

Fixed Access Market Reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls

13 February 2014

Introduction

KCOM welcomes the opportunity to provide further comments in relation to the fixed access market reviews. In responding to this consultation, KCOM limits its comments to the issues concerning Openreach quality of service.

The analysis which has been undertaken is complex and we do not intend to comment on the detail of the cost differentials, the treatment of fault rates in the charge controls or the overall impact on the charge controls of setting minimum quality of services standards. Rather our comments are more general and concern the appropriateness of the proposed service standards, the proposed KPIs, enforcement and incentives for Openreach to improve overall quality of service.

Overall we welcome the action which Ofcom is proposing to take which will provide both CPs and Openreach with a greater degree of clarity in terms of expectations for service delivery. We see this as very much a step in the right direction. However, we are concerned that the targets which Ofcom is proposing are not challenging enough and provide no real incentive for Openreach to strive to improve its basic level of service delivery. We also remain concerned about the need to ensure that the threat of enforcement action provides a real incentive for Openreach to get it right and that enforcement action is timely when needed.

Use of existing SLAs as the basic standard

While we understand the difficulty facing Ofcom in pointing to clear evidence that more stringent SLA standards are required to those currently in place, we remain concerned that this will simply set the bar at a level which industry has previously been forced to accept, is too low and provides no incentive for Openreach to strive to improve overall quality of service.

Ofcom notes that while it is setting minimum standards this does not preclude industry from agreeing changes to contractual SLAs in future. As we commented in our response to the July 2013 consultation, the contracts under which Openreach provides services are not normal commercial contracts. Invariably contractual provisions are presented to industry who then engage in a degree of negotiation but with little bargaining power to force changes to the contract. As a result where there are service quality provisions in Openreach contracts they are not as detailed and comprehensive as we would expect to see in commercially negotiated contracts, nor do they require delivery to the standards which we and our customers would expect. Similarly we have concerns with the level of payments which “commercially negotiated” SLAs/SLGs provide for.



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Ranges for minimum standards

We are concerned that simply because Openreach service delivery in 2011/12 was less problematic Ofcom believes it therefore provides an appropriate lower level for the range of minimum standards in repair completion and provision appointment availability. Overall our impression is that the targets being set for Openreach are not challenging and should be well within the range which they are able to achieve with current resources.

They are also not reflective of the minimum standards which our customers expect from us in terms of service delivery. To tell a customer that 77.7% - 85% of repairs will be completed within SLA timescales would be unacceptable. Our customers expect a high degree of surety in our ability to deliver and maintain their services and that is provided contractually. When we are unable to meet those contractual commitments due to issues with Openreach service delivery we bear that responsibility with our customer.

Putting it another way, we believe there are two key measures when considering service delivery:

- 1) The actual target which is being committed to; and
- 2) The level of certainty that the target will be met.

If the range of minimum standards proposed by Ofcom are adopted then the test of certainty will fail, particularly in relation to completion of repairs.

For business customers it is the test of certainty which is particularly important. Put simply they need to know that something will be done when we say it will be done. We do not believe that Ofcom's proposals will enable us to meet customer expectations in this regard.

Proposed minimum standards

Our key concern is in relation to business services, where typically customers tend to be more demanding in terms of quality of service issues and as we have commented above expect a high degree of surety in our ability to meet their service requirements.

We agree with Ofcom's view is that Openreach should be required to meet the standards in full as soon as reasonably possible. However we do not accept that there is a need to impose somewhat lower minimum standards for the first two years because of a perceived significant risk of failure. To be clear, Ofcom is not asking Openreach to meet more stringent SLAs than those it already commits to, rather it is simply introducing a measure to determine whether Openreach performance against those SLAs is acceptable.

We do not believe that the proposed targets provide adequate incentives for Openreach to markedly improve its performance and they should be much more challenging in order to ensure that customers (both CPs and end-customers) are offered a reasonable level of service. A target of 67% of repairs being completed within SLA timescales in year 1 is not in our opinion reasonable and will not bring about the fundamental change in Openreach's approach to service delivery which we see as necessary.



KPIs and monitoring the tail

We share Ofcom's concern that the imposition of minimum standards may incentivise BT to focus on the delivery of services up to the target percentage, but to de-prioritise those where it becomes clear that they will not be delivered within the SLA period.

We welcome Ofcom's proposal to monitor the 'tail' and the proposal for monthly publication of additional KPIs tracking tails for provisioning and repairs on a +1, +5, +10 and +30 days basis - that is SLA+X days, together with the total number of faults, requests for provisioning appointments and provisioning appointments scheduled.

However, we are not sure that this goes far enough and provides CPs or Ofcom with a timely way to address any issues which arise. We note Ofcom's invitation to Openreach to respond with their own targets for delivery of the tail, however it does not seem to be the intention that these targets should form part of any obligation on Openreach. This leaves CPs dependent on SLGs to remedy individual customer problems. In this regard, we would reiterate the point made in response to the July 2013 consultation about whether the current level of payments for failure to meet SLAs/SLGs are sufficient to incentivise Openreach to improve its service. Overall they form a very small element of the Openreach balance sheet and as such may simply be seen as a cost of doing business rather than a material penalty that incentivises a culture of continuous improvement.

Incentives and enforcement

Finally we are concerned that any obligations that are placed on BT are effectively monitored and that the threat of enforcement action provides a real incentive for Openreach to get it right and enforcement action is timely when needed.

Ofcom must ensure that the incentives for Openreach are meaningful and will exert sufficient pressure to ensure compliance with any defined targets and improvements in the overall quality of service. In order to do this we believe that a number of key issues need to be addressed:

- the setting of challenging targets which require improvement in delivery over time;
- effective monitoring of compliance;
- timely intervention should there be a failure to meet targets;
- penalties which provide a real incentive to deliver against targets.

We are hopeful that the suggested KPIs will enable effective monitoring of compliance and timely intervention on the part of Ofcom should problems arise but as we have commented above we are concerned that the targets which Ofcom is proposing are not challenging enough and provide no real incentive for Openreach to strive to improve its basic level of service delivery.

And while we appreciate that Ofcom's proposals for minimum service standards will enable Openreach to be financially penalised for failure to meet those standards but determining whether there has been a breach will always be a retrospective exercise that will not address the need for timely payment of compensation to customers for failure to deliver. Unlike compliance with other regulatory obligations such as charge controls



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which are retrospectively reviewed, there is no potential for retrospective benefit or future adjustment in respect of service delivery which a provider might take advantage of. Service delivery is very much a current issue and unless action is taken to address issues quickly then as experience shows shortfalls in service can become much worse.

Finally we would also reiterate our point about whether the current level of payments for failure to meet SLAs/SLGs are sufficient to incentivise Openreach to improve its service. We believe that commercially renegotiating these amounts will prove to be incredibly difficult if not impossible.



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