

David Clarkson
Competition Policy Director
Ofcom
Riverside House
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London
SE1 9HA

By email only

12 May 2020

Dear Dave,

Request for notification waivers in relation to Openreach offers to help mitigate COVID-19 impacts

COVID-19 is posing significant operational and financial challenges for our industry and the customers we serve. As you know, Openreach has taken a series of measures to help mitigate these impacts, supporting our Communication Provider (CP) customers and end user consumers and businesses. In this regard, I am writing to you in relation to two offers that Openreach has developed to help CPs mitigate the impacts of COVID-19 for their customers and to keep vital communications services going.

To deliver the maximum benefits into the market Openreach wishes to implement these offers as soon as possible, and so is seeking Ofcom's consent to waive the notification periods foreseen under Condition 6 of the 2019 Business Connectivity Market Review and Condition 9 of the 2018 Wholesale Local Access Market Review. Both offers have been signed off via Openreach's commercial governance process and, subject to agreement of this waiver request, are ready for implementation.

I set out the relevant details of the two offers below, and explain why the waivers are justified, proportionate and to the benefit of all CPs.

1. Special offer allowing EAD 100 and EAD 1000 customers to complete orders and pausing the service start and billing for up to 90 days

This offer will help Openreach to progress EAD orders whilst giving flexibility to CPs to delay activating the start of service until their end customer is ready. Essentially CPs will be able to pause the activation of service and the associated connection and rental billing for up to 90 days after the circuit has been installed. This will be of benefit to CPs who have end customers whose sites can be accessed for installation work and who aren't currently operating normally, but who want to switch services on quickly when they are ready to come

out of lockdown. This offer will also assist CPs and Openreach reduce the inevitable order backlog which will develop when lockdown is withdrawn. This offer will be made available until the end of June 2020, although we are open to extending beyond that based on prevailing conditions at the time.

As you know, Openreach has discussed the nature of this offer bilaterally with a number of CPs of differing sizes that we consider could make use of it, and all have responded positively. We have also discussed this offer with the OTA2 who also recognise the benefits of this in the current context of COVID-19 business lockdown.

Openreach considers that this would be the provision of new services in a manner that is outside of the normal terms and conditions offered, and so a minimum notification period of 28 days would apply under Condition 6 of the 2019 Business Connectivity Market Review. Waiving the notice period and allowing for a prompt implementation of the offer will maximise the benefit of the offer more quickly, which is required in the current time given the COVID-19 crisis.

2. SOGEA New Line Provide with Managed Install rebate offer

This offer is part of a package of measures that will help Openreach do more installation work for CPs and their customers during a period when it is difficult for us to do work in the end customer environment. Essentially Openreach will undertake SOGEA New Line Provide (NLP) work but will rebate the Managed Install element of the charge, given that we will not be performing the in-home tasks. Because Openreach does not have a SOGEA NLP with Self-Install product, MPF NLP with Self Install has been used as a reasonable proxy to calculate the rebate amount. The offer will be made available until we are able to return to working in the premises where we can deliver a managed install journey.

Openreach has discussed the nature of this offer with CPs and OTA2, along with other arrangements to help us do more work for CPs, at a specially convened CFPCG call on 6 May 2020.

Openreach considers that this offer is effectively a price discount versus normal terms, and so a minimum notification period of 28 days would apply under Condition 9 of the 2018 Wholesale Local Access Market Review. Waiving the notice period and allowing for a prompt implementation of the offer will maximise the benefit of the offer more quickly, which is required in the current time given the COVID-19 crisis.

To recap, Openreach formally requests that Ofcom waive the applicable minimum notification period for the offers described above. To do so we believe is in the interests of UK Consumers and Businesses and will help Openreach and its CPs overcome some of the operational difficulties posed by COVID-19 and allow the UK economy to recover more quickly as the lockdown provisions start to be lifted.

I would be happy to provide further detail to Ofcom as needed. I also anticipate that Openreach may be making further offers to support CPs and their customers through these difficult times, and so may be seeking further waivers from Ofcom in the near future. We will of course endeavour to engage Ofcom as early as possible in the event the need arises.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Shurmer". The signature is written in a cursive, slightly slanted style.

Mark Shurmer
Managing Director of Regulatory Affairs
Openreach