to unavailability of LOLO (assessed under metric 21)²⁵⁸.

(e) Penalties applicable under the Customer Service Guarantee (only applicable to consumers)

The following penalties apply to a failure to meet the service levels under the Customer Service Guarantee:

²⁵⁶ Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra's performance is measured against a fixed Service Level rather than measuring Telstra's comparative performance for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra's control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra's ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user's premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours' notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

²⁵⁷ S118A of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* provides that if a customer becomes liable for any of the penalties to the end user under the Customer Service Guarantee, and that liability has arisen by some contribution of the upstream supplier, then the customer is able to claim secondary damages in respect of that end user claim under this section and in respect of the customer service guarantee standards.

²⁵⁸ Which has a service level of 98% calculated at $(\text{Total Time} - \text{Outage Time}) / \text{Total Time}$ with an applicable rebate amount of $\text{AUD } 5 \times (\text{Average Hourly Order Rate} \times \text{Total Number of Hours Outage})$

Customer type	Services delayed	Compensation for first 5 working days (paid for per day of delay)	Compensation after first 5 working days (paid for per day of delay)
Residential	Connection or repair of standard telephone service	\$14.25 (€10.23)	\$48.40 (€34.75)
	Connection or repair of enhanced call handling features to an existing service	\$7.26 (€5.21)	\$24.20 (€17.38)
	Connection or repair of two or more enhanced call handling features to an existing service	\$14.52 (€10.43)	\$48.40 (€34.75)
	Not keeping an appointment	\$14.52 (€10.43) for each missed appointment	
Business	Connection or repair of the standard telephone service	\$24.20 (€17.38)	\$48.40 (€34.75)
	Connection or repair of enhanced call handling features to an existing service	\$12.10 (€8.69)	\$24.20 (€17.38)
	Connection or repair of two or more enhanced call handling features to an existing service	\$24.20 (€17.38)	\$48.40 (€34.75)
	Not keeping an appointment	\$24.20 (€17.38) for each missed appointment	

(f) *Claiming compensation under the Customer Service Guarantee (only applicable to consumers)*

Typically, in downstream telecommunications contracts, there is a provision that ensures that the operator would automatically compensate customers in accordance with the above for failure to achieve the CSG service levels.²⁵⁹ If the phone company fails to pay compensation, or there is a

²⁵⁹Note that downstream customers can choose to waive their rights for CSG service levels.

dispute as to the amount of compensation paid (or payable), the customer should contact the company in the first instance and seek to resolve the issue directly. If the issue cannot be resolved with the phone company, the customer may raise the matter with the Telecommunications Industry Ombudsman (**TIO**). The TIO is able to investigate complaints and, if necessary, determine an outcome. This is the only escalation avenue available under the Customer Service Guarantee scheme.

22.5 Reporting / KPIs

Telstra's measurement against the WLR Metrics will be relative. As such, on a quarterly basis, Telstra will measure the Variance between:

- its performance against Equivalency and Transparency (**E&T**) Metrics in relation to wholesale customers; and
- its performance against the E&T Metrics in relation to the Retail business Units.

Each Quarter, Telstra must report to the regulator (the Australian Competition and Consumer Commission) and the Independent Telecommunications Adjudicator, a report (**Operational Equivalence Report**) that sets out:

- the E&T performance result for each Metric for that quarter
- the result that would have been the E&T performance result for each Metric for that Quarter if the conditions in paragraph 3 of Schedule 10²⁶⁰ (the **conditions**) were²⁶¹ not applied
- the performance against the E&T Metrics in relation to Wholesale Customers; and
- an explanation of how Telstra has applied the conditions calculating the E&T performance result for each Metric for that quarter.

The report must be provided to the ACCC and the ITA by no later than two months after the end of the quarter to which it relates.

If the report shows a Reporting Variance, Telstra will:

²⁶⁰ Paragraph 10 of Schedule 3 sets out a number of conditions which Telstra is not required to consider when calculating the E&T Metrics, including (a) for Metrics 12-16 and 20-21 (being Metrics for which Telstra's performance is measured against a fixed Service Level rather than measuring Telstra's comparative performance for retail business units and wholesale customers), a ticket of work which is directly affected by NBN-related activities being undertaken by NBN Co or Telstra in any rollout region or which is in the course of being migrated to the NBN at any time during the quarter; (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the plan; (c) a failure to meet the Service Level due to circumstances outside of Telstra's control, including (i) damage to a Telstra facility by a third party; (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the E&T Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra's ability to perform the Metric); (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or (iv) where Telstra is unable to obtain lawful access to an end user's premises, or to any land or facility, which is necessary to be able to perform the relevant work; (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster; (e) circumstances where the retail customer or end-user of a wholesale customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours' notice; and (f) a failure to meet a Service Level which the retail customer or wholesale customer (as applicable) has waived in writing; or (g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

²⁶¹ Set out in paragraph 10 of schedule 3 of the SSU

- promptly investigate the cause or causes of the non-compliant result;
- at the same time as Telstra provides the report for the quarter, it will separately provide to the Independent Telecommunications Adjudicator and the ACCC an accompanying confidential report setting out for each non-compliant result:
 - a reasonably detailed explanation of the reasons for the Reporting Variance
 - if Telstra determines that the failure is in part or whole due to non-compliance with Part D of the SSU , it will set out any steps being taken to further investigate and / or rectify the non-compliance, including an estimated timeframe for rectification.

Telstra must calculate the Variance as follows:

- For Metrics 1 - 11, the Variance threshold is applied to business and residential customers separately
- For Metrics 19, 20 and 21, the Variance threshold is applied to combined business and residential data
- For Metrics 17 and 18, the Variance threshold is applicable to business data only.

Telstra's results for September quarter of 2012

For the September 2012 quarter, Telstra reported the following (variance) results in the operational equivalence report:²⁶²

- Metric 1: (-) business variance: 12.21% and (-) residential variance: 3.88%
- Metric 2: (-) business variance: 18.12% and (-) residential variance: 7.96%
- Metric 3: (-) business variance: 15.53% and (-) residential variance: 18.84%
- Metric 4: (-) business variance: 0.66% and (-) residential variance: 2.26%
- Metric 5: (-) business variance: - 4.92% and (-) residential variance: - 3.95%

²⁶² Operational Equivalence Report for the September Quarter, 30 November 2012 <http://www.telstrawholesale.com.au/download/document/operational-equivalence-report-sept-12.pdf>

23 Denmark, TDC

23.1 Setting the service levels

In Denmark, the Act nr.169 (03.03.2011) on Electronic Communications Networks and Services (the **Act**), governs telecommunications. In particular section 41 of the Act requires the incumbent operator to publish a reference offer, which needs to set out the service, including a description of the services and the associated terms and condition for the supply of the service. Section 52 of the Act provides that the *National IT and Telecom Agency* will supervise compliance with the provisions of the Act, including specific requirement sin respect of the reference offer. As such, TD is required to publish a reference offer, and submit it to the regulator for approval.

Although we have found no specific cases to date on this, in case of any disputes regarding the reference offer, a party can submit a dispute to be decided by the courts, including requesting an ‘administrative body’ to make a decision in respect of the parties’ agreement (although the Act does not specify the relevant administrative body).

23.2 Service levels

TDC will provision the service orders based on the following service levels:

- Full automatic orders – day of order + 1 business day
- Orders that can be executed without a technician’s visit at the end user’s premise, and without digging or construction work – day of order + 6 business days
- Orders that can only be executed by technician’s visit at the end users place, but without digging or construction work – day of order + 12 business days
- Orders that can be executed either with, or without a technician’s visit at the end user’s place, but requires digging or construction work – day of order + 20 business days
- Orders that can only be executed by technician’s visit at the end user’s place, but either with or without digging or construction work – day of order + 20 business days

For a customer (wholesale customer who has been notified by the end user) that the delivery or the installation is not satisfactory, there are two ways of remediation, which can only be requested within 14 days after the date of installation:

- “Standard repairing” – under this method, the provider will have a right to claim compensation if TDC fails
- “Express repairing”²⁶³

²⁶³ The customer may contact TDC’s wholesale service desk by phone or email before 4pm, and a new installation will be organised for the next business day. All enquiries after 4pm will be considered to have been received on the following business day.

There are ***different service packages*** available for service levels, which customer could purchase at a price,²⁶⁴ including:

1) *Standard service level*

- Business days from Monday to Friday
- Service period/Work hours from 8AM to 4PM
- Reaction time on site - as fast as possible, but usually 2-4 days from fault reporting
- Reaction time remote – (no information)
- No non-stop debugging (re faults) – debugging ends at the end of a service period and restarted at the next service period
- On site fault remedy procedure – 100hours in average (based on TDC’s statistics)
- Customer visit(booking intervals) - 4 and 8 hour intervals

2) *Business days 8am – 4pm package*

- Business days from Monday to Friday
- Service period/ Work hours from 8AM to 4PM
- Reaction time Major – max 3 work hours
- Reaction time Minor – max 8 work hours
- Fault reporting interval 0AM-12PM
- No non-stop debugging
- Customer visit(booking intervals) - 4 and 8 hour intervals
- Fault remedy/debugging time – (no information)
- Fault remedy/debugging time when major fault – max. next business day
- Fault remedy/debugging time when minor fault – max. next two business days

3) *Business days 8AM-7PM package*

- Business days from Monday to Friday
- Service period/Work hours from 8AM to 7PM
- Reaction time Major – max 1 work hour
- Reaction time Minor – max 5 work hours
- Fault reporting interval 0AM-12PM
- No non-stop debugging
- Customer visit(booking intervals) - 4 and 8 hour intervals
- Fault remedy/debugging time – max next business day
- Fault remedy/debugging time when major fault – max. 11 work hours
- Fault remedy/debugging time when minor fault – max. next business day

²⁶⁴http://download.tdc.dk/pub/tdc/erhverv/branchesalg/gensalg_fastnet/HA_Gensalg_fastnet_B1e_Servicekoncept_v_standard_110311.pdf - "Bilag 1e - Serviceaftaler"

4) Business days 8AM-8PM package

- Business days from Monday to Friday
- Service period/Work hours from 8AM to 8PM
- Reaction time Major – max 1 work hours
- Reaction time Minor – max 4 work hours
- Fault reporting interval 0AM-12PM
- No non-stop debugging
- Customer visit(booking intervals) - 4 and 8 hour intervals
- Fault remedy/debugging time – (no information)
- Fault remedy/debugging time when major fault – max. 10 work hours
- Fault remedy/debugging time when minor fault – max. next business day

5) All days 8AM-10PM package

- Business days from Monday to Sunday
- Service period/Work hours from 8AM to 10PM
- Reaction time Major – max 1 work hours
- Reaction time Minor – max 4 work hours
- Fault reporting interval 0AM-12PM
- No non-stop debugging
- Customer visit(booking intervals) - 2, 4 and 8 hour intervals
- Fault remedy/debugging time – (no information)
- Fault remedy/debugging time when major fault – max. 8 work hours
- Fault remedy/debugging time when minor fault – max. next business day

6) All days 8AM-10PM package

- Business days from Monday to Sunday
- Service period/Work hours – 24hours a day
- Reaction time Major – max ½ work hour
- Reaction time Minor – max 2 work hours
- Fault reporting interval 0AM-12PM
- No non-stop debugging
- Customer visit(booking intervals) - 2, 4 and 8 hour intervals
- Fault remedy/debugging time – (no information)
- Fault remedy/debugging time when major fault – max. 4 work hours
- Fault remedy/debugging time when minor fault – max. next business day

If customer wishes to take advantage of any of the above enhanced service levels, then customer must pay TDC the following amounts:

For PSTN / ISDN2:

Business days 8AM-4PM	dk35,00 (€4.69)
Business days 8AM-7PM	dk43,20 (€5.79)

Business days 8AM-8PM	dk91,20 (€ 12.23)
All days 8AM-10PM	dk139,20 (€ 18.67)
All days 0AM-12PM	dk180,00 (€ 24.14)

23.3 Service level guarantees

The customer will have a right to be compensated in the following circumstances:

- if TDC exceeded the time limit given for delivery, and hasn't provided the connection to the service ordered, unless the cause of delay is on the customer's side.
- if the customer has ordered services and not specified a date but selected for it to be delivered 'as soon as possible', and TDC hasn't delivered the connection within the actual delivery time (as set out above), unless the cause of the delay is on the customer's side.
- if TDC hasn't mended the reported fault in its own system and installations within the agreed fault debugging time in service level agreement, unless the cause of the delay is on the customer's side.

Maximum liability

TDC's responsibility is capped according to the customer's spend. These caps are per year.

Resellers buying/ year	TDC's responsibility expressed in DKK
0 - 10 million DKK	100,000DKK (€13,410.04)
10million – 100million DKK	175,000DKK (€23,467.57)
Over 100million DKK	250,000DKK (€33,525.10)

There are no other details regarding the penalties that are payable by TDC, including specific details on what the penalty for missing each service level is. The above cap figures suggest that TDC is liable for damages up to a specific amount (i.e. loss of profits by the customer, which would need to be proven by the customer and therefore subject to the principles of damages under contract law such as remoteness, mitigation, etc.). This model contrasts with the UK model, which provides service level guarantees as a means of compensation by proxy.

23.4 Reporting

Neither TDC nor the regulator publish KPIs for WLR. TDC was contacted directly to confirm this and it is indeed the case that no performance reports are published for WLR in Denmark.

24 Germany

As confirmed by the Bundesnetzagentur, Deutsche Telekom does not offer a regulated WLR product.

25 New Zealand – Telecom New Zealand Wholesale and Chorus

25.1 Setting the service levels

In New Zealand, Telecom Wholesale was created as a result of the adoption of a functional separation model. In late 2011 Telecom voluntarily structurally separated into a wholesale and retail business in order to participate in the Government's Ultra-fast Broadband Initiative (**UFB Initiative**). Chorus (which broadly reflects the network business under the operational separation regime) provides regulated access to its copper services (including an unbundled copper local loop service, a bitstream service and an unbundled copper low frequency service for voice services). In addition, it will provide fibre services as part of the Government's UFB Initiative.

Since the demerger of Chorus from Telecom, Chorus has been required to supply the local access and calling service in a bundle with its unbundled bitstream access service. This requirement is met through Chorus acting as an agent for Telecom Wholesale. Under the Chorus-Telecom Wholesale agreement for voice services, Chorus is responsible for the supply of various Telecom Wholesale services (including full responsibility for all operational aspects), while Telecom retains the contractual relationship with access seekers and responsibility for the commercial aspects of the products.

Prior to structural separation, Telecom was subject to operational undertakings, which required it to comply with certain resale equivalence obligations, and then submit Service Performance Equivalence KPIs (**SPEK**) to help monitor its compliance with equivalence. Since structural separation in 2011, Telecom Wholesale is no longer required to comply with resale equivalence obligations, but still publishes SPEK reports on a commercial basis.²⁶⁵

25.2 Service levels

The service levels provided by Telecom Wholesale are merely aspirational and neither party is obliged to achieve them.

Unless specifically stated below, Telecom has an objective of achieving the service levels in 90% of the instances in any one calendar month.

The service levels below (except for the **Service provisioning** service levels (final table)) do not apply to any Projects.²⁶⁶

²⁶⁵Telecom Wholesale, *Service Performance Equivalence KPIs (SPEK) Report*, February 2012

²⁶⁶ means a Request that involves 10 or more voice lines/data circuits and/or a group of Requests which need to be synchronized and resources coordinated in order to meet the specific requirements of the relevant Service Provider's Customer(s).

(a) Provisioning of transfer requests for residential and business customers

Service attribute	Service Level	Comment
Request acknowledgement	4 consecutive hours within Receipt Time ²⁶⁷	
Notification of rejections	4 consecutive hours within Receipt Time	Only applicable to reasons which can be determined in 4 hours.
Transfer lead-time	Complex reassignment request ²⁶⁸ → within 12 consecutive working days ²⁶⁹ All other assignment requests → within 3 consecutive working days Transition requests (WBS and UBS) → within 1 consecutive working day Change package (WBS and UBS) → within 1 consecutive working day	Expected completion date will be the longest applicable transfer lead-in time to complete the request. If there is no network capacity or temporary equipment or plant shortage, the service level will not apply.
Confirmation	Within 1 business day after the transfer request has been completed.	

(b) Deliverables specific to direct supply of service for business customers

Service attribute	Service Level
Direct supply notifications	At least 1 consecutive working day prior to commencing process of direct supply.
Billing cessation advice	Within 1 business day of completing the direct supply process.

(c) Deliverables specific to new services and MACs for residential and business customers

Service attribute	Service Level	Comment
Rejection of new of MAC request	Within 4 consecutive business hours ²⁷⁰ of Receipt	Only applies to reasons for rejection that can be determined in 4 consecutive business hours.
Notification of	within 5 consecutive	Expected RFS date to be determined by the

²⁶⁷ Calculated as the number of consecutive hours, days etc. For example, the time between 2 pm on Thursday to 2pm on the following Monday (provided that Thursday, Friday and Monday are working days) is 2 consecutive days. Requests submitted outside of business hours will be deemed to have been received the start of the next following business day. And, for (a) Requests that are made using OO&T or the TED Customer Portal, the time that the electronic communication containing the Request enters OO&T or the TED Customer Portal; or (b) for Requests that are made by email, the time that a Request is received in the inbox of the Telecom business wholesale provisioning group or residential wholesale provisioning group (as applicable), provided that where a Request is received outside Business Hours, the Receipt Time will be the start of the first Business Hour of the following Working Day (or Business Day as applicable).

²⁶⁸ A request that requires greater expertise or work effort in order to implement the reassignment (e.g. concurrently with other reassignment request)

²⁶⁹ means a number (including fractions) of consecutive periods of X Consecutive Business Hours, where X is the number of Business Hours in a standard Working Day.

²⁷⁰ means a number of consecutive hours (including fractions of hours) within Business Hours (where the first Consecutive Business Hour in a Working Day (or Business Day as applicable) is consecutive to the last Consecutive Business Hour in the preceding Working Day (or Business Day as applicable)).

Service attribute	Service Level	Comment
expected RFS ²⁷¹ date	working days (business) following the deemed acceptance time ²⁷²	longest applicable standard lead-time to complete the request. If there is no network capacity or some temporary shortage of equipment or plant, then the service level will not apply.
Meet expected RFS date	Meet the expected date notified under the notification of expected RFS date	
Confirmation	Within 1 consecutive working day after the new service or MAC has been closed and posted in Telecom Wholesale's systems.	

(d) *Billing*

Service attribute	Service Level	Comment
Delivery of billing information	Will initiate secure file transfer within 3 consecutive working days following the applicable bill run date	This service level is subject to the service provider's use of the most current eBill specification. It is the service provider's responsibility to read the file contents in accordance with the current eBill specification.

(e) *Service provisioning*

Service attribute	Service Level	Comment
Forecasting of pending voice projects	Service provider to provide at least 1 month's advance notice of the voice projects	Voice projects are projects that only require Telecom Wholesale to provision and / or transfer voice services.
Forecasting of data projects or voice and data projects	Service provider to provide at least 3 months' advance notice of data projects or combined voice and data projects	Data projects are projects that only require Telecom to provision and / or transfer data services. Combined voice and data projects are projects that require Telecom to provision and / or transfer voice and data services.
Billing cessation advice acknowledgement	The service provider will provide a billing cessation advice acknowledgement within 1 working day.	

²⁷¹ Means the date a service, which is the subject of a New Service Request or MAC Request, is provisioned and is functionally ready for use by the Customer.

²⁷² means the time which is four Consecutive Business Hours after the Receipt Time of a valid Request. To avoid doubt, a Request may still be rejected notwithstanding a deemed acceptance.

(f) *Exceptions*

Telecom Wholesale is not responsible for any failure to meet the service levels if such a failure is caused by:

- a force majeure event
- under-forecast volume or under forecast variability of requests (set out in the operations manual); and
- any act or omission of the service provider or the service provider's customer.²⁷³

This is quite a draconian exclusion, which significantly diminishes the weight of the service levels regime above. Furthermore, the commercial contract underpinning the access arrangements, ring-fences Telecom's liability entirely by excluding "Indirect Damages", which is described fairly broadly to include things like loss of business and revenue. However, in effect, this is not too dissimilar to other regimes where payment of penalties are said not to apply in events of force majeure, or if the failure to achieve a service level was somehow caused by, or contributed to, by an act or omission of the customer. Given the fact that these contracts typically exclude the provider's liability by stating that the penalties are the sole and exclusive remedy of the customer for the breach of the service levels, thus taking away the avenue to claim any other damages under contract, the New Zealand provisions ultimately have the same effect. The difference here, however, is that Telecom Wholesale offers no rebates for its failure to achieve the service levels.

25.3 Service level guarantees

No liability arises from Telecom Wholesale's failure to meet the service levels.²⁷⁴

25.4 Reporting

As a result of the structural separation of Telecom in December 2011, the Telecom Wholesale arm is no longer required to comply with Resale Equivalence obligations. However, Telecom has continued to publish reports on its website on a commercial basis but these apply to a non-regulated service negotiated on commercial terms.²⁷⁵ In February 2012, Telecom Wholesale seems to provide a worse service to retail customers than to its wholesale customers, especially, in respect of service levels relating to provisioning time and fault repair.

25.5 Chorus regulated services

Following structural separation, Chorus provides regulated access to its copper network through a number of designated services under the Telecommunications Act 2001. The two key services are the unbundled copper local loop service (**UCLL**) and the unbundled bitstream access service (**UBA**).

²⁷³See clause 4.3 of the Service Level Agreement, at http://www.telecomwholesale.co.nz/f26,7100/Service_Level_Agreement_Sept_09.pdf

²⁷⁴This is highly atypical, and sets out quite an exception to the other regimes.

²⁷⁵Telecom Wholesale, *Service Performance Equivalence KPIs (SPEK) Report*, February 2012.

In addition, following structural separation, a new unbundled copper low frequency service (**UCLFS**) was introduced.

The UCLFS service enables access to, and interconnection with, the low frequency in Chorus's copper local loop network, connecting end-user premises to the handover point in Chorus's local telephone exchange. As such, the UCLFS service can be used to deliver services such as voice services (whereas the full UCLL service allows a broader range of services, including broadband services, to be delivered over the line). The UCLFS replaces the previously available (on a commercial basis) Access Seeker Voice service. Pricing and terms for the Access Seeker Voice service have been "grandfathered", with the Commission indicating that it will monitor the grandfathering arrangement.

The composition of the Chorus's current suite of regulated copper services is depicted in the following diagram from the Commission:

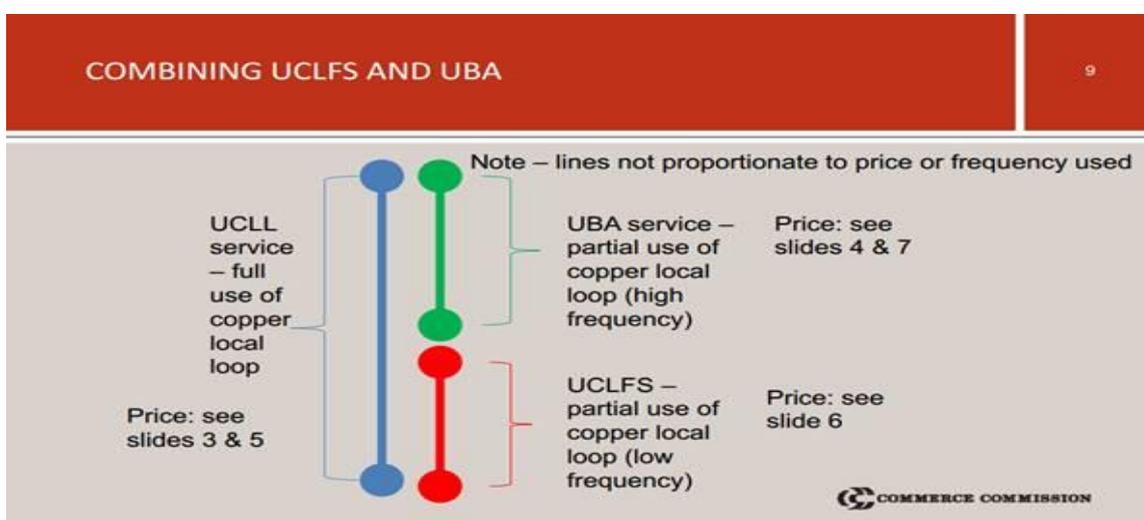


Figure 1 Combining the UCLFS, UBA and UCLL services (Commerce Commission, July 2011)

Telecom is restricted from consuming the UCLL service until December 2014. As such, it can compete in the retail market using the UBA and UCLFS service. When those services are combined, the price for UCLFS is zero (although it may be purchased separately for voice only consumers). The price for consuming the UCLFS service on its own is the geographically averaged monthly price for the UCLL service (being \$24.46) (€14.73).

Service levels for the UCLFS service were set as part of the standard terms determination process for the UCLFS service (following the default standard terms determination process in New Zealand). The Service Levels for the UCLFS mirror those for UCLL, as follows:

Service level description	Target
Provide acknowledgment of receipt of each Order to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	99%
Provide notification of the rejection to the Access Seeker within 4 Consecutive Business Hours following the Receipt Time	90%
Provide notification of the expected RFS Date to the Access Seeker within 6 Consecutive Business Hours of the Deemed Acceptance Time	90%

Service level description	Target
No faults in work carried out to provision the Order to occur within 5 Working Days	90%
Complete the MPF Move Address, New Connection, Transfer Order or Other Service to MPF by the notified expected RFS Date	90%
Complete MPF Relinquishment Order by the notified expected RFS Date	90%
Pre-qualification MPF orders acknowledged within 4 Business Hours following order receipt	90%
Complete the Pre-qualification Order and return the appropriate information to the Access Seeker within: <ul style="list-style-type: none"> ● for authorised and unauthorised automatic pre-qualification, 4 Consecutive Business Hours following receipt of the Order ● for a special manual prequalification investigation or a manual line test, 6 Working Days following receipt of the Order 	90%
Provide notification of the change of RFS Date to the Access Seeker within 6 Consecutive Business Hours of receipt of the request to change an existing Order (provided that the request is received at least 1 Working Day prior to the notified RFS Date)	90%
Provide confirmation of completion of the Order to the Access Seeker within 4 Consecutive Business Hours after the Order has been completed	90%
Advise at least 5 Working Days before Planned Outage occurs	90%
Advise within 2 hours, on a 24x7 basis, of Chorus discovering or receiving notification of the Unplanned Outage	90%
Provide fault report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported	90%
Provide notification of the expected restoration time within 8 Fault Restoration Hours of the fault being reported	90%
Restore fault within notified expected restoration time	90%
Within 10 Working Days of each 6 month anniversary of the Determination Date, Chorus will provide a written rolling 3-year forecast report	100%
Online Order and Tracking Management availability (24/7)	99.8%
Online Fault Management availability (24/7)	99.8%

26 France, France Télécom

26.1 Setting the service levels

In 2005, the French telecommunications regulator, Arcep, published a decision (no. 05-0571) in which it required France Telecom to supply WLR. In the decision, Arcep specifically stated that service levels formed an important part of the wholesale supply regime. As such, Arcep used its powers to impose an obligation on France Telecom to include service levels as part of its standard offer.²⁷⁶ In that decision, Arcep listed the following (non-exhaustive) list of service levels that France Telecom ought to publish in any reference offer:

- time taken to supply access
- time taken to activate carrier pre-selection
- service supply failure rate
- maximum downtime rates

Further, Arcep required that France Telecom publish key performance indicators.

In a 2006 consultation, Arcep reiterated the importance of including service levels in a reference offer as well as the publication of key performance indicators. Acknowledging that business and residential customers have varying needs, Arcep required that France Telecom provide different service levels for business versus residential customers. France Telecom responded to the consultation by objecting to the requirement to publish key performance indicators and provide service levels for all analogue and digital WLR services (given the alleged complexities associated with setting up ISDN). However, Arcep disregarded such objections by France Telecom, and in its final decision in May 2006, re-imposed the obligation to publish service levels and key performance indicators for all WLR services.

26.2 Service levels

The following measures apply to France Télécom's supply of WLR:

- Completion date is no later than 8 calendar days from the date of acceptance by France Télécom of the customer's order, and 21 days in the case of group orders. Other cases will be agreed by the customer and France Télécom.
- Orders for WLR made via France Télécom's gateway are capped at 75,000/day.
- Requests for information made via France Télécom's gateway are capped at 1,000/day.
- Orders are processed on a first come first served basis.
- There is no contractual completion date if France Télécom is faced with exceptional problems in connecting the provider.
- There is no contractual completion date if the order contains a maximum downtime SLA requirement in relation to a 'sensitive' line (a sensitive line refers to a WLR migration on an existing line, which benefits from the maximum downtime SLA).
- Customers must estimate the number of future orders for the next quarter and communicate this number to France Télécom on the last working day of each quarter. Customers are liable to

²⁷⁶Powers given to Arcep under Article D.310 of the *Postal and Electronic Communications Code*.

indemnify France Télécom for unfulfilled future orders for which France Télécom incurred costs.²⁷⁷

26.3 Service level guarantees

(a) Penalties payable by France Télécom

France Télécom will pay the following penalties:

Delay in processing an analogue WLR order or an ISDN migration order	10% of the WLR subscription²⁷⁸ per calendar day late, capped at 2 months' subscription
Delay in giving access to a single or group ISDN line	10% of the WLR subscription per calendar day late, capped at 2 months' WLR subscription
Delay in processing WLR order exceeding 30 days	2 months' WLR subscription

(b) Penalties payable by the customer

Incomplete or faulty order form	€41,00 (prices excluding VAT)
Lack of infrastructure	€60,00
End user not present when needed to provide access to premises	€60,00
End user refuses work to be done on premises	€60,00
Wrongful request for on-site technical support	Price of travel to the premises as per the France Télécom price catalogue
Wrongful notification of a fault to technical support	per action : €125,77
Additional fee for order made by fax	per action and per WLR access : €125,77
Fees for rejected quote for work to be carried out on end user's private lines, after WLR access has been granted	per action : €176,00

26.4 Reporting

Currently, France Telecom has only one published performance report in respect of WLR on its website (for 2013).²⁷⁹ This report provides the following results in respect of France Telecom's performance for residential and business customers:

- **Residential orders**
 - o the average delivery times on existing lines were exceeded by 6 calendar days in most cases (from 8 calendar days to 2 calendar days) and France Telecom managed

²⁷⁷ This is quite draconian, and France Télécom justifies this on the basis that if it has mobilised resources to service the forecasted orders, then it should be able to receive an indemnity if the customer fails to live up to the forecast

²⁷⁸ Monthly subscription fee → €12,21 for a single or group analogue lines and €18,61 for a single or group ISDN line

²⁷⁹ See <http://www.orange.com/fr/content/download/3667/33621/version/15/file/Reportings+pour+Arcep+13-01.pdf>

to achieve a total of 98.1% of deliveries within 8 calendar days. Only 10 orders took more than 30 days to deliver.

- the average time to deliver services to premises which required some building work was 24 calendar days, and only 4.5% of orders were delivered in less than 8 calendar days, 187 took longer than 30 calendar days (note that France Telecom is not bound by any services levels for orders that require building works).
- France Telecom managed to only resolve 50.6% of faults within 2 working days, and a total of 1818 faults took longer than 3 working days.

- **Business orders**

- the average delivery time was quite long – at 10 -11 calendar days and similarly the overall percentage of lines delivered on time was only achieved 72.7% of the time.
- resolution of faults within the service level timeframe was achieved at 80%.

27 Belgium, Belgacom

There is no equivalent for WLR in Belgium. In 2006, a reference offer was put to consultation, but never made it past the draft stage.²⁸⁰ Belgacom publishes its regulated reference offer on its website, however none of the products contained therein amount to WLR. The BIPT commented earlier this year that WLR was definitively shelved due to the disproportionate cost required to implement it (and subsequent high wholesale price), considering only two carriers expressed an interest in purchasing WLR when it was discussed amongst service providers in 2008.²⁸¹

²⁸⁰ Belgacom, Revision of the European Commission of the Recommendation on ex-ante regulatory relevant markets – response to the questionnaire for public consultation, 8 January 2013.

²⁸¹ <http://www.bipt.be/ShowDoc.aspx?objectID=3908&lang=en>, paragraph 5.6.2

28 The Netherlands, KPN

28.1 Setting the service levels

Following a 2005 market review, the regulator (OPTA) imposed on the incumbent the obligation to offer a WLR product on the wholesale market. KPN was given 8 weeks to publish a detailed proposal. KPN was told to treat its own retail arm and competing providers on an equal basis.

The regulator has published a number of documents which attest to its scrutiny in terms of pricing of WLR but not other aspects of the product.

28.2 Service levels

KPN will provide the service in accordance with the following service levels:

- Response to order (accept or reject)
 - For WLR New Line Service (**NLS**) types 1 (Completely available copper pair from the main centre to end user (no welding required)) and NLS 2 (Completely available copper pair from the main centre to end user (no welding required)) = $X^{282} + 10$ days
- Modem installation
 - To install the modem, KPN will contact the end user within 8 business days ($X + 8$) to make an appointment.
- Response to order
 - For WLR NLS type 1 = $X + 6$
 - For WLR NLS types 2 and 3 = $X + 12$
- Delivery date
 - WLR NLS type 1 → $X + 12$ business days, with an approved preferred date $X + 4$
 - WLR NLS type 1b → (with technician visit, relocation and combinations with MDF possible, at request) $X + 15$, with an approved preferred date $X + 4$
 - WLR NLS type 2: $X + 15$ business days, with an approved preferred date $X + 9$
 - WLR NLS type 2b: with technician visit: $X + 17$, with an approved preferred date $X + 9$
 - WLR NLS type 3: (always requires a technician visit): $X + 50$ business days, with an approved preferred date $X + 30$
- Failed installations for WLR NLS HC/LC

²⁸² X is the day of receiving the application and

- If the service is installed, but according to the requesting communications provider does not work, a fault can be reported by the requesting party no later than 5 business days of the installation and must be resolved within 12 business hours of the report.
- Re-planning and cancellations
 - Re-planning is possible up to 3 business days before the delivery of service. Cancellations are possible, as follows:
 - WLR NLS type 1: up to 3 business days before delivery
 - WLR NLS type 1b: (technician visit, relocation and combinations with MDF possible, at request): up to 8 business days before delivery
 - WLR NLS type 2: up to 8 business days before delivery
 - WLR NLS type 2b: with technical visit, up to 13 business days before delivery
 - WLR NLS type 3: always requires a technician visit, up to 40 business days before delivery

28.3 Service level guarantees

Performance standards are only applicable if the orders are spread evenly across the month. Therefore:

- on a per business day basis, the orders may not exceed more than 1.5 x the average per day orders based on the monthly forecast; and
- on a per week basis, the orders must not exceed more than 1.5 the average per week orders based on the monthly forecast

If orders are received above the limits, then the performance standards are not applicable.

KPN will measure performance against the service levels above on a monthly basis. Orders received outside the forecast numbers will be treated on a best efforts basis.

For failure to meet a response time service level, KPN must pay a penalty of: €1 every business day delayed, per order.

For failure to meet a standard delivery date, KPN must pay a penalty of: €1 every business day delayed, per order. The final date of delivery in relation to the scheduled date:

- €5 for the first business date delayed, per order
- €2 for every next business day delayed, per order

(a) Payment of penalties

Monthly reporting is provided by KPN. If there are differences between the reporting and the service levels, the customer and KPN must consult in respect to the non-performance, and either

party may send an invoice for penalties (which implies that the customer may issue an invoice to KPN for credits, or in fact have the right of set-off against any due payments).

(b) Exceptions:

The penalties do not apply if the non-performance is due to a force majeure event, including lightning, frost and storm, safety and environmental requirements, conditions imposed by landowners such as closures of dikes, paving etc, where access is refused (e.g. a mall), vandalism, sabotage, terrorism and other disasters. Please note that in the UK, although 'heavy rain' as such is not mentioned in the definition of Force Majeure within the Openreach contractual documents, 'lightning', 'flood' and 'acts of God' are included within the definition, and thus service levels do not apply to the extent that the relevant failure has occurred as a result of a Force Majeure Event.

If an invalid invoice / claim for payment of service levels is issued, then KPN may charge a fee.²⁸³

28.4 Reporting / KPIs

KPIs are assessed on a mutual exchange basis whereby each party keeps track of the KPIs and compares them with the other side's report. If there are discrepancies, the customer and KPN cantake part in a consultation in respect to the non-performance, and either party may send an invoice for penalties (which implies that the customer may issue an invoice to KPN for credits, or in fact have the right of set-off against any due payments).

KPN's KPI data is not publicly available.

²⁸³ This fee is not defined in the offer.

29 Ireland

29.1 Setting the service levels

Following a review of the status of carrier pre-selection in 2002, ComReg requested Eircom propose a new wholesale line rental product.²⁸⁴

29.2 Service levels

Eircom will provide the following service levels:

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
DR ²⁸⁵ Order type	Advise of completion of the accepted order by 1700 on the first working day ²⁸⁶ following the working day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
LE Order Type	Advise of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded on the UG	97% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
PW Order Type Activation of accepted provide SB-WLR/provide SB-WLR and CPS order and notification of completion	Advice of completion of the accepted order by 1700 on the second Working Day following the Working Day the request was recorded on the UG	97% of request in accordance with performance metric	€25.39 per account affected per Working Day or part
LNI/LTI/MI Order Types: Provision of accepted New /Additional PSTN/BRA Line Order	Advise of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded on the UG	80% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay
LNI/LTI/MI Order Types: Provision of accepted New /Additional PSTN/BRA Line Order	Advise of completion of the accepted order by 1700 on the third Working Day following the Working Day the request was recorded on the UG	99% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay

²⁸⁴<http://www.comreg.ie/fileupload/publications/comreg0307.pdf>

²⁸⁵Not defined.

²⁸⁶Monday to Friday, 9am – 5pm

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
CL Order Type Completion of accepted cease SB-WLR order and notification of completion	Advise of completion of the accepted order by 1700 on the second Working Day following the Working Day the request was recorded on the UG	97% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay
LNN/LTN/MN Order Types: Acceptance or Rejection of New/Additional PSTN/BRA Line Order	Advice of acceptance or rejection of each order submitted by 1700 on the second Working Day following the Working Day the request was recorded on the UG	97% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay
LNN/LTN/MN Order Types: Provision of new/additional PSTN/BRA line with Single Billing	Advice of completion of accepted order by 1700 on the tenth Working Day following the Working Day the request was recorded on the UG	80% of request in accordance with performance metric	€12.70 per account affected per Working Day or
CH Order Type Activation of changes to Ancillary Services order and notification of completion ²	Advise of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay
CN Order Type Activation of number change request on PSTN lines	Advise of completion of the accepted order by 1700 on the second Working Day following the Working Day the request was recorded on the UG	95% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.
CM Order Type Adding and Removing TOS	Advise of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay.

29.3 Service level guarantees

Please see above section.

29.4 Reporting / KPIs

Provisioning performance reports will be provided within 10 Working Days of the end of the month. Repair performance reports will be provided within one month of the end of the reporting quarter. The reports are used primarily to calculate any rebates payable, which are calculated on the basis of any difference between the actual percentage calculated and the target achieved.²⁸⁷

Eircom's WLR KPIs can be found on their website, but also inside ComReg's quarterly report²⁸⁸.

For quarter 3 of 2012, Eircom met on average 99.5% of the deliveries within the performance targets.²⁸⁹

On faults, for the 2 day service level (target at 73%), Eircom met 68.06%; for the 5 day service level (target at 92%), Eircom met 92.2% and for the 10 day service level (target at 100%), Eircom met 98.57%.

Eircom achieved similar percentages for all other quarters of 2012.

Universal Service Obligation (USO)

Eircom has performance targets in relation to its USO obligation²⁹⁰ which currently runs until June 2014, date at which its status as a USO provider will be the subject of a consultation.

The incumbent discharges its USO obligation against service levels set in its quality of service improvement programme²⁹¹. This document states clearly that non-compliance with these performance metrics gives rise to enforcement action as per 2003 regulations²⁹². Such action follows a similar process to the relevant enforcement powers in relation to regulated access products: notification, deadline for compliance, then application to the High Court for further remedial orders or financial penalties. In practice this took place following ComReg's finding, based on the above document, that Eircom's fault repair KPIs were below the USO standard. Though Eircom only fell a few points below the standard (e.g. 94.7% of faults rectified in 5 working days instead of the 96% target), this still gave rise to a €525,000 fine²⁹³ in 2012.

²⁸⁷Appendix 2 of Eircom, Service Level Agreement through Wholesale Line Rental, effective from 1.3.2009

²⁸⁸http://www.comreg.ie/_fileupload/publications/ComReg1325.pdf

²⁸⁹Commission for Communications Regulation, *Quarterly Key Data Report*, Q3 of 2012.

²⁹⁰http://www.comreg.ie/consumer_initiatives/universal_service_obligation.590.html

²⁹¹http://www.comreg.ie/_fileupload/publications/ComReg_1080.pdf

²⁹²<http://www.irishstatutebook.ie/2003/en/si/0308.html> (see Regulation 32).

²⁹³http://www.comreg.ie/_fileupload/publications/ENDOFYEAR2012.pdf

30 Spain, Telefonica

30.1 Setting the service levels

Telefonica's Access Offer for wholesale line rental (WLR) is available on the Spanish regulator's website²⁹⁴.

In 2011 the Spanish telecommunications industry body ASTEL requested that the CMT initiate a review of Telefonica's WLR offer.²⁹⁵ ASTEL had eleven major recommendations for amending the offer, many of which concerned the SLAs and many of which were adopted by the CMT. Major changes to the SLAs that resulted from the review include:

- decrease of resolution time for infrastructure complaints from 3 working days to 2;
- the inclusion of connection as well as disconnection services in the timeframes for provision;
- the inclusion of a maximum limit of 12 working days for the provision of WLR on inactive lines; and
- the inclusion of the penalty provision of double the maximum fee for breaching resolution deadlines.

The final form of the current WLR offer is a result largely of ASTEL submissions to the CMT during both the initial offer and the revision period.

30.2 Service levels

Telefonica will provide the customer with the following service levels:

(a) *Time of supply*

Service	Guaranteed provision time (business days)	When time begins running
Connection or disconnection of WLR (without performance preselection)	2	Receipt of request
Connection or disconnection of WLR (with performance preselection)	5	Receipt of request
Connection or disconnection of WLR	12	Receipt of request
Connection of joint WLR and broadband services	12	Receipt of request

²⁹⁴http://www.cmt.es/c/document_library/get_file?uuid=8913e1c8-229c-486e-abe1-f67dd8cade04&groupId=10138.

²⁹⁵ CMT 'revision of WLR offer' 2011 available at http://www.cmt.es/c/document_library/get_file?uuid=da3e0a48-87fb-4929-8867-94ce199d8862&groupId=10138 pg1.

30.3 Service level guarantees

In the event of a breach of the timeframes above Telefonica will pay the operator a penalty of €1.5 per line per late day, except in the case of broadband connection services where the penalty is €5 per line per late day. The contractual documents provide no other service level guarantees, or any other details on how these are applied.

30.4 Reporting

There are no publicly available reports detailing Telefonica's performance in respect of wholesale supply.

Fault repair

31 UK, Openreach

31.1 Service levels

BT will provide a repair service for WLR3 Wholesale Access in accordance with the Service Maintenance Level (**SML**) ordered by the CP. If BT fails to achieve this service level, BT will pay compensation to the customer (this is a **proactive guarantee**).

There are a number of SMLs, which the customer can purchase, as specified below:

Feature	Service Maintenance Level 1 (Annual Rental) in £ ex VAT	Service Maintenance Level 2 (Annual Rental) in £ ex VAT	Service Maintenance Level 3(Annual Rental) in £ ex VAT	Service Maintenance Level 4 (Annual Rental) in £ ex VAT
WLR basic	Included in the price	6.32 (€7.45)	43.52 (€51.30)	54.32 (€64.04)
WLR premium	Not applicable	Included in line rental	37.20 (€43.85)	48.00 (€56.59)
WLR ISDN 30 (per channel)	Not applicable	Included in line rental	12.00 (€14.15)	24.00 (€28.29)
WLR wholesale digital (per line – 2 channels)	Not applicable	Included in line rental	37.20 (€43.85)	48.00 (€56.59)
Relevant repair time	End of next working day + 1 working day (working day = Monday to Friday, 8am-6pm)	End of next working day (working day = Monday – Saturday 8am-6pm)	In by 1pm fix the same day, in after 1 pm, fix the next day (working day = Monday – Sunday (including bank holiday) 7am – 9pm Monday-Friday and 8am to 6pm Saturday – Sunday)	6-hour repair (working day = Monday – Sunday, including bank holidays)

A customer may choose to purchase expedited service levels on a per occasion basis, as follows:

Feature	Per occasion (excluding VAT)
Expedite repair from Service Maintenance Level 1 to Service Maintenance Level 2	£85 (€100.10)
Expedite repair from Service Maintenance Level 1 to Service Maintenance Level 3	£585 (€689.65)
Expedite repair from Service Maintenance Level 1 to Service Maintenance Level 4	£735 (€866.49)
Expedite Repair from Service Maintenance level 2 to Service Maintenance Level 3	£500 (€589.45)
Expedite Repair from Service Maintenance Level 2 to Service Maintenance Level 4	£ 650 (€766.28)
Expedite Repair from Service Maintenance Level 3 to Service Maintenance Level 4	£150 (€176.83)

A customer may enhance their fault repair service at the time of reporting a fault, however, if a fault is 'in flight', then the customer cannot choose an Expedite Repair service level to apply to that fault.

If the customer reports the same fault within 72 hours of it being closed on the system, it will be treated at the same expedited SML of the original fault, and the customer will not be charged for the Expedite Repair in that situation.

If a customer decides to permanently upgrade an SML, the lead time is 5 working days.

Flexible appointments

A customer can purchase flexible appointments (Monday to Saturday, 7am-8am, Monday to Friday 6pm-9pm and Saturdays 8am-6pm) for a fixed charge of £12.50 (€14.74).

31.2 Service level guarantees

If BT fails to achieve the repair service levels, then for each day or part day that BT is late in clearing a failure of the service, the customer will be entitled to an amount equal to 1 month's line rental charge for:

- WLR3 Wholesale Access per line;
- WLR3 ISDN2 per line,

affected by the failure.

(a) Maximum

The penalties payable for failure to achieve the service levels are set out above. There are limits on the penalties payable:

Product	Maximum compensation
Wholesale Access	For any one failure limited to 60 full days per line
Wholesale Digital Access	For any failure limited to 60 full days per line

(b) Method for payment

Except for the guarantees that are specified as **proactive guarantees**, immediate compensation will only be allowed if the customer notifies BT within 6 months of the failure giving rise to the compensation. For claims relating to the provision of Calling and Network features where evidence indicates a failure could not have been identified in the first 6 months after the provision, a customer may submit a claim up to 12 months after the Calling and Network feature provision order was submitted.

Compensation in such circumstances will be limited to the 3 months period prior to the compensation for the failure being claimed. Provisioning claims are submitted by the 13th day of the month and subject to a maximum limitation of 1700 claims across all customers by this cut off point, and any compensation will be credited to the customer's next invoice.

For the **proactive guarantees**, BT must monitor its performance against the guarantees and compensate the customer proactively if it fails to meet the guarantee – that means that the customer does not need to make a claim. BT may offset any part of any compensation against any outstanding amounts due for the service which has not been paid by the customer.

(c) Exclusions

If BT issues a request for further information to the customer, the number of hours that it takes the customer to respond, will be added to the timescales specified in the relevant service level.

The service level and the compensation will not apply if:

- the failure by BT is due to the performance of the public internet;
- the failure by BT is due to the customer's own network or equipment or any other network or equipment outside the BT Network;
- through no fault of BT, BT is unable to carry out any necessary work at, or gain access to an end user's site or the customer fails to agree an appointment date or work is aborted by the customer or end user or a 3rd party that BT reasonably assumes to be in authority;
- the customer and BT agree a different timescale for performance of the service;

- the failure by BT is because reasonable assistance is required or information is reasonably requested or required by BT from the customer, end user or a third party and such assistance or information is not provided;
- through no fault of its own, BT is unable or is waiting to obtain any necessary permissions or consents required in connection with the performance of a particular service level;
- the failure is due to a reason covered by force majeure;
- the failure is due to the application of the geographic number porting process in accordance with that process;
- the failure is due to BT receiving a cancel own or cancel other instruction in relation to the affected order;
- during work to implement an order for a line, BT discovers that work is required which could not have been reasonably foreseen;
- the failure is due to a scheduled outage or an outage of the systems notified in accordance with the contract; or
- the failure is because an ancillary product is required.

31.3 Reverse penalties

If Openreach has organised for a technician or an engineer to attend an end user's premises, and that engineer is unable to gain access to the premises, the end user is not ready for the work to be completed or the person who has placed the order is not available, then, Openreach will charge the customer an abortive visit charge of £85 (£100.20) per visit per engineer.

32 Australia, Telstra

32.1 Service levels

Metric 5, the percentage of Basic Telephone Service Faults that are rectified in the relevant Quarter, and copied to Telstra's data warehouse by the relevant data extraction date, on or by the Service Level:

- Urban – 1 Clear Working Day after the Fault report is logged by Telstra.
- Major Rural and Minor Rural – 2 Clear Working Days after the Fault report is logged by Telstra.
- Remote – 3 Clear Working Days after the Fault report is logged by Telstra

Metric 5 will not apply where a site visit to the customer's premises is required to determine whether the Fault is the cause of the service difficulty.

Metric 6, the percentage of Basic Telephone Service Fault appointments that are met in the relevant Quarter:

- All locations – appointment between two particular times less than or equal to a 4 hour period – must be at the customer's premises no later than 15 minutes after the end time of the appointment.
- Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's premises no later than the end time of the appointment.
- Minor Rural/Remote – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance – must be at the customer's premises no later than 45 minutes after the end time of the appointment.

Note – Response time is the end time of the calculation. It represents the time that the technician arrived for the appointment and is dependent on Telstra workforce or contractors making a record of their arrival time.

32.2 Service level guarantees

See section 32.1 above.

33 Denmark, TDC

33.1 Service levels

All fault reports should be classified whether the fault in question is considered to be a minor, or a major fault. TDC is entitled at any time to reclassify a given fault from minor to major, or vice versa.

It is the customer who should classify the fault based on its own fault assessments when reporting it to the FASIN (TDC's fault reporting centre).

For specific service levels on fault rectification, see the different service level packages set out in section 23 above.

Exceptions

The following circumstances will delay the remedy time for the fault:

- special physical circumstances that makes debugging difficult, or impossible
- serious cable defects, or other serious defects in TDC's installations and system, that affects several clients
- circumstances that create significant delays (rejection by authorities, or action needed from authority side etc.)
- force majeure
- unsatisfying delivery from TDC's supplier's side
- production fault by a series of accessories, software, or hardware

33.2 Service level guarantees

Customer will have a right to be compensated in the following circumstances:

- if TDC exceeded the time limit given for delivery, and hasn't provided the connection to the service ordered, unless the cause of delay is on Customer's side
- if Customer has ordered services with choosing it not to be delivered on an exact date, but 'as soon as possible', and TDC hasn't delivered the connection within the actual delivery time, unless the cause of the delay is on Customer's side
- if TDC hasn't mended the reported fault in its own system and installations within the agreed fault debugging time in service level agreement, unless the cause of the delay is on Customer's side

Liability cap

TDC's responsibility is capped according to the customer's spend

Resellers buying/ year

TDC's responsibility expressed in DKK

Webb Henderson
Legal and Regulatory Advisors

0 - 10 million DKK	dk100.000 (€13,410.04)
10million – 100million DKK	dk175.000 (€23,467.57)
Over 100million DKK	dk250.000 (€33,252.10)

There are no other details regarding the penalties that are payable by TDC, including specific details on what the penalty for missing each service level is. The above cap figures suggest that TDC is liable for damages up to a specific amount (i.e. loss of profits by the customer, which would need to be proven by the customer and therefore subject to the principles of damages under contract law such as remoteness, mitigation, etc.). This model contrasts with the UK model, which provides service level guarantees as a means of compensation by proxy.

34 Germany, Deutsche Telekom (DT)

As confirmed by the Bundesnetzagentur, DT does not offer a regulated WLR product.

35 New Zealand – Telecom Wholesale

35.1 Service levels

Note that the service levels provided by Telecom Wholesale are merely aspirational and neither party is obliged to achieve them.

Unless specifically stated below, Telecom has an objective of achieving the service levels in 90% of the instances in any one calendar month.

(a) *Fault management for business and residential customers*

Service attribute	Service Level	Comment
Restoration	<p>Restore normal operation of 80% of all reported customer faults within 24 hours following receipt of a report (for residential)</p> <p>Restore normal operation of 80% of all reported customer faults within 6 consecutive fault restoration hours²⁹⁶ following receipt of a report (for business)</p>	<p>Service level will not apply if:</p> <ul style="list-style-type: none"> - it is not reported by the service provider to the fault reporting service set out in the operation manual - it is not in Telecom's area of responsibility - is a fault in Telecom's network that affects more than one customer - requires Telecom to dispatch a contractor

(b) *Exceptions*

Telecom wholesale is not responsible for any failure to meet the service levels if such a failure is caused by:

- a force majeure event
- under-forecast volume or under forecast variability of Requests (set out in the operations manual) and
- any act or omission of the service provider or the service provider's customer

35.2 Service level guarantees

No liability arises from Telecom Wholesale's failure to meet the service levels.

²⁹⁶ means a number of consecutive hours (including fractions of hours) between 0700 hours to 1900 hours seven days a week (where the first Consecutive Fault Restoration Hour in a day is consecutive to the last Consecutive Fault Restoration Hour in the preceding day).

36 France, France Télécom

36.1 Service levels

Maximum downtime

- For an analogue line: 48 hours (on working days only) from when the customer's notification is registered by France Télécom's support technician.
- For an ISDN line: 4 hours (on working days only) from when the customer notifies France Télécom (France Télécom's technical support working days only)²⁹⁷.

36.2 Service level guarantees

Penalties relating the service levels for WLR access to single or group ISDN line

Maximum downtime 48 hours SLA delay (working days)	2 months' subscription per affected line, capped at 85% of the affected lines
Maximum downtime 8 hours SLA delay (working hours)	4 months' subscription per per affected line
Maximum downtime 4 hours SLA delay for PSTN line (working days)	4 months' subscription per affected line
Maximum downtime 4 hours SLA option S1²⁹⁸ delay	
Delay exceeding 4 hours but no more than 5 hours	2 months' subscription per affected line + 2 months' subscription to MD S1.
Delay exceeding 5 hours but no more than 6 hours	4 months' subscription per affected line + 4 months' subscription to MD S1.
Delay exceeding 6 hours but no more than 7 hours	6 months' subscription per affected line + 6 months' subscription to MD S1.
Delay exceeding 7 hours	12 months' subscription per affected line + 12 months' subscription to MD S1.
Maximum downtime 4 hours SLA option 2 delay	
Delay exceeding 4 hours but no more than 5 hours	2 months' subscription per affected line + 2 months' subscription to MD S2.
Delay exceeding 5 hours but no more than 6 hours	4 months' subscription per affected line + 4 months' subscription to MD S2.

²⁹⁷ Working hours/days not defined in the offer.

²⁹⁸ Note the options S1 and S2 relate to different service levels that you can purchase at different prices, S1 being the more expensive option to S2. S1 is priced at €17,53 / month / access (access to single and group lines) and S2 is priced at €7,62 / month / access (access to single and group lines)

Delay exceeding 6 hours but no more than 7 hours	6 months' subscription per affected line + 6 months' subscription to MD S2.
Delay exceeding 7 hours	12 months' subscription per affected line + 12 months' subscription to MD S2.
Maximum downtime SLAs for single or group ISDN lines	
Maximum downtime 4 working hours SLA delay	4 months' subscription per affected line, capped at 85% of the faults
Maximum downtime 4 hours SLA option S1 delay	
Delay exceeding 4 hours but no more than 5 hours	2 months' subscription per affected line + 2 months' subscription to MD S1.
Delay exceeding 5 hours but no more than 6 hours	4 months' subscription per affected line + 4 months' subscription to MD S1.
Delay exceeding 6 hours but no more than 7 hours	6 months' subscription per affected line + 6 months' subscription to MD S1.
Delay exceeding 7 hours	12 months' subscription per fault + 12 months' subscription to MD S1.
Maximum downtime 4 hours SLA option S2 delay	
Maximum downtime 4 hours SLA option S1 delay	2 months' subscription per affected line + 2 months' subscription to MD S2.
Delay exceeding 4 hours but no more than 5 hours	4 months' subscription per affected line + 4 months' subscription to MD S2.
Delay exceeding 5 hours but no more than 6 hours	6 months' subscription per affected line + 6 months' subscription to MD S2.
Delay exceeding 6 hours but no more than 7 hours	12 months' subscription per fault + 12 months' subscription to MD S2.

37 Belgium, Belgacom

N/A. See section 27 above.

38 The Netherlands, KPN

38.1 Service levels

KPN will resolve any faults in accordance with the following levels set out below.

(a) *Fault rectification service levels*

Service	Service level	%
WLR LC Basic WLR HC Basic	Above ground:	
	<10 Service hours	80%
	<20 Service hours	95%
	<40 Service hours	100%
	Under ground:	
	<1 Business day	80%
<2 Business days	95%	
<5 Business days	100%	
WLR LC Premium WLR HC Premium	Above ground:	
	<8 Clock hours	80%
	<24 Clock hours	95%
	<48 Clock hours	100%
	Under ground:	
	<8 Clock hours	80%
<24 Clock hours	95%	
<48 Clock hours	100%	

(b) *Fault reporting service levels*

Low capacity WLR	Reporting/Service period
WLR LC Basic	Monday to Friday(excluding holidays) 08:00 –18:00
WLR LC Premium	7 days a week 24 hours a day
High capacity WLR	Reporting/Service period
WLR HC Basic	Monday to Friday(excluding holidays) 08:00 –18:00 Saturday 08.00-17.00
WLR HC Premium	7 days a week 24 hours a day

38.2 Service level guarantees

KPN will only pay penalties in respect of the 'above ground' WLR service levels (see section 38.1 above). The penalty will be calculated on a 23 business day basis²⁹⁹. KPN will pay the following penalties for failing to achieve the fault repair service levels:

- WLR Basic, €5 per 12 hours of faulty service outside of the service level period
- WLR Premium, €10 per 24 hours of faulty service outside of the service level period

(a) *Exceptions*

The penalties do not apply if the fault is caused by a force majeure event, including lightning, frost and storm, safety and environmental requirements, conditions imposed by landowners such as closures of dykes, paving etc, where access is refused (e.g. a mall), vandalism, sabotage, terrorism and other disasters.

²⁹⁹ This means that penalties are only due for the first 23 days of the unresolved fault. Beyond 23 days, the purchasing provider's only remedy is to cancel the order free of charge. This appears to be a counter-incentive to resolving faults which would leave end users without connectivity.

39 Ireland

39.1 Service levels

Eircom will provide the following service levels:

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
FA Order Type Activation Fault	Advise of completion of the accepted order by 1700 on the first Working Day following the Working Day the request was recorded on the UG	98% of request in accordance with performance metric	€12.70 per account affected per Working Day or part thereof of delay
Resolution of PSTN/BRA Line Fault	Repair Time: 2 Working Days	Target 73%	<p>Where this SLA is not met, the SLA penalty penalises Days 3 to 5 of all tickets in breach. The 73% target mitigates the commercial impact of this article.</p> <p>Number of Faults subject to Penalty Number of Faults subject to penalty = $C(2)-C(1)*(1-0.73)$</p> <p>Multiplier Penalty Days (multiplier) = $(\Sigma(5)-2*C(5)+3C(6)+3C(4))/C(2)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 6 are deemed to have breached this SLA by the maximum 3 days.</p> <p>Service Credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty X% = Actual 2 Day Repair Performance</p> <p>Service credit: € 4</p>
Resolution of PSTN/BRA Line Fault	Repair Time: 5 Working Days	Target 92%	<p>Where this SLA is not met, the SLA penalty penalises Days 6 to 10 of all tickets in breach. The 92% target mitigates the commercial impact of this article.</p> <p>Number of Faults subject to Penalty Number of Faults subject to penalty = $C(3)-C(1)*(1-0.92)$</p> <p>Multiplier Penalty Days (multiplier) = $(\Sigma(6)-5C(6)+5*C(4))/C(3)$ – Average penalty days of all tickets in breach, where tickets closed on or after Day 11 are as having breached this SLA by the maximum 5 days.</p> <p>Service credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty</p> <p>Y% = Actual 5 Day Repair Performance Service credit: €7.00</p>
Resolution of PSTN/BRA Line Fault	Repair Time: 10 Working Days	Target 100%	<p>Number of Faults subject to Penalty Number of Faults subject to penalty $C(4)$ (Count of all tickets closed on or after day 11)</p> <p>Multiplier</p>

Activity Description	Performance Metric	Performance Target	Service Credit for not meeting Performance Metric Target
			$= (\Sigma(4)-10C(4))/C(4)$ Service Credit = (Number of Faults subject to penalty) * (Multiplier) * Penalty Z% = Actual 10 Day Repair Performance Service credit: €10

39.2 Service level guarantees

See above section 39.1.

39.3 Exceptions

The circuits will be deemed to be available, and therefore no service level credits apply if the following circumstances apply:

- where the fault is caused by, third party activities such as cable damage, or gunshot.
- where the fault is caused by severe weather conditions such as storms, flooding, fire or lightning
- where a fault occurrence is due to changes in customer provided apparatus
- where the fault is related to customer premises equipment dialling 13xxx codes
- where a fault is reported without following the Fault Reporting Checklist, as per the IPM.
- where the fault is not in the Eircom network i.e. SB-WLR Operator non-fault
- where a fault is reported and no fault is detected when the service is tested from end to end.
- a failure of the SB-WLR Operator to pass on all the fault details provided by the SB-WLR Operator's customer
- a failure by the SB-WLR Operator or its customer to allow access to premises or equipment when requested
- the SB-WLR Operator or its customer failing to operate the service in accordance with Eircom terms and conditions for the provision of the service
- a failure of the customer to report the fault in accordance with the fault reporting procedures

40 Spain, Telefonica

40.1 Service levels

Telefonica will provide the customer with the following fault resolution service levels:

The maximum resolution time of a complaint is as follows:

Service	Time for resolution (working days)
Complaint concerning provision of services (except high broadband)	2
Complaint concerning infrastructure	2
Complaint concerning billing	10

Broadband connection complaints must be resolved in 5 business days.

40.2 Service level guarantees

If Telefonica breaches the timeframe for resolving complaints relating to infrastructure, a penalty will apply in favour of the operator, calculated as a percentage of the monthly recurring service fee. This percentage is double the percentage of the maximum time limit for resolutions.

Violation of the timeframe for billing complaints will result in a penalty in favour of the operator calculated as a percentage of the registration fee of the service. This percentage is double the percentage of delay compared to the maximum resolution time.

40.3 Reverse penalties (payable by customer to Telefonica)

If Telefonica investigates a complaint regarding reported breakdown and finds that they (Telefonica) were not responsible due to poor service provision, the following amounts must be paid for lodging the false report depending on the time of the investigation occurred.

time	Penalty without dispatch (Euros)	Penalty with dispatch (Euros)
8am to 10pm	101.31	111.46
10pm to 8am	126.64	138.57

Other industries

41 Water Industry - UK

41.1 Service Levels

The statutory guaranteed standards scheme (GSS)³⁰⁰ establishes minimum standards of water service that each company must provide to its customers.³⁰¹ Water and sewage companies are required to inform their customers of their rights under the scheme every year. If the company fails to meet any of the guaranteed standards, customers are entitled to a payment.³⁰²

The standards, which companies are required to meet are as follows:

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
Appointments not made properly, GSS Regulation 6	If an appointment is made with a customer, the company must give notice to the customer that its representative will visit during the morning or the afternoon. The company must specify to the customer the times it considers to be the morning or afternoon. If requested by the customer, the company must give notice to the customer that its representative will visit within a specified two-hour time slot.	20	20	10 ³⁰³	10 ³⁰⁴
Appointments not kept, GSS Regulation 6	If an appointment is not kept because: <ul style="list-style-type: none"> • the company representative did not visit on the appointed day; • the company representative did not visit during the morning or the afternoon (in accordance with 	20	20	10 ³⁰⁵	10 ³⁰⁶

³⁰⁰ The guaranteed standards scheme (GSS), applicable to England and Wales from 1 April 2008, available at

http://www.ofwat.gov.uk/consumerissues/rightsresponsibilities/standards/gud_pro_gss08.pdf

³⁰¹ http://www.ofwat.gov.uk/consumerissues/rightsresponsibilities/standards/gud_pro_gss08.pdf

³⁰² <http://www.ofwat.gov.uk/consumerissues/rightsresponsibilities/standards/#customersrights>

³⁰³ payable within ten working days of the payment becoming due, if the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

³⁰⁴ Same as above number 3.

³⁰⁵ The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this, and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

³⁰⁶ Same as above number 5.

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>the appointed time specified);</p> <ul style="list-style-type: none"> the company representative did not visit within the appointed 2-hour time slot; or the company cancelled the appointment but did not give the customer at least 24 hours' notice. <p>Exceptions include where:</p> <ul style="list-style-type: none"> the customer cancels the appointment; the company cancels the appointment giving at least 24 hours' notice; it is impracticable to keep the appointment due to severe weather; it is impracticable to keep the appointment due to industrial action by the company's employees; or it is impracticable to keep the appointment due to an act/default of a person other than the company's representative 				
Incidences of low water pressure, GSS Regulation 10	<p>The company must maintain a minimum pressure in the communication pipe of seven metres static head (0.7 bar). If pressure falls below this on two occasions, each occasion lasting more than one hour, within a 28-day period, the company must automatically make a GSS payment.</p> <p>Exceptions include where:</p> <ul style="list-style-type: none"> a payment has already been made to the same customer in respect of the same financial year; it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date of the latter occasion; industrial action by the 	25	25	N/A	N/A

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>company's employees makes it impracticable to maintain the pressure standard;</p> <ul style="list-style-type: none"> the act or default of a person other than the company's representative make it impracticable to maintain the pressure standard; or the pressure falls below the minimum standard due to necessary works taking place or due to a drought. 				
Incorrect notice of planned interruptions to supply, GSS Regulation 8	<p>Where it is planned that the supply will be materially interrupted or cut off for more than four hours to carry out necessary works the company must give written notice to affected customers at least 48 hours before the supply will be interrupted or cut off, including notification of the time by which the supply will be restored.</p> <p>Where the supply is interrupted or cut off to carry out necessary works in an emergency the company must, as soon as is reasonably practicable, take all reasonable steps to notify affected customers:</p> <ul style="list-style-type: none"> that the supply has been interrupted or cut off; where any alternative supply can be obtained; the time by which the supply will be restored; and of the phone number of an office from which further information may be obtained. <p>Exceptions include where:</p> <ul style="list-style-type: none"> industrial action by the company's employees makes it impracticable for the 	20	50	20 ³⁰⁷	50 ³⁰⁸

³⁰⁷ Where a customer was not given the correct notification for a planned interruption lasting more than four hours caused by necessary works, but the company does not make an automatic payment to the customer within 20 working days of this event, the company must automatically make an additional penalty payment to the customer.

³⁰⁸ Same as above number 6

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>company to give the correct notice at least 48 hours before the supply was cut off;</p> <ul style="list-style-type: none"> the act or default of a person other than the company's representative made it impracticable for the company to give the correct notice at least 48 hours before the supply was cut off; <p>or</p> <ul style="list-style-type: none"> it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date on which the supply was cut off. 				
Supply not restored(*) - initial period, GSS Regulation 9	<p>The company must automatically make a GSS payment to affected customers if:</p> <ul style="list-style-type: none"> the supply is interrupted or cut off to carry out necessary works, and the supply is not restored by the time stated in the written notice given to affected customers; the supply is interrupted or cut off in an emergency due to a leak or burst in a strategic main and is not restored within 48 hours of the company first becoming aware of the interruption or that the supply was cut off; or the supply is interrupted or cut off in an emergency for any other reason and is not restored within 12 hours of the company first becoming aware of the interruption or that the supply was cut off. <p>Exceptions include where:</p> <ul style="list-style-type: none"> industrial action by the company's employees 	20	50	20 ³⁰⁹	50 ³¹⁰

³⁰⁹ If the company does not make an automatic payment for which it is liable to the customer within 20 working days of the interruption to supply, the company must automatically make an additional penalty payment to that customer.

³¹⁰ Same as above number 8

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>prevented the supply being restored;</p> <ul style="list-style-type: none"> the act or default of a person other than the company's representative prevented the supply being restored; severe weather prevented the supply being restored; where the supply was interrupted or cut off due to a leak or burst on a strategic main, or for any other unplanned reason, the circumstances were so exceptional that it would be unreasonable to expect the supply to be restored within the relevant period; It is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date of the supply not being duly restored; or the regulation does not apply where supply is interrupted or cut off due to a drought. 				
Supply not restored(*) - each further 24 hours	A further automatic GSS payment must be made for each full 24-hour period that the supply is interrupted or cut off.	10	25	20 ³¹¹	50 ³¹²
Written account queries and requests to change payment arrangements not actioned on time, GSS Regulation 7	<p>If a customer queries in writing the correctness of an account, the company must despatch a substantive reply to the customer within ten working days from the receipt of the query.</p> <p>If a customer requests, in writing, a change to a</p>	20	20	10 ³¹³	10 ³¹⁴

³¹¹ Same as above number 8.

³¹² Same as above number 8.

³¹³ The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

³¹⁴ Same as above number 12.

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>payment arrangement and the company is unable to agree to the request, the company must despatch a substantive response within five working days from the receipt of the request.</p> <p>Exceptions include where:</p> <ul style="list-style-type: none"> • the customer informs the company that they don't wish to pursue the query or request; • in the case of a query the company reasonably considered a visit to be necessary, but severe weather made it impracticable to make the visit; • industrial action by the company's employees made impracticable to despatch a substantive response within the relevant period; • the act or default of a person other than the company's representative made it impracticable to despatch a substantive response within the relevant period; • the query or request was not sent to an address notified in writing by the company to its customers as the appropriate address for such queries or requests; or • in the case of a query, it is frivolous or vexatious. 				
Written complaints not actioned on time, GSS Regulation 7	If a customer complains in writing to a water company about the supply of water, or to a sewerage company about the provision of sewerage services, the	20	20	10 ³¹⁵	10 ³¹⁶

³¹⁵ The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

³¹⁶ Same as above number 14.

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>company must despatch a substantive response to the customer within ten working days of receipt of the complaint.</p> <p>Exceptions include where:</p> <ul style="list-style-type: none"> • the customer informs the company that they don't wish to pursue the complaint; • industrial action by the company's employee's make it impracticable to despatch a reply within the relevant period; • the act or default of a person other than the company's representative made it impracticable to despatch a reply within the relevant period; • the complaint was not sent to an address notified in writing by the company to its customers as the appropriate address for complaints of that nature; • the complaint was frivolous or vexatious; or • the company reasonably considered a visit to be necessary, but severe weather made it impracticable to make the visit. 				
Properties sewer flooded internally, GSS Regulation 11	<p>If effluent from a sewer, which is vested in a sewerage company, enters a customer's building, the company must make an automatic GSS payment of the sum equal to the customer's annual sewerage charge up to a maximum of £1,000.</p> <p>If the amount the company is required to make is less than £150, the company must pay</p>	Payment equal to annual sewerage charges (Minimum payment of £150. Maximum of £1000)	20 ³¹⁷	50 ³¹⁸	

³¹⁷ If the company does not make an automatic payment for which it is liable to the customer within 20 working days following the date on which the effluent entered his building, the company must automatically make an additional penalty payment to that customer.

³¹⁸ Same as above number 16.

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>the customer £150.</p> <p>Exceptions include where the entry of the effluent was caused by:</p> <ul style="list-style-type: none"> – exceptional weather conditions; – industrial action by the company’s employees; – the actions of the customer; – a defect, inadequacy or blockage in the customer’s drains or sewers; or • it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months following the date on which the effluent entered his building. 				
Properties materially affected sewer flooded externally	<p>If effluent from a sewer, which is vested in a sewerage company, enters a customer’s land or property, the company must make a GSS payment of the sum equal to 50% of the customer’s annual sewerage charge up to a maximum £500. The customer must claim the payment from the company within three months of the incident.</p> <p>If the amount the company is required to make is less than £75, the company must pay the customer £75.</p> <p>Exceptions include where:</p> <ul style="list-style-type: none"> • the entry of the effluent was caused by: <ul style="list-style-type: none"> – exceptional weather conditions; – industrial action by the company’s employees; – the actions of the customer; 	Payment equal to 50% of annual sewerage charges (Minimum payment of £75. Maximum of £500)	20 ³¹⁹	50 ³²⁰	

³¹⁹ If the company does not make a payment for which it is liable to the customer within 20 working days following the date on which the claim is received by the company, the company must automatically make an additional penalty payment to that customer.

³²⁰ Same as above number 19

Standard	Details	Penalty for failing to meet service level		Penalty for late payment	
		Domestic	Business	Domestic	Business
	<p>– a defect, inadequacy or blockage in the customer’s drains or sewers;</p> <ul style="list-style-type: none"> • the company has made a payment to the same customer in respect of the same incident for internal sewer flooding; • the customer was not materially affected by the incident; or • the customer has not claimed the payment within three months following the date on which effluent entered the customer's land or property. <p>In deciding whether a customer has been materially affected by the incident companies must take into account:</p> <ul style="list-style-type: none"> • what parts of the customer's land or property the effluent entered; • the duration of the flooding; • whether the flooding restricted the access to the land or property; • whether the flooding restricted the use of the land or property; and • any other relevant considerations of which the company is aware. 				

41.2 Ofwat – service quality assessment

In addition to the service levels that a water company is required to achieve (specified above), the water companies are required to report their performance each year against performance indicators called levels of service indicators.³²¹ These indicators cover the basic service that consumers expect to receive. Companies are also encouraged to improve their customer service through the service incentive mechanism, which is explained below.

In cases where Ofwat finds serious and persistent failure for companies failing to comply with the below standards, Ofwat has enforcement powers available to it under the *Water Industry Act 1991*.

³²¹<http://www.ofwat.gov.uk/regulating/aboutconsumers/levelsofservice#dq2>

(a) *Service indicators*

There are a number of levels of service that apply to water companies, and which Ofwat uses to assess the company's performance including:

- **DG2 – inadequate pressure:**
 - The number of connected properties that have received, and are likely to continue to receive, pressure below the reference level when demand for water is at a normal level.
 - The reference level of service is defined as ten metres per head of pressure (pressure sufficient to raise water to a height of ten metres) at a boundary stop tap with a flow of nine litres a minute. This should be sufficient to fill a 3.5 litre container in 30 seconds from a ground floor kitchen tap.³²²
 - Each property is allowed to report against an alternative reference level of 15 metres head of pressure in the distribution main supplying the property.
 - Each company is expected to maintain registers that identify properties at risk of receiving low pressure.

- **DG3: supply interruptions:** number of properties experiencing interruptions to their water supply for:
 - Between three and six hours
 - Between six and 12 hours
 - Between 12 and 24 hours
 - Longer than 24 hours
 - Indicators reflect how long each company is to restore supplies for interruptions for which consumers receive no warnings.³²³
 - Each company is expected to maintain registers that identify those properties affected by supply interruptions.

- **DG4: restrictions on water use:** percentage of a company's population that has experienced water usage restrictions. Water restrictions can be divided into:
 - Voluntary reductions, encouraged by a publicity campaign
 - Hosepipe restrictions
 - Drought orders restricting non-essential water use; and
 - Drought orders imposing standpipes or rota cuts
 - Each company must report the percentage of the population affected by these water usage restrictions.

- **DG5: Flooding from sewers:** company performance in respect of internal sewer flooding of properties. Each company reports its assessment of the number of properties at risk of flooding because of overloaded sewers under two categories:
 - once in every ten years;
 - twice or more in every ten years.

³²² A number of exceptions, including circumstances beyond the company's control (such as the plumbing of the household)

³²³ Interruptions caused by third parties or as a result of planned maintenance work for which consumers had given reasonable advance warning are excluded from the indicator.

- companies also report under two casual categories: (-) overloaded sewers and (-) other causes
- **DG6: Billing contacts:** shows the total number of billing contacts that consumers made during the report year, and the time each company took to respond to them. The time is measured in two bands:
 - Within five working days; and
 - In more than ten working days.
- The term 'billing contacts' covers any communication from a customer regarding a bill which requires a response or an action by the company and does not constitute a written complaint
- **DG7: Written complaints:** identifies the total number of written complaints received during the report year, and the time taken to respond to them. The time is measured in two bands:
 - within ten working days; and
 - in more than 20 working days.
- **DG8: Bills for metered consumers:** shows the percentage of metered consumers who receive at least one bill during the year based on a meter reading, taken by either the water company or the consumer.
- **DG9: ease of telephone contact:** the ease with which consumers can make telephone contact with their water company and their satisfaction with the way the company handled their call. This indicator measures:
 - total calls received on consumer contact lines;
 - all lines busy (that is, inability to make contact with the company);
 - calls abandoned (that is, calls abandoned before a company agent could substantively answer them; or before the relevant message is completed where recorded messages, answering machines, etc; and
 - how satisfied consumers are with the way their call is handled.

The above indicators are measured in accordance with measurement criteria set out on page 7 at http://www.ofwat.gov.uk/regulating/reporting/rpt_los_2009-10supinfo.pdf#page=70.

Environmental and drinking water quality

Ofwat works with the Drinking Water Inspectorate and the Environment Agency to ensure service delivery in accordance with the environmental standards that are either required by UK or EU legislation.

- 1) **Drinking water quality:** each company must do tests and provide results to the Drinking Water Inspectorate in relation to compliance with national drinking water standards set out in the Water Supply (Water Quality) Regulations 2000.
- 2) **Environmental impact,** Environmental Agency provides information each year on the various aspects of water company assets, including:
 - a. overall compliance with discharge permits for sewage treatment works
 - b. details of specific permit failures
 - c. successful prosecutions brought against the water companies by the Environment Agency

- d. pollution incidents caused by the companies (split by category of the company)
- e. delivery of schemes in the National Environmental Programme, or changes to the programme
- f. sludge disposal routes and the level of treatment; and
- g. bathing water compliance with mandatory European standards

Ofwat uses the above information, jointly with the Environment Agency, to monitor each company's performance in meeting its environmental responsibilities. Where a company is not meeting the expected standards, Ofwat will look for assurances from the company to prove that they are improving. If necessary, Ofwat may request a formal action plan to be developed by individual companies.

(b) *Security of supply*

Security and supply index

The Security and Supply Index (SoSI) is used to assess whether each company is complying with its duty to safeguard security of its water supplies. It does this by assessing the extent to which a company is able to guarantee its planned level of service at the end of the report year. If a company needs to impose more restrictions than the planned level of service, then that means that the security levels are low.

Headroom is defined as the difference between the amounts of water that a company has available to supply and the volume of water it expects to introduce into its network to meet demand. Target headroom is the minimum amount of headroom that a company needs in order to meet demand, taking account of supply and demand uncertainties, such as the temporary loss of a water resource. Where the headroom is greater than the target headroom, a company can provide its planned level of service.

Water balance and leakage

There are a couple of ways for measuring the leakage levels:

1. the minimum flows at night into districts of 1000 – 3000 properties – in the early hours of the morning, consumption is at a minimum and the principal component of the measured flow will be the leakage
2. the integrated flow method estimates all the components of the water balance except leakage, and assumes that the residual, the difference between distribution input and water used, is leakage. It is important that companies using this technique have robust monitors in place for estimating the other components of the water balance, particularly unmetered household consumption.

Ofwat monitors the reports that companies are required to submit to it on leakage levels. If Ofwat considers that the leakage figures are higher than required, then Ofwat will require the company to show the steps that they are taking to improve it. In the past, Ofwat has commissioned investigations into reported leakage levels by a company.

Assessing leakage and SoSI performance against targets

Ofwat uses companies' June return information to assess their success in delivering against two key price review outputs: SoSI targets and leakage targets. In determining the leakage target failures, the two stages used are:

- making a judgment on whether the company has a reasonable explanation for failing to achieve its leakage target; and
- deciding if the breach is material or trivial in nature

The primary consideration in all calculations is how the magnitude of the target failure affects customers' security of supply (for example, does it mean the company has a significant higher risk of needing to impose a hosepipe ban).

Current policy for assessing a leakage failure will take account of a company's performance over three years; therefore no action is taken after one year's failure. The same approach is applied for SoSI scores – Ofwat will take action if a company is underperforming over a five-year period.

(c) *Enforcement action*³²⁴

Ofwat has a range of options to deal with leakage and SoSI failures – it can take regulatory action if companies fail to deliver the services that consumers have the right to expect:

- Ofwat has power under the *Water Industry Act (WIA91) 1991* to secure legally binding undertakings – it has done so from two companies (Thames and Severn Trent)
- Ofwat has concurrent powers to the Office of Fair Trading under the *Competition Act 1998* and Articles 81 and 82 of the EC Treaty.

Formal enforcement action is likely only to be required to deal with more serious and persistent breaches.

Ofwat has imposed eight financial penalties since 2005 under its powers under the WIA91. In taking action under the WIA91, Ofwat's approach to enforcement is as follows:

- Self-regulation
- Dialogue, letters, warnings
- Quarterly, monthly reporting
- Informal undertaking, additional investment
- Formal undertakings under section 19 of WIA91
- Enforcement orders under section 18 of WIA91
- Financial penalties under section 22A of WIA91
- Special administration

The actions to be taken depend on the nature, seriousness and impact of any contravention. In determining the seriousness, Ofwat will consider the damage that has arisen as a result of the breach.

Legal framework for enforcement³²⁵

Section 6(2) of WIA91 states that a company holding a licence to be a water and sewage undertaker is under an obligation to comply with the conditions of its appointment, and to comply with statutory and other obligations placed on the company by virtue of the relevant legislation. Companies holding a water supply licence are also expected to comply with the conditions of their licence and to comply with the relevant statutory and other obligations.

Enforcement orders under section 18

If Ofwat is satisfied that a company is contravening or likely to contravene any of the conditions of its appointment or licence or any statutory or other requirement, then Ofwat may impose an enforcement order.

³²⁴http://www.ofwat.gov.uk/regulating/enforcement/pap_pos_enforcementapproach.pdf

³²⁵http://www.ofwat.gov.uk/regulating/enforcement/pap_pos_enforcementapproach.pdf

Undertakings – section 19

This section provides the exceptions to the enforcement order under section 18 – where a company has given, and is complying with an undertaking to take appropriate steps to ensure compliance. If the company fails to comply with the undertaking, then, Ofwat can issue a section 18 enforcement order.

Financial penalties – section 22A

If Ofwat is satisfied that a company has contravened or is contravening a condition of its appointment or licence or any statutory or other requirement that Ofwat can enforce under section 18 WIA91 or has failed to achieve a certain prescribed standard, Ofwat can impose a financial penalty on the company.

Special administration orders

With consent from the Secretary of State, or if appropriate, the Welsh Ministers, Ofwat will in some cases apply to the High Court for a special administration order – the High Court can only make a special administration order in certain circumstances, including where it is satisfied that:

- (a) there has been or is likely to be a contravention of a principal duty or an enforcement order that is serious enough to make it inappropriate for the company to continue to hold its appointment or licence; or
- (b) the company is or is likely to be unable to pay its debts.

41.3 Serviceability

At the various price review points, Ofwat assess the company's plans regarding maintenance of its over ground and underground networks of water mains and sewers. Performance of serviceability is measured which is the capability of a system of assets to deliver a reference level of service to customers and to the environment now and in the future. Ofwat requires the companies to maintain (or achieve and maintain) as a minimum, stable serviceability, against which they monitor their progress. Ofwat will engage with companies with marginal serviceability to make sure that they understand the assessment, and have plans to restore stable³²⁶ serviceability.

41.4 Carbon accounting

Ofwat has recently started collecting gas emission data from water companies to assess their environmental impact.

41.5 Information quality

Ofwat assesses the quality of the information received from water companies, and engages independent consultants to assess company procedures for collecting information, and the reliability of such information. If the information by a company is found to be of unreliable quality, Ofwat will work with them and their reporters to enhance consistency and comparability of their information.

³²⁶ Stability is when the assessment of trends in a defined set of service and asset performance indicators demonstrating that service is in line with the reference level of service and, by reference, is likely to remain so in the future.

42 Electricity

Obligations to connect new Customers are set out in the *Electricity Act 1989*, and in the *Standard Licence Conditions (SLC)* 12, 15 and 19.³²⁷

SLC 12 requires each DNO to provide offers for connection as soon as reasonably practicable and, in any event within three months.

SLC 15 relates to the timeliness of the provision of non-contestable connection services to third party providers.³²⁸

SLC 19 prohibits the discrimination between classes of consumers.

Each of these obligations is a minimum standard of acceptable performance and DNO's performance on connections must be seen in this light.

On 1 October 2010, the *Electricity (Connection Standards of Performance) Regulations*³²⁹ and *Distributed Generation (DG) Standards Direction*³³⁰ took effect requiring specific connection services to be provided within specified timescales.

Standard condition 15A.14 of the Electricity Distribution Licence requires these timescales to be met in 90% of cases against the aggregated standards below:

- Metered standards of performance relating to budget estimates and quotations (in total)
- All other metered standards of performance (in total)
- All unmetered standards of performance (in total)

42.1 Metered quotation DG Standards

Reporting code (ECDGS no) ³³¹	Service	Performance level	Voluntary payment to Customer
1A	Provision of budget estimate < 1MVA	Within 10 working days	£ 50 – one off payment
1B	Provision of budget estimate > 1MVA	Within 20 working days	£ 50 – one off payment
3A	Provision of an (Low Voltage) LV generation quotation	Within 45 working days	£ 50 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched
3B	Provision of an (High Voltage) HV generation quotation	Within 65 working days	£ 100 for each working day after the end of the

³²⁷The Standard Conditions of the Electricity Distribution Licence

³²⁸ This is work that can only be done by the host DNO licence holder.

³²⁹Electricity (Connections Standards of Performance) Regulations 2010. Statutory Instrument 2088.

³³⁰ Direction under paragraph 15a.16 Of Standard Condition 15a (Connection Policy And Connection Performance) of the Electricity Distribution Licence

³³¹ This is the Electricity Connections Distributed Generation Standards number as referenced throughout the guidance document and which is associated with their corresponding conditions.

Reporting code (ECDGS no) ³³¹	Service	Performance level	Voluntary payment to Customer
			prescribed period up to and including the day on which the quotation is dispatched
3C	Provision of an Extra High Voltage (EHV) generation quotation	Within 65 working days	£ 150 for each working day after the end of the prescribed period up to and including the day on which the quotation is dispatched
4B	Contact Customer (post acceptance) about scheduling LV generation connections	Within 7 working days	£ 50 for each working day after the end of the prescribed period up to and including the day on which contact occurs
4C	Contact Customer (post acceptance) about scheduling HV Generation Connections	Within 10 working days	£100 for each working day after the end of the prescribed period up to and including the day on which contact occurs
4D	Contact Customer (post acceptance) about scheduling EHV Generation Connections	Within 15 working days	£150 for each working day after the end of the prescribed period up to and including the day on which contact occurs
5	Commence LV, HV & EHV generation works on Customer's site	In timescale agreed with the Customer	£20 for each working day after the agreed date up to and including the day on which the works are commenced
6B	Complete LV works (including phased works)	In timescale agreed with the Customer	£100 for each working day after the agreed date up to and including the day on which the works are completed
6C	Complete HV works (including phased works)	In timescale agreed with the Customer	£150 for each working day after the agreed date up to and including the day on which the works are completed
6D	Complete EHV works (including phased works)	In timescale agreed with the Customer	£200 for each working day after the agreed date up to and including the day on which the works are completed
7A	Complete LV Energisation works (including phased works)	In timescale agreed with the Customer	£100 for each working day after the agreed date up to and including the day on which Energisation occurs
7B	Complete HV Energisation works (including phased works)	In timescale agreed with the Customer	£150 for each working day after the agreed date up to and including the day on which

Reporting code (ECDGS no) ³³¹	Service	Performance level	Voluntary payment to Customer
			Energisation occurs
7C	Complete EHV Energisation works (including phased works)	In timescale agreed with the Customer	£200 for each working day after the agreed date up to and including the day on which Energisation occurs

Further, the *Electricity (Standards of Performance) Regulations 2010* specifies the minimum levels of DNOs.³³² If a DNO fails to meet these standards, the affected Customer is entitled to a payment, subject to certain exemptions.

The following table outlines the Electricity Guaranteed Standards of Performance (EGS) and the payment due for not meeting these. Some exemptions apply. These EGS only apply to DNOs.

Note that the asterisk on any of the below EGS means that the Customer must make the claim under the relevant standards for payment, whereas the other standards require DNOs to make the payments proactively.

Reporting code	Service	Performance level	Guaranteed standards payments
EGS1	Responding to failure of distributor's fuse (Regulation 12)	All DNOs to respond within 3 hours on a working day (at least) 7am – 7pm, and within 4 hours on other days between (at least) 9am to 5 pm, otherwise a payment must be made.	£ 22 for domestic and non-domestic Customers
EGS2*	Supply restoration – normal conditions (Regulation 5)	Supply must be restored within 18 hours; otherwise a payment must be made	£ 54 for domestic Customers and £ 108 for non-domestic Customers, plus £ 27 for each further 12 hours
EGS2A*	Supply restoration: multiple interruptions (Regulation 11)	If four or more interruptions each lasting 3 or more hours occur in any single year (1 April – 31 March), a payment must be made	£ 54 for domestic and non-domestic Customers
EGS2B*	Supply restoration – normal conditions (5000 or more premises interrupted) (Regulation 6)	Where a large scale event occurs, that is where 5000 or more Customers' premises are interrupted by a single failure of, fault in or damage to a distributor's system, then supply must be restored within 24 hours, otherwise a payment must be made	£ 54 for domestic Customers and £ 108 for non-domestic Customers, plus £ 27 for each further 12 hours up to a cap of £ 216 per Customers
EGS2C*	Supply restoration – rota disconnections (Regulation 8)	Where supply to a Customer's premises is interrupted as a result of rota disconnection on a distributor's distribution system by a failure of, fault in or damage to that system, then supply must be restored within 24 hours, otherwise a payment must be made	£ 54 for domestic Customers and £ 108 for non-domestic Customers
EGS3	Estimate of charges	Distributors must dispatch an estimate to	£ 44 for domestic and non-

³³²http://www.legislation.gov.uk/uksi/2010/698/pdfs/ukxi_20100698_en.pdf

Reporting code	Service	Performance level	Guaranteed standards payments
	for connections (Regulation 13)	the Customer within either 5 working days or 15 working days (15 working days applies if significant work beyond a distributor's fuse and service line are necessary), otherwise a payment must be made	domestic Customers
EGS4*	Notice of planned interruption to supply (Regulation 14)	Customers must be given at least 2 days' notice, otherwise a payment must be made	£ 22 for domestic and £ 44 for non-domestic Customers
EGS5	Notice of planned interruption to supply (Regulation 15)	Visit Customer's premises within 7 working days or dispatch an explanation of the probable reason for complaint within 5 working days, otherwise payment must be made	£ 22 for domestic and non-domestic Customers
EGS8	Making and keeping appointments (Regulation 19)	Companies must offer and keep a timed appointment, or offer and keep a timed appointment where requested by the Customer, otherwise a payment must be made	£ 22 for domestic and non-domestic Customers
EGS9	Payments owed under the standards (Regulation 21)	Payments to be made within 10 working days, otherwise a payment must be made	£ 22 for domestic and non-domestic Customers
EGS11* (EGS11A, 11B and 11C)	Supply restoration: severe weather conditions (Regulation 7)	Depending on category of event supply must be restored within 24, 48 or a multiple of 48 hours, otherwise a payment must be made	£ 27 for domestic and non-domestic Customers, plus £ 27 for each further £ 12 hours up to a cap of £ 216
EGS12*	Supply restoration: highlands and islands	Supply must be restored within 18 hours, otherwise a payment must be made	£ 54 for domestic Customers and £ 108 for non-domestic Customers, plus £ 27 for each further 12 hours

42.2 Disputes

Customers and distributors can communicate directly in order to progress their claims and Distributors are encouraged to resolve the disputes. If a dispute brought to a distributor has not been resolved by the distributor, Customers must be advised of their rights and refer disputes to Ofgem for determination.

43 Post

43.1 Service levels for universal service

Royal Mail is subject to various service level requirements as part of its universal service obligations. These requirements only apply to the retail products which fall within the scope of the universal service.

Royal Mail is obliged to meet the performance targets set out in the table below. These are average targets over a 12 month period:

USO Condition	Standard	Performance target (%)
Deliveries		
DUSP 1.4.1 and 1.4.2	Delivery routes completed each day upon which a delivery is required by DUSP 1.4.1 and DUSP 1.4.2	99.90
	Postal packets deemed delivered in the UK in the provision of the universal service	99.50
DUSP 1.10.2	Deliveries made every day upon which a delivery is required by DUSP 1.4.1 and DUSP 1.4.2, by the latest delivery time notified to Ofcom in accordance with DUSP 1.10.2	N/A
Collections		
DUSP 1.5	Public access points used in the provision of any postal service provided pursuant to DUSP 1.6, served each day upon which a collection is required by DUSP 1.5	99.90
DUSP 1.5 and 1.10.2	Collections made every day upon which a collection is required by DUSP 1.5 from letter boxes and other public access points used in the provision of any domestic service provided pursuant to DUSP 1.6, at or after the final time of collection advertised on the access point	
Domestic end-to-end services		
DUSP 1.6.1(a)	USO priority services: deemed delivered with an actual routing time of D+1	93.0
DUSP 1.6.1(a)	USO priority services purchased by postage stamp and by meter: deemed delivered with an actual routing time of D+1 in each postcode area apart from HS, KW and ZE	91.5
DUSP 1.6.1(a)	USO priority services purchased by postage stamp and by meter: deemed delivered with an actual routing time of D+1 in each of the postcode areas HS, KW and ZE	N/A
DUSP 1.6.1(b)	USO standard services for postal packets weighing up to 1kg: deemed delivery with an actual routing time of D+3	98.5
DUSP 1.6.1(b)	USO standard services for postal packets weighing more than 1kg: deemed delivered with an actual routing time of D+3	90.0
DUSP 1.6.1(d)	USO registered and insured services for postal packets weighing no more than 10 kilograms: deemed delivered with an actual routing time as	99.0

USO Condition	Standard	Performance target (%)
	specified in accordance with DUSP 1.6.1(d)	
DUSP 1.6.1(g)	USO incoming EU services deemed delivered with an actual routing time of D+3	85
DUSP 1.6.1(g)	USO incoming EU services deemed delivered with an actual routing time of D+5	97
DUSP 1.6.1(f)	USO outgoing EU services deemed delivered with an actual routing time of D+3	85
DUSP 1.6.1(f)	USO outgoing EU services deemed delivered with an actual routing time of D+5	97

Royal Mail is obliged to monitor (or procure the monitoring of) its performance in relation to these standards using an appropriate testing methodology. The suitability of the testing methodology is required to be reviewed annually by an independent person (either appointed by Royal Mail or appointed by Ofcom, with Royal Mail's agreement).

Royal Mail is also obliged to publish (and notify Ofcom and the National Consumer Council of) its performance against the above standards, no later than two months after the end of each quarter.

Although there is no automatic requirement to pay compensation for failure to meet the above performance targets, Royal Mail is required to maintain policies providing for "fair and reasonable" remedies and redress in respect of **delay** to services covered by the universal service and **loss** or **damage** to post covered by the universal service. It is also required to notify Ofcom annually of the number of claims for compensation received and the number of such claims where compensation was paid, as well as the amount of compensation paid, broken down by the main causes of the claims.

43.2 Service levels for access

Royal Mail is under a regulatory obligation to provide access to its postal network on fair, reasonable and non-discriminatory terms. This involves competing postal operators and larger business customers dropping off mail at Royal Mail's inward mail centres, which Royal Mail then delivers to the addressees' premises.

Until recently, almost all competing operators relied on access from Royal Mail in order to compete at the retail level (other than for parcels, where operators tend to have their own delivery networks). TNT recently launched a competing end-to-end delivery service for bulk mail.

Royal Mail is obliged to publish information as is reasonably necessary for the purposes of securing transparency as to the quality of service in relation to its access services.

Under the current regulatory framework, there is no specific obligation on Royal Mail to meet any particular quality of service targets in relation to access mail. However, Royal Mail's standard access contract does include provisions relating to quality of service and compensation.

Part A of Schedule 2 to Royal Mail's standard access contract provides that Royal Mail will deliver 95% of total mailing items on the next working day following the working day on which the mail was handed over by the customer. Compensation is payable to customers where Royal Mail falls below a performance target of 90%. There are carve-outs from these obligations for certain events

outside Royal Mail's control. In order to claim compensation, the customer must also provide proof that it has suffered loss as a result of the failure to meet the performance targets. Although Ofcom has not imposed specific quality of service obligations in relation to the provision of access services by Royal Mail, it is open to a customer to bring a dispute to Ofcom in relation to Royal Mail's service quality and level of compensation payments. We are not aware of any such dispute having been brought to date.