

14 March 2014

Level 3's Response to Ofcom Consultation regarding BT Openreach's Ethernet Access Direct Service

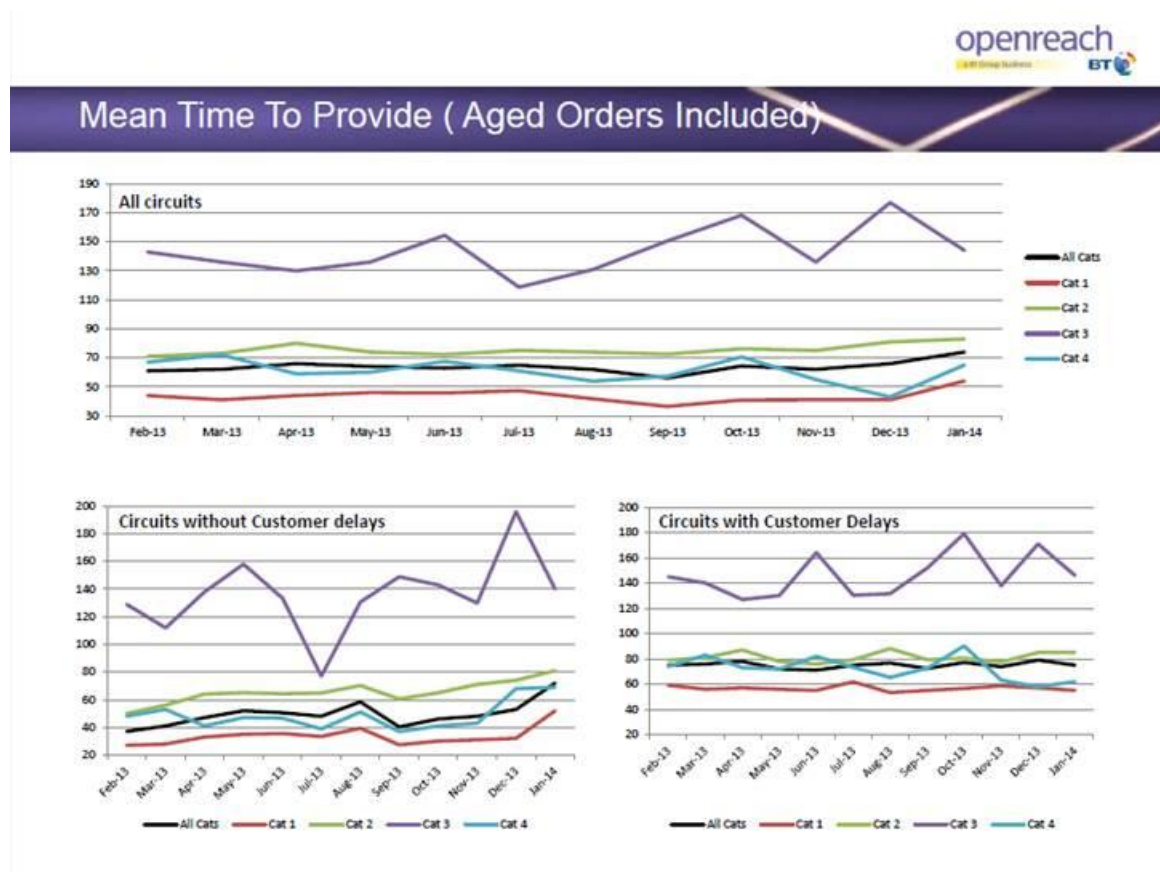
As Ofcom will be aware from our previous submissions on BCMR and LLCC initiatives, we make use of BT's EAD services and have been advocating changes to the ECC regime for several years. We welcome the opportunity to respond to this consultation which we believe is a timely one since decisions can be taken and clarity given to all stakeholders in advance of the next review of the business connectivity market.

General Comments

We are generally supportive of Ofcom's assessment of the BT Openreach proposals and the conclusions that are expressed. We also agree with Ofcom's suggestion that the most appropriate timing for any change to the current pricing regime would be April 2014. In our view, the BT pricing model for ECCs is a relatively simple one and so ought not to require a substantial implementation timescale. If a short notice approach were to be adopted then we would ask for clarity regarding any orders that may have been placed prior to the change but which remain 'in-flight' on the implementation date.

Service Delivery Performance Issues

We are concerned about BT's historical service delivery performance, the reality of which is materially different from the nominal 30-day lead-time quoted in section 3.2. The actual lead-times are much longer across all service categories as can be seen from the factual information presented to the Ethernet service forum on 14th February:



Performance Incentive

Although we can see a potential benefit in removing delays caused by the first £2,800 ECCs, the actual delivery metrics illustrated in the 'Mean Time to Provide' graph above show that even Cat 1 orders (where no ECCs would exist) are currently suffering late delivery and we note that this failure trend has been worsening over time.

Under the current regime, there is relative little commercial incentive on BT Openreach to perform to contract. Ofcom may therefore wish to explore whether the regulation of the ECC charging regime might be tailored in a proportionate manner so as to incorporate a clear and meaningful incentive regime.

EAD Process

We feel that clauses 3.2 & 4.5 and Figure 1 of the Consultation Document do not accurately describe the process. In particular, we believe that the Planning and Survey stages should be reversed since this is the logical sequence, ie survey should be undertaken before planning can be completed. In our view, BT Openreach is required to assess any need for ECCs and to quote a confirmed CDD within the first 8 working days of the CP placing an order rather than 14 days as stated.

We also observe that CPs frequently have a challenge to accept ECCs within 30wd as their customers/end users frequently require far longer than this to approve. This is particularly so where ECCs represent a significant cost so while the current proposal goes some way to deal with this issue, we are unconvinced that it will fully resolve the concern. Furthermore, the nature of the ECC offer is typically little more than a list of EAD components and is light on information and/or customer options. For example, our customers are frequently asking that we approach BT Openreach to request route maps but the EAD process does not currently permit this to happen. If the regime were to be made sufficiently flexible to permit a degree of dialogue in cases where the CP's customer requests further information or time to consider, then this would enable a more positive process which would assist all parties, including BT Openreach.

In clause 4.8, Ofcom calculates that a potential reduction of 22% of failing orders would result from the proposed change to the regime. This is indeed an attractive proposition which, if it can be combined with the sort of initiatives that we seek, would greatly improve the consumer experience.

Measurable Impact of Regulatory Measures

The effect of whatever new regime is selected must be carefully monitored so as to ensure it delivers upon expectations. We would be particularly interested in exploring whether a BT Openreach performance metric could be published going forwards that would enable Ofcom and CPs to easily track success at both an industry and individual CP level.

Need for Increased Transparency

Under the original charging model the first £5k of construction costs were covered. The extant RFS design did give CPs comfort that the recovery was being fairly accounted for and this was one of the reasons given for introducing ECCs in the first place. However, we do not yet feel that we are able to understand the underlying costs of ECCs.

In order to allay these concerns, we seek Ofcom's assistance in ensuring that detailed accounting information is kept by BT Openreach under the new regime which can be presented in due course so as to clearly show the relation between costs and charges. In particular, the accounting for use of third party contractors by BT Openreach is an area that may require careful monitoring.

Likewise, should Ofcom support our concerns regarding process and performance, we seek publication of meaningful and helpful operational statistics.

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