

# A5. Draft Legal Instruments

## Notification of Directions to BT under section 49 of the Communications Act 2003 and SMP condition 10

### Background

1. On 8 January 2020, OFCOM published “Promoting Competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (the “WFTMR Consultation”). The WFTMR Consultation set out Ofcom’s proposals on its review of fixed telecoms markets including the wholesale local access, leased lines access and inter-exchange connectivity markets. At Volume 5 of that document, Ofcom published a notification under section 45 of the Communications Act 2003 (the “Act”) containing its proposals on market identification, market power determinations and the setting of SMP conditions and directions to be applied to BT.
  
2. The WFTMR Consultation proposed to impose SMP condition 10 on BT in each of the wholesale local access, leased lines access and inter-exchange connectivity markets which requires it to comply with all such quality of service requirements as Ofcom may from time to time direct and publish all such information as to the quality of service as Ofcom may from time to time direct. Pursuant to proposed SMP condition 10, Ofcom included in Volume 5 of the WFTMR Consultation a notification under s.49 of the Act and proposed to make four directions requiring BT:
  - a. to comply with quality of service standards in respect of the provision of network access in the following markets:
    - (i) supply of leased line access in LL Area 2;
    - (ii) supply of leased line access in LL Area 3;
    - (iii) supply of interexchange connectivity in BT Only exchanges; and
    - (iv) supply of interexchange connectivity in BT+1 exchanges.

in which Ofcom has provisionally found BT as having SMP as set out in the Consultation (“**Direction 1**”); and

- b. to comply with transparency and publication requirements in respect of the provision of network access in the markets set out at a. above and the market for the supply of leased lines in High Network Reach Areas as applicable (“**Direction 2**”);
  - c. to comply with quality of service standards in respect of the provision of network access in the following markets:
    - (i) supply of wholesale local access at a fixed location in WLA Area 2; and
    - (ii) supply of wholesale local access at a fixed location in WLA Area 3in which Ofcom has provisionally found BT as having SMP as set out in the Consultation (“**Direction 3**”); and
  - d. to comply with transparency and publication requirements in respect of the provision of network access in the markets set out at c. above as applicable (“**Direction 4**”) (together the “**QoS Directions**”).
3. The period within which representations could be made to Ofcom about its proposals in the WFTMR Consultation ended on 22 May 2020. Ofcom received many comments on its proposals set out in the WFTMR Consultation which Ofcom is still considering.

#### **Proposed amendments to the proposed QoS Directions**

- 4. In the WFTMR Consultation, Ofcom invited views on options for the Upper Percentile standard, in addition to the content of the proposed QoS Directions more generally. In light of stakeholder representations in response to the WFTMR Consultation and further information collected from BT, Ofcom is setting out its further proposals in relation to the proposed QoS Directions in the consultation document accompanying this notification “Wholesale Fixed Telecoms Market Review – Openreach Quality of Service – Further consultation on proposed quality

of service remedies” (the “Consultation”).

5. Proposed Directions 1 to 4 as amended by this notification are set out respectively at Annexes 1 to 4 of this notification. Deletions to the proposal in the WFTMR Notification are shown in strike through text and additions are underlined and highlighted. Consequently, the WFTMR Notification should be read accordingly. It is proposed that the QoS Directions as amended will take effect from the date of any notification under section 49A of the Act adopting the proposals set out in this notification.

### **Ofcom’s duties and legal tests**

6. The effect of these amendments to the proposed QoS Directions, and Ofcom’s reasons for proposing them, are set out in the consultation document accompanying this notification and, for the reasons therein, Ofcom considers that the Directions would comply with the requirements of section 49(2) of the Act. Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
7. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

### **Making representations**

8. Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying Consultation by no later than 3 December 2020.
9. Copies of this notification and the accompanying Consultation have been sent to the Secretary of State in accordance with sections 49C(1) of the Act.

## Interpretation

10. For the purposes of interpreting this notification —

- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 11 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
- (b) headings and titles shall be disregarded;
- (c) expressions cognate with those referred to in this notification shall be construed accordingly; and
- (d) the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

11. In this notification—

- (a) “**Act**” means the Communications Act 2003 (c. 21);
- (b) “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- (c) “**Consultation**” has the meaning given to it in paragraph 4; and
- (d) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002.

12. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink, consisting of a stylized initial 'T' followed by the name 'Clarkson'.

David Clarkson

Competition Policy Director, Ofcom

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002**

22 October 2020

## Annex 1

### Direction 1: Quality of Service Standards

#### Direction

A. This Direction is made under section 49 of the Act and SMP Condition 10 and requires the Dominant Provider to comply with quality of service standards in relation to the provision of network access to Relevant Ethernet Services and Dark Fibre Access in the markets for (i) in LLA Area 2; (ii) LLA Area 3; (iii) interexchange connectivity in BT Only exchanges; (iv) and interexchange connectivity in BT+1 exchanges.

B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from [1 April 2021].

#### Quality of Service Standards

##### Application

1. The Dominant Provider must comply with the following quality of service standards in respect of the provision of Orders for:
  - a. Relevant Ethernet Services; and
  - b. Dark Fibre Access.
  
2. The obligation referred to in paragraph 1 above shall apply in the Relevant Year to Orders that became Accepted Orders on or after [DATE] or that were Accepted Orders before [DATE] but were not Completed Orders on or before [DATE], and that relate to:
  - a. Supply of Leased Line access in LLA Area 2 (“LL Area 2”);
  - b. Supply of Leased Line access in LLA Area 3 (“LL Area 3”);
  - c. Interexchange connectivity in BT Only exchanges (“IE”); or
  - d. Interexchange connectivity in BT +1 exchanges (“IE BT+1”).

### Quality of Service Standard 1 - Mean Time to Provide

3. The Dominant Provider must ensure that the ~~Mean~~ **mean** Time to Provide of Completed Orders is no more than 38 Working Days in each Relevant Year.

### Quality of Service Standard 2 - Upper Percentile Limit

4. The Dominant Provider must ensure that **the mean Monthly Upper Percentile Open Orders is** no more than ~~3%~~ of Completed Orders are completed with a Time to Provide that is more than ~~133~~ Working Days **5%** in each Relevant Year.

### Quality of Service Standard 3 - Certainty (including certainty cross-link)

5. The Dominant Provider must ensure that Time to Provide is less than or equal to the applicable Initial Contractual Delivery Period for at least 86% of Completed Orders in each Relevant Year.
6. The Dominant Provider must ensure that the mean Initial Contractual Delivery Period of Completed Orders is no more than 53 Working Days in each Relevant Year.

### Quality of Service Standard 4 - Repairs

7. The Dominant Provider must ensure that at least 94% of Faults achieve a Restored Service within the period specified in the applicable service level agreement set out in the Dominant Provider's Reference Offer in each Relevant Year.

### Interpretation

8. For the purposes of interpreting the Directions, the following definitions shall apply:
  - i. **'Accepted Order'** means an Order that has been validated and accepted by the Dominant Provider;
  - ii. **'Completed Order'** means an Accepted Order that has been provisioned and for which all related work has been carried out;

- iii. **'Contractual Delivery Date'** means a date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;
- iv. **'Customer Caused Delay'** means a delay between the date on which an Order becomes an Accepted Order and the date on which (i) it becomes a Completed Order; (ii) it is treated as a becoming a Completed Order for the purposes of calculating the Time to Provide for Monthly Upper Percentile Open Orders; or (iii) an Initial Contractual Delivery Date is issued (as applicable) ~~in an Accepted Order becoming a Completed Order~~ which the Dominant Provider can reasonably attribute to being caused either by a Third Party Customer or a customer of that Third Party Customer (including an end user);
- v. **'Dark Fibre Access'** means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals;
- vi. **'Delay Code'** means a code applied by the Dominant Provider that categorises the reason for a change in Contractual Delivery Date and notifies a Third Party Customer of that change, or for a cause of delay to the Accepted Order becoming a Completed Order;
- vii. **'Fault'** means a degradation or problem with network access that is identified by the Dominant Provider or a Third Party Customer and which is registered on the Dominant Provider's operational support system;
- viii. **'Final Contractual Delivery Date'** means the last Contractual Delivery Date after which, in respect of the relevant Order, no other Contractual Delivery Dates were provided;



- ix. **'Initial Contractual Delivery Date'** means the first date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;
- x. **'Initial Contractual Delivery Period'** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the Initial Contractual Delivery Date, but excluding Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;
- xi. **'KPI'** means a key performance indicator;
- xii. **'Monthly Upper Percentile Open Orders'** means in relation to all Orders that were Accepted Orders but not Completed Orders by the end of the relevant month, the percentage of orders that had they become Completed Orders on the last day of the relevant month, would have had a Time to Provide of more than 133 Working Days;
- xiii. **'Order'** means a request submitted to the Dominant Provider by a Third Party for a Relevant Ethernet Service, Relevant WDM Service or Dark Fibre Access (as applicable), including (i) a request for an upgrade on bandwidth of an existing Relevant Ethernet Service or Relevant WDM Service; or (ii) a request for a change to the product variant of an existing Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access;
- xiv. **'Provision Category'** means such categories, as may be specified from time to time in the Dominant Provider's Reference Offer in relation to its ordering and provisioning procedures, which identify an Order by reference to one or more of the following:
  - a. a specified level of provisioning work; and
  - b. a specified lead time.

- xv. **'Quarter'** means in respect of Relevant Years, each of the following periods as applicable:
- (i) 1 April to 30 June;
  - (ii) 1 July to 30 September;
  - (iii) 1 October to 31 December;
  - (iv) 1 January to 31 March;
- xvi. **'Relevant Ethernet Services'** means those Ethernet Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Ethernet Access Direct, (ii) Ethernet Backhaul Direct or (iii) Cablelink including, in relation to:
- a. all product variants except where Ofcom agrees otherwise, and
  - b. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;
- xvii. **'Relevant Regions'** mean the following six nations and regions, as defined by the Dominant Provider:
- a. Northern Ireland;
  - b. Scotland;
  - c. Wales;
  - d. England – North;
  - e. England – East; and
  - f. England – West;

or other such regions as Ofcom may agree with the Dominant Provider or direct from time to time;

- xviii. **'Relevant WDM Services'** means those WDM Services offered by the Dominant Provider to a Third Party under the product or service names of (i)

Optical Spectrum Access; (ii) Optical Spectrum Extended Access; or (iii) Optical Filter Connect including, in relation to each:

- a. all product or service variants except where Ofcom agrees otherwise; and
- b. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;

xix. **'Relevant Year'** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March; ~~each of the following periods as applicable:~~

- ~~(i) 1 April 2021 — 31 March 2022;~~
- ~~(ii) 1 April 2022 — 31 March 2023;~~
- ~~(iii) 1 April 2023 — 31 March 2024;~~
- ~~(iv) 1 April 2024 — 31 March 2025;~~
- ~~(v) 1 April 2025 — 31 March 2026.~~

xx. **'Restored Service'** means the point at which any Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access, which has been subject to a Fault, is available for use by the Third Party without the relevant degradation or problem with network access;

xxi. **'Six Month Period'** means in respect of the Relevant Year:

- (i) 1 April to 30 September;
- (ii) 1 October to 31 March;

a. **'Third Party'** means a person providing a public electronic communications network or a person providing a public electronic communications service;

- b. **‘Third Party Customer’** means a Third Party purchasing a Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access (as applicable) from the Dominant Provider;
  
- c. **‘Time to Provide’** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the date when that Accepted Order becomes a Completed Order, excluding only Working Days attributable to Customer Caused Delay;
  
- d. **‘WDM Services’** means services provided using wavelength division multiplexing equipment located at the customer’s premises and which is capable of supporting multiple leased line services over a single fibre or pair of fibres; and
  
- e. **‘Wholesale Fixed Telecoms Market Review SMP Conditions’** means the SMP conditions set out [in Volume 5 of the consultation document entitled *“Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”*] and dated [8 January 2020];
  
- f. **‘Working Day’** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

To the extent not otherwise defined in this notification, words or expressions used shall have the same meaning as they have been ascribed in this notification and in the Wholesale Fixed Telecoms Market Review SMP Conditions. Otherwise, any word or expression shall have the same meaning as it has in the Act.

## **Annex 2**

### **Direction 2: Transparency and publication of KPIs**

#### **Direction**

- A. This Direction is made under section 49 of the Act and SMP Condition 10 and requires transparency and the publication of KPIs by the Dominant Provider in relation to the provision of network access in the markets for: (i) LLA in Area 2; (ii) LLA in Area 3; (iii) LLA in HNR Areas; (iv) Interexchange connectivity in BT Only exchanges (“IE”); or (v) Interexchange connectivity in BT +1 exchanges (“IE BT+1”).
- B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from [1 April 2021].

#### **Transparency and publication of KPIs**

1. Except insofar as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must comply with the following transparency and publication requirements in respect of the provision of Relevant Ethernet Services, Relevant WDM Services, and Dark Fibre Access.

#### **Publication of information**

2. For each Quarter, the Dominant Provider must publish an average of the three months in that Quarter of the information required in each of KPIs (a) to (e), for the geographic areas in which it has been designated as having SMP as a whole and, for each of KPIs (a) to (e), split by reference to each Relevant Region in the Relevant Year.
3. Publication referred to in paragraph 2 above must be effected by the Dominant Provider placing the information on a publicly available website operated or controlled by the Dominant Provider within 15 Working Days after the end of the Quarter to which it relates.

#### **Provision of information to Ofcom**

4. For Orders or Faults which relate to products and services to which Direction 2 applies, excluding products and services provided in High Network Reach Areas, the figures

required for the Dominant Provider to calculate each KPI (a) – (s) in this Direction, will be calculated using the total number of relevant Orders or Faults in LL Area 2, LL Area 3, IE and IE BT+1 in aggregate for the relevant KPI.

5. For all Orders to which this Direction 2 relates, the Dominant Provider must provide to Ofcom each month the information specified in KPIs (a) to (s) for the geographic areas in which it has been designated as having SMP as a whole, and in relation to KPIs (a) to (c), ~~(e)~~, (f), (h) and (k) splits by reference to:
  - a. each Relevant Region; and
  - b. Orders for (i) EAD (including EAD LA); (ii) EBD; (iii) Cablelink; (iv) WDM; and (v) Dark Fibre Access; and
  - c. Orders (excluding WDM Orders) that related to the High Network Reach Areas identified in Schedule 3 of the SMP conditions.
  
6. For Orders which relate to products and services to which Direction 1 (Quality of Service Standards) applies in the Relevant Year, the Dominant Provider must also provide to Ofcom each month the information specified in KPIs (a) to (s) as a whole, and splits according to each of the following:
  - a. KPIs (a), (c), ~~(e)~~, (f), (h) and (k), by reference to each Provision Category; and
  - b. KPIs (a) to (s) by reference to (i) Orders for the Dominant Provider; and (ii) Orders for Third Party Customers.
  
7. In relation to each of the requirements set out in paragraphs 5 and 6 above, for all KPIs except ~~(h)~~ and (r), the Dominant Provider must include in information provided to Ofcom:
  - a. the denominator representing the volume of the applicable Relevant Ethernet Services over which the average or the percentage (as applicable) is

calculated; and

- b. the numerator representing the value corresponding to the denominator from which the average or the percentage (as applicable) is calculated.
8. The Dominant Provider shall provide to Ofcom narrative reports including statistical evidence summarising the causes of delay in respect of Orders (as specified in a. and b. below) which relate to products and services to which Direction 1 (Quality of Service Standards) applies in a Relevant Year. The first such narrative report shall be provided in respect of the period 1 April 2021 to 30 September 2021. Thereafter narrative reports shall be provided to Ofcom in respect of each Six Month Period.

Each narrative report shall include details of those Orders that either:

- a. became Closed Orders in the period covered by the report that had a Time to Provide of more than 133 Working Days in the Relevant Years; or
  - b. were Accepted Orders but not Closed Orders at the end of the period covered by the report and that would have had a Time To Provide of more than 133 Working Days in the Relevant Years, had they become Completed Orders on the last day of the period covered by the report being provided.
9. Provision of information to Ofcom referred to under paragraphs 5 to 7 above must be effected by the Dominant Provider by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time (which may include requirements as to who within the Dominant Provider must confirm accuracy of contents), within 15 Working Days after the end of the relevant month, or Six Month Period to which it relates.
10. Provision of information to Ofcom referred to under paragraph 8 above must be effected by the Dominant Provider by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time (which may include requirements as to who within the Dominant Provider must confirm accuracy of

contents), within 30 Working Days after the end of the relevant month, or Six Month Period to which it relates.

## Interpretation

11. For the purposes of interpreting the Directions, the following definitions shall apply:

- i. **'Accepted Order'** means an Order that has been validated and accepted by the Dominant Provider;
- ii. **'Completed Order'** means an Accepted Order that has been provisioned and for which all related work has been carried out;
- iii. **'Contractual Delivery Date'** means a date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;
- iv. **'Customer Caused Delay'** means a delay ~~in an Accepted Order becoming a Completed Order~~ between the date on which an Order becomes an Accepted Order and the date on which (i) it becomes a Completed Order; (ii) it is treated as a becoming a Completed Order for the purposes of calculating the Time to Provide in KPI(h); or (iii) an Initial Contractual Delivery Date is issued (as applicable) which the Dominant Provider can reasonably attribute to being caused either by a Third Party Customer or a customer of that Third Party Customer (including an end user);
- v. **'Dark Fibre Access'** means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals;
- vi. **'Delay Code'** means a code applied by the Dominant Provider that categorises the reason for a change in Contractual Delivery Date and notifies a Third Party Customer of that change, or for a cause of delay to the Accepted Order becoming a Completed Order;
- vii. **'Fault'** means a degradation or problem with network access that is identified by the Dominant Provider or a Third Party Customer and which is registered on the Dominant Provider's operational support system;



- viii. **'Final Contractual Delivery Date'** means the last Contractual Delivery Date after which, in respect of the relevant Order, no other Contractual Delivery Dates were provided;
- ix. **'Initial Contractual Delivery Date'** means the first date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;
- x. **'Initial Contractual Delivery Period'** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the Initial Contractual Delivery Date, but excluding Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;
- xi. **'KPI'** means a key performance indicator;
- xii. **'Order'** means a request submitted to the Dominant Provider by a Third Party for a Relevant Ethernet Service, Relevant WDM Service or Dark Fibre Access (as applicable), including (i) a request for an upgrade on bandwidth of an existing Relevant Ethernet Service or Relevant WDM Service; or (ii) a request for a change to the product variant of an existing Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access;
- xiii. **'Provision Category'** means such categories, as may be specified from time to time in the Dominant Provider's Reference Offer in relation to its ordering and provisioning procedures, which identify an Order by reference to one or more of the following:
  - a. a specified level of provisioning work; and
  - b. a specified lead time;
- xiv. **'Quarter'** means in respect of Relevant Years, each of the following periods as applicable:
  - (v) 1 April to 30 June;
  - (vi) 1 July to 30 September;
  - (vii) 1 October to 31 December;
  - (viii) 1 January to 31 March;

xv. **‘Relevant Ethernet Services’** means those Ethernet Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Ethernet Access Direct, (ii) Ethernet Backhaul Direct or (iii) Cablelink including, in relation to:

- a. all product variants except where Ofcom agrees otherwise, and
- b. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;

xvi. **‘Relevant Regions’** mean the following six nations and regions, as defined by the Dominant Provider:

- a. Northern Ireland;
- b. Scotland;
- c. Wales;
- d. England – North;
- e. England – East; and
- f. England – West;

or other such regions as Ofcom may agree with the Dominant Provider or direct from time to time;

xvii. **‘Relevant WDM Services’** means those WDM Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Optical Spectrum Access; (ii) Optical Spectrum Extended Access; or (iii) Optical Filter Connect including, in relation to each:

- a. all product or service variants except where Ofcom agrees otherwise; and
- b. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;

- xviii. **'Relevant Year'** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March; ~~each of the following periods as applicable:~~
- (i) 1 April 2021 – 31 March 2022;
  - (ii) 1 April 2022 – 31 March 2023;
  - (iii) 1 April 2023 – 31 March 2024;
  - (iv) 1 April 2024 – 31 March 2025;
  - (v) 1 April 2025 – 31 March 2026.
- xix. **'Restored Service'** means the point at which any Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access, which has been subject to a Fault, is available for use by the Third Party without the relevant degradation or problem with network access;
- xx. **'Six Month Period'** means in respect of the Relevant Year:
- (i) 1 April to 30 September;
  - (ii) 1 October to 31 March;
- i. **'Third Party'** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ii. **'Third Party Customer'** means a Third Party purchasing a Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access (as applicable) from the Dominant Provider;
- iii. **'Time to Provide'** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the date when that Accepted Order becomes a Completed Order, excluding only Working Days attributable to Customer Caused Delay;

- iv. **‘WDM Services’** means services provided using wavelength division multiplexing equipment located at the customer’s premises and which is capable of supporting multiple leased line services over a single fibre or pair of fibres; and
- v. **‘Wholesale Fixed Telecoms Market Review SMP Conditions’** means the SMP conditions set out in [Volume 5 of the consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”] and dated [8 January 2020];
- vi. **‘Working Day’** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

To the extent not otherwise defined in this notification, words or expressions used shall have the same meaning as they have been ascribed in this notification and in the Wholesale Fixed Access Telecoms Market Review SMP conditions. Otherwise any word or expression shall have the same meaning as it has in the Act.

#### **List of KPIs relating to quality of service**

##### **KPI (a) - Mean Time to Provide**

In relation to all Orders that became Completed Orders in the relevant month, the ~~Mean~~ **mean** Time to Provide.

##### **KPI (b) - Fault repair performance**

The percentage of Faults during the relevant month that achieved a Restored Service within the period specified in the applicable service level agreement set out in the Dominant Provider’s Reference Offer.

### **KPI (c) - Delivery date certainty**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders which were completed with a Time to Provide that is equal to or less than their Initial Contractual Delivery Period.

### **KPI (d) - Time to provide (lower percentile)**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time to Provide was 29 Working Days or less.

### **KPI (e) - Time to provide (upper percentile)**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time to Provide was more than 133 Working Days in each Relevant Year.

### **KPI (f) – Certainty Cross-Link (Mean initial contractual delivery period)**

In relation to all Orders that became Completed Orders in the relevant month, the mean Initial Contractual Delivery Period.

### **KPI (g) - Monitoring the tail (closed work stack)**

In relation to all Orders that became Completed Orders in the relevant month, the mean Time to Provide of those Completed Orders whose Time to Provide was more than 133 Working Days in each Relevant **Year**.

### **KPI (h) - Monitoring the tail (open work stack)**

- (i) In relation to all Orders that were Accepted Orders but not Completed Orders by the end of the relevant month, the percentage of orders that had they become Completed Orders on the last day of the relevant month,

would have had a Time to Provide of more than 133 Working Days in each Relevant Year; and

- (ii) for those orders only, the mean Time to Provide had they been completed on the last day of the relevant month.

### **KPI (i) - Time to provide of the tail extremities**

In relation to all Orders that became Completed Orders in the relevant month, the Time to Provide of the Completed Order corresponding to the 97<sup>th</sup> percentile of Completed Orders (i.e. the Completed Order with a Time to Provide greater than 97% of Completed Orders).

### **KPI (j) - Order validation**

In relation to all Orders that became Accepted Orders in the relevant month, the percentage that became Accepted Orders within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer.

### **KPI (k) – Mean time to issue initial contractual delivery dates**

In relation to all Orders in respect of which an Initial Contractual Delivery Date was issued in the relevant month, the mean number of Working Days that elapsed between the Order becoming an Accepted Order and the issue of an Initial Contractual Delivery Date but excluding Working Days attributable to Customer Caused Delay which occurred after the Order becoming an Accepted Order but before the Initial Contractual Delivery Date was issued.

### **KPI (l) - Performance in issuing initial contractual delivery dates**

In relation to all Orders in respect of which an Initial Contractual Delivery Date was issued in the relevant month, the percentage for which it was issued within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer.

### **KPI (m) - Changes to contractual delivery dates**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders subject to a change to the Contractual Delivery Date not attributable to Customer Caused Delay.

### **KPI (n) - Mean delay due to contractual delivery date changes**

In relation to changes to the Contractual Delivery Date not attributable to Customer Caused Delay for each Completed Order in the relevant month, the average number of Working Days incurred for each Completed Order as a result of such changes.

### **KPI (o) - Mean customer caused delay**

In relation to all Orders that became Completed Orders in the relevant month and which were subject to one or more changes in the Contractual Delivery Date that were attributable to Customer Caused Delay, the average number of Working Days incurred for each Completed Order as a result of such changes.

### **KPI (p) - Monitoring traffic management delay code applications**

In relation to all Orders that became Completed Orders in the relevant month:

- (i) the percentage that were subject to Delay Codes relating to traffic management; and
- (ii) for those Orders only, the mean number of Working Days associated with each Delay Code relating to traffic management.

### **KPI (q) - Monitoring wayleave delay code applications**

In relation to all Orders that became Completed Orders in the relevant month:

- (i) the percentage that were subject to Delay Codes relating to wayleaves; and
- (ii) for those Orders only, the mean number of Working Days associated with each Delay Code relating to wayleaves.

## **KPI (r) - Size of the installed base**

The total number of each of the following for which the Dominant Provider is charging Third Parties, at the end of the relevant month:

- (i) Relevant Ethernet Services;
- (ii) Relevant WDM Services;
- (iii) Dark Fibre Access.

## **KPI (s) Performance against final CDD**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders that were completed on or before the Final Contractual Delivery Date.



## Annex 3

### Direction 3: Quality of service standards

- A. This Direction is made under section 49 of the Act, SMP Condition 10 and requires the Dominant Provider to comply with quality of service standards in relation to the provision of network access to MPF, SOTAP and GEA-FTTC services in the markets for (a) WLA in Area 2; and (b) WLA in Area 3.
- B. OFCOM hereby directs the Dominant Provider to comply with this Direction with effect from [1 April 2021].

### Quality of Service Standards

1. The Dominant Provider must comply with the following Quality of Service Standards.

#### Installations

##### *Quality of Service Standard 1*

2. In relation to the provision of MPF and GEA-FTTC services, except GEA-FTTC services provided by the Dominant provider using the Bulk Grouping Process, in aggregate, in each Relevant Year the Dominant Provider shall offer appointments, where required for the provision of those services, that are within ~~10~~ **12** Working Days of a corresponding Order being placed on the Equivalence Management Platform by a Third Party such that the following formula is satisfied:
  - (i) the percentage of appointments offered in accordance with this Quality of Service Standard 1 in WLA Area 2 and Quality of Service Standard 1 in WLA Area 3 is, in total, greater than or equal to 89%.

##### *Quality of Service Standard 2*

3. In relation to the provision of MPF and GEA-FTTC services, in aggregate, in each Relevant Year the Dominant Provider shall complete the provision of those services on the Committed Date such that the following formula is satisfied:
  - (i) the percentage of the completed provision of services in accordance with this Quality of Service Standard 2 in WLA Area 2 and Quality of Service Standard 2 in WLA Area 3 is, in total, equal to or greater than 94%.

## **Fault repair**

### *Quality of Service Standard 3*

4. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 1 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:
  - (i) the percentage of Fault repairs subject to Service Maintenance Level 1 completed in accordance with Quality of Service Standard 3 for WLA Area 2 and Quality of Service Standard 3 for WLA Area 3 is, in total, greater than or equal to 85%.

### *Quality of Service Standard 4*

5. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 1 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the seventh Working Day after such Faults have been placed on the Equivalence Management platform is such that the following formula is satisfied:
  - (i) the percentage of Faults repairs subject to Service Maintenance Level 1 completed in accordance with Quality of Service Standard 4 for WLA Area 2 and Quality of Service Standard 4 for WLA Area 3 is, in total, greater than or equal to 97%.

### *Quality of Service Standard 5*

6. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 2 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:

- (i) the percentage of Faults repairs subject to Service Maintenance Level 2 completed in accordance with Quality of Service Standard 5 for WLA Area 2 and Quality of Service Standard 5 for WLA Area 3 is in total greater than or equal to 85%.

#### *Quality of Service Standard 6*

- 7. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 2 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the sixth Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:

- (i) the percentage of Fault repairs subject to Service Maintenance Level 2 completed in accordance with Quality of Service Standard 6 for WLA Area 2 and Quality of Service Standard 6 for WLA Area 3 is in total greater than or equal to 97%.

#### **Obligation to comply with the each of the Quality of Service Standards**

#### *Quality of Service Standards 1, 2, 3 and 5*

- 8. In each Relevant Year:
  - (a) in ~~eight~~ **five** of the ~~ten~~ **seven** Relevant Regions the Dominant Provider must comply with Quality of Service Standards 1, 2, 3 and 5; and
  - (b) in the remaining two Relevant Regions the Dominant Provider must comply with Quality of Service Standards 1, 2, 3 and 5, except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations, instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.

#### *Quality of Service Standards 4 and 6*

9. In each Relevant Year, the Dominant Provider must comply with each of Quality of Service Standards 4 and 6 in the UK as a whole.
10. Where the Dominant Provider relies upon the exemption in paragraph 8(b) to comply with any of Quality of Service Standards 1, 2, 3 and 5 in up to two Relevant Regions, in calculating compliance with the requirements set out in paragraph 9 for the UK as a whole, the following instances of failure shall be excluded:
  - (i) instances of failure occurring within the up to two Relevant Regions that were excluded for the purposes of assessing compliance with paragraph 8(b).
11. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Relevant Year the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this Direction.

### Interpretation

12. For the purposes of interpreting this Direction:
  - (a) The following definitions shall apply:
    - i. **“Access Agreement”** means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access;
    - ii. **“Bulk Grouping Process”** means the process (known as the ‘Bulk Grouping Provision Capability process’ or similar names) under which a Third Party accepts that its Order for a GEA–FTTC service at the street cabinet may not be provisioned by the Dominant Provider until an engineering visit by the Dominant Provider to that cabinet can be arranged to deal with an additional Order by that same Third Party for a GEA–FTTC service at the same street cabinet;
    - iii. **“Committed Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
    - iv. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;

- v. **“Dominant Provider”** means BT;
- vi. **“Equivalence Management Platform”** means the Dominant Provider’s operational support system designed to handle the majority of transactions for equivalence of inputs and network access;
- vii. **“Fault”** means a degradation or problem with MPF, SOTAP or GEA-FTTC services (as applicable) that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system, excluding those faults which were flagged and agreed by the Third Party to be resolved under a separate process as set out in the applicable service level agreement;
- viii. **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;
- ix. **“GEA”** means Generic Ethernet Access, the Dominant Provider’s non-physical wholesale services providing wholesale access to higher speed broadband products;
- x. **“GEA-FTTC”** means BT’s product consisting in the provision of GEA services via its FTTC network, including G.fast, SOGEA, and SOG.fast;
- xi. **“G.fast”** means the name given by Openreach to its GEA-FTTC product which uses G.fast technology;
- xii. **“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);
- xiii. **“Level 2 Working Day”** means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- xiv. **“MBORC”** means Matters Beyond Our Reasonable Control, a force majeure event under the relevant Access Agreement, the occurrence of which

releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

- xv. **“MBORC Declaration”** means a declaration made by the Dominant Provider that an MBORC has occurred in relation to MPF, GEA-FTTC services as applicable in a Relevant Region, including in response to both major incidents (**“High Level MBORC Declaration”**) and local incidents (**“Local MBORC Declaration”**);
- xvi. **“MPF”** means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network, MPF definition for the purposes of this direction includes variants such as SOTAP;
- xvii. **“Order”** means a request for MPF, or GEA-FTTC services submitted to the Dominant Provider by a Third Party;
- xviii. **“Quality of Service Standards”** has the meaning given to it in paragraph 1 of this Direction;
- xix. **“Relevant Region”** means the following ~~ten~~ **seven** regions, as defined by the Dominant Provider:
  - ~~East Anglia;~~
  - ~~London;~~
  - ~~North East;~~
  - ~~North Wales and North Midlands;~~
  - ~~North West;~~
  - ~~Scotland;~~
  - ~~South East;~~
  - ~~South Wales and South Midlands;~~
  - ~~Wessex; and~~
  - ~~Northern Ireland;~~

- East Anglia;
- London and South East;
- Northern England;
- Northern Ireland;
- Scotland;
- Wales and Midlands; and
- Wessex

or other such regions as OFCOM may agree with the Dominant Provider or direct under Condition 10 of the Wholesale Fixed Market Access Review SMP Conditions, from time to time, but which cumulatively at all times cover the wholesale local access markets in the UK, as applicable, excluding the Hull Area;

xx. **“Relevant Year”** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March; ~~each of the following periods as applicable:~~

- (i) 1 April 2021 – 31 March 2022;
- (ii) 1 April 2022 – 31 March 2023
- (iii) 1 April 2023 – 31 March 2024
- (iv) 1 April 2024 – 31 March 2025
- (v) 1 April 2025 – 31 March 2026

xxi. **“Repair Service Level Commitment”** means the Dominant Provider’s contractual commitment for the provision of MPF, or GEA-FTTC services, as applicable, in relation to the period within which it will achieve Restored Service from the registration of a Fault;

xxii. **“Restored Service”** means the point at which the MPF, or GEA-FTTC services, as applicable, in relation to which a Fault was registered becomes available again for use by the Third Party;

- xxiii. **“Service Maintenance Level 1”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA-FTTC services, as applicable, to Third Parties;
- xxiv. **“Service Maintenance Level 2”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA-FTTC services, as applicable, to Third Parties;
- xxv. **“SOGEA”** means Single Order Generic Ethernet Access and is the name given by Openreach to its GEA-FTTC product where only a broadband service is being provided;
- xxvi. **“SoG.fast”** means the name given by Openreach to its GEA-FTTC product which uses G.fast technology and where only a broadband service is being provided;
- xxvii. **“SOTAP”** means Single Order Transitional Access Product and is the name given by Openreach to a variant of MPF which can provide both broadband and IP voice services;
- xxviii. **“Third Party”** means a person providing a public Electronic Communications Network or a person providing a public Electronic Communications Service;
- xxix. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions set out in [Volume 5 of the consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”] and dated [8 January 2020];
- xxx. **“WLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in [Schedule 2] to the notification at Annex [] to [Wholesale Fixed Telecoms Market Review Statement];
- xxxi. **“WLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in [Schedule 2] to the notification at Annex [] to [Wholesale Fixed Telecoms Market Review Statement];
- xxxii. **“Working Day”** in the context of Service Maintenance Levels means the days deemed to be working days in contracts for the provision of services and in



other contexts means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

- (b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
- (c) Headings and titles shall be disregarded.
- (d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
- (e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## **Annex 4**

### **Direction 4: Transparency and publication of KPIs (MPF and GEA services)**

#### **Direction**

- A. This Direction is made under section 49 of the Act and SMP Condition 10 and requires publication of KPIs by the Dominant Provider in relation to the provision of network access to specified MPF, and GEA services in the markets for (a) WLA in Area 2; and (b) WLA in Area 3.
- B. OFCOM hereby directs the Dominant Provider to comply with this Direction with effect from [1 April 2021].

#### **Transparency and publication of KPIs**

1. The Dominant Provider must publish to Third Party Customers the information specified in paragraphs 1, 3 and 8 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services, as required in paragraphs 5 or 6 below, as applicable.
2. The Dominant Provider must provide to individual Third Party Customers on request the information specified in paragraph 7 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services to them, as required in paragraphs 5 or 6 below, as applicable.
3. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in paragraph 5 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services, as required in paragraph 5 or 6 below, as applicable.
4. The Dominant Provider must publish the information specified in paragraph 6 of Schedule 1 to this Direction on a publicly accessible website, which for the avoidance of doubt should not require password access.
5. With the exception of the information specified in KPIs (ix) and (xiii) of Schedule 1 to this Direction, the information required by paragraphs 1 to 3 above must be published and provided as required by the Dominant Provider on or before [DATE] in respect of

the previous month and, for each subsequent month, within 15 Working Days of the last Working Day of every month in respect of the previous month.

6. The information specified in KPIs (ix) and (xiii) of Schedule 1 to this Direction must be published and provided, as required, by the Dominant Provider on or before [DATE] in respect of the month preceding the previous month and, for subsequent periods, within 15 Working Days of the last Working Day of every month in respect of the month preceding the previous month.
7. The information required by paragraph 4 above must be published as required by the Dominant Provider on or before [DATE] in respect of the previous three months and, for subsequent periods, within 15 Working Days of the last Working Day of every third month in respect of the previous three months.
8. The Dominant Provider shall prepare and provide a report to OFCOM containing the information specified in Schedule 2 to this Direction relating to Delayed Installations and Repairs (the “Delayed Installations and Repairs Report”). The first Delayed Installations and Repairs Report must be provided to OFCOM by [DATE] and thereafter within one month and 30 Working Days of the last Working Day of every third month.
9. The Schedules to this Direction form part of the Direction.
10. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.

## Interpretation

11. For the purposes of interpreting this Direction:
  - (a) The following definitions shall apply:
    - i. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of MPF, or GEA services, as applicable;
    - ii. “**Appointed Order**” means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premises in order to become a Completed Order;

- iii. **“Bulk Grouping process”** means the process (known as the ‘Bulk Grouping Provision Capability process’ or similar names) under which a Third Party accepts that its Order for a GEA–FTTC service at the street cabinet may not be provisioned by the Dominant Provider until an engineering visit by the Dominant Provider to that cabinet can be arranged to deal with an additional Order by that same Third Party for a GEA–FTTC service at the same street cabinet;
- iv. **“Committed Order”** means an Order that has been accepted by the Dominant Provider and for which a Committed Date has been confirmed;
- v. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;
- vi. **“Committed Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- vii. **“Delayed Installation and Repair”** means an Order that has not become a Completed Order within 120 calendar days of the Committed Date or a Fault that has not achieved a Restored Service status within 30 calendar days of identification to or by the Dominant Provider;
- viii. **“Dominant Provider”** means BT;
- ix. **“Equivalence Management Platform”** means the Dominant Provider's operational support system designed to handle the majority of transactions for equivalence of inputs and network access;
- x. **“Fault”** means a degradation or problem with MPF, or GEA services, as applicable, that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider’s operational support system;
- xi. **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;

- xii. “**FTTP**” means Fibre-to-the-Premises, an Electronic Communications Network consisting of optical fibre extending from the local access node to the customer’s premises;
- xiii. “**GEA**” means Generic Ethernet Access, the Dominant Provider’s non-physical wholesale services providing wholesale access to higher speed broadband products;
- xiv. “**GEA-FTTC**” means Virtual Unbundled Local Access provided through the Dominant Provider’s GEA services over its FTTC network, and includes SOGEA, SoG.fast and G.fast services;
- xv. “**GEA-FTTP**” means Virtual Unbundled Local Access provided through the Dominant Provider’s GEA services over its FTTP network;
- xvi. “**Hull Area**” means the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;
- xvii. “**Installed Base**” means the average number of relevant MPF, SOTAP or GEA services, as applicable, that are in use during the relevant month;
- xviii. “**KPI**” means key performance indicator;
- xix. “**MBORC**” means Matters Beyond Our Reasonable Control, a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
- xx. “**MBORC Declaration**” means a declaration made by the Dominant Provider that an MBORC has occurred in relation to MPF, SOTAP or GEA services as applicable in a Relevant Region, including in response to both major incidents (“**High Level MBORC Declaration**”) and local incidents (“**Local MBORC Declaration**”);
- xxi. “**MPF**” means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-

mechanical energy to convey signals when connected to an electronic communications network, MPF definition for the purposes of this direction includes variants such as SOTAP;

- xxii. “**Order**” means a request for an MPF, SOTAP or GEA service, as applicable, submitted to the Dominant Provider by a Third Party;
- xxiii. “**Pending Order**” means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;
- xxiv. “**Rejected Order**” means an Order rejected by the Dominant Provider because it is incomplete or incorrect;
- xxv. “**Relevant Region**” means the following ~~ten~~ **seven** regions, as defined by the Dominant Provider:

- ~~East Anglia;~~
- ~~London;~~
- ~~North East;~~
- ~~North Wales and North Midlands;~~
- ~~North West;~~
- ~~Scotland;~~
- ~~South East;~~
- ~~South Wales and South Midlands;~~
- ~~Wessex; and~~
- ~~Northern Ireland;~~
- East Anglia;
- London and South East;
- Northern England;
- Northern Ireland;
- Scotland;
- Wales and Midlands; and
- Wessex

or other such regions as OFCOM may agree with the Dominant Provider or direct from time to time under Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions, but which cumulatively at all

times cover the wholesale local access market in the UK, as applicable, excluding the Hull Area;

- xxvi. **“Relevant Subscriber”** means any person who is a party to a contract with a provider of public electronic communications services for the supply of such services;
- xxvii. **“Repair Appointment”** means an arranged appointment in respect of a Repair that requires an engineering visit by the Dominant Provider to the end user’s premises in order to become a Restored Service;
- xxviii. **“Repair Service Level Commitment”** means the Dominant Provider’s contractual commitment in contracts for the provision of MPF, or GEA services, as applicable, in relation to the period within which it will achieve Restored Service from the registration of a Fault;
- xxix. **“Required First Appointment Date”** is the date on which the Dominant Provider is required to offer an installation appointment pursuant to *“Quality of Service Standard 1”* in Direction 1 (quality of service standards) made pursuant to Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions;
- xxx. **“Restored Service”** means the point at which an MPF, or GEA services, as applicable, in relation to which a Fault was registered becomes available again for use by the Third Party;
- xxxi. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for an MPF, SOTAP or GEA services, as applicable, whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- xxxii. **“Service Maintenance Level 1”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its

contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;

xxxiii. **“Service Maintenance Level 2”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;

xxxiv. **“Service Maintenance Level Business 2 Plus”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services to Third Parties;

xxxv. **“Service Maintenance Level 3”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;

xxxvi. **“Service Maintenance Level 4”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of the MPF, or GEA services, as applicable, to Third Parties;

xxxvii. **“SOTAP”** means Single Order Transitional Access Product and is a variant of MPF;

xxxviii. **“Street Cabinet Appointment”** means an arranged appointment in respect of an Order that requires an engineering visit by the Dominant Provider to a street cabinet rather than to the end user’s premises in order to become a Completed Order;

xxxix. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;

xl. **“Third Party Customer”** means a Third Party purchasing MPF, SOTAP or GEA services (as applicable) from the Dominant Provider;



- xli. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions set out in [Volume 5 of the consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”] and dated [8 January 2020];
  - xlii. **“Working Day”** in the context of Service Maintenance Levels means the days deemed to be working days in contracts for the provision of services and in other contexts means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).
- (b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
  - (c) Headings and titles shall be disregarded.
  - (d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
  - (e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## Schedule 1 to Direction 4

### Key Performance Indicators for Metallic Path Facilities, SOTAP and Generic Ethernet Access services

1. The Dominant Provider must publish to Third Party Customers the following:
  - (a) the information required in all KPIs, except KPIs (iii)(c), (xii)(c), (xiv)(c), (xix) to (xxiii), in relation to the provision of network access to MPF;
  - (b) the information required in all KPIs, except KPIs (iii) (a) and (c), (xii)(a) and (c), (xiv)(a) and (c), and (xx) to (xxiii), in relation to the provision of network access to GEA-FTTC;
  - (c) the information required in all KPIs, except KPIs (iii) (a) and (c), (xii)(a) and (c), (xiv)(a) and (c), and (xix) to (xxiii), in relation to the provision of network access to GEA-FHTTP.
2. The Dominant Provider must publish the information required in paragraph 1 in at least the detail outlined below:
  - (a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so); and
  - (b) provision of the specified services to itself.
3. Where options exist for Third Parties (excluding the Dominant Provider) to purchase different MPF, or GEA services, the Dominant Provider must publish as the information required in paragraph 1 to Third Party Customers separately for each service.
4. When publishing KPIs in accordance with paragraphs 1 to 3, the Dominant Provider must publish all KPIs for the United Kingdom as a whole. In addition, the Dominant Provider must publish the following KPIs split by reference to each Relevant Region:
  - (a) ~~For~~ **for** MPF KPIs (i) to (iii)(a), (b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region);
  - (b) for GEA-FTTC, KPIs (i) to (iii)(b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region);

**and**

- (c) for GEA-FTTP, KPIs (iii)(b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region).
5. The Dominant Provider must provide to Ofcom the information required in all KPIs as described in paragraphs 1 to 4 above. This information shall be provided by electronic mail to the person from time to time designated by Ofcom. The Dominant Provider must also provide to Ofcom data relating to specific Third Parties upon request.
  6. The Dominant Provider must publish information derived from the following KPIs on a publicly accessible website, which for the avoidance of doubt should not require password access:
    - (a) ~~For~~ **for** MPF the information required in KPIs (i)(a), (ii)(a), (iii)(a)(i) and (b)(i), (iv), (vii), (viii), (xii)(a) and (b), (xvii), (xviii), and (xx) to (xxiii); **and**
    - (b) ~~For~~ **for** GEA-FTTC, the information required in KPIs (i)(a), (ii)(a), (iii)(b)(i), (iv), (vii), (viii), (xii)(b), and (xvii) to (xxiii);
  7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in paragraph 1 above for that Third Party Customer.
  8. Where the Dominant Provider does not provide LLU services to itself, it must instead publish or provide to Third Party Customers (as required) the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to end users.
  9. The Dominant Provider must include numerators and denominators used to calculate any percentages or averages in the following cases:
    - (a) when publishing to Third Party Customers under paragraph 1 the information referred to in paragraph 2(a) in relation to all KPIs except for GEA-FTTP for which no industry numerators and denominators need be provided;
    - (b) when providing information to Third Party Customers pursuant to paragraph 7 in relation to all KPIs; and

- (c) when providing information to Ofcom pursuant to paragraph 5 in relation to all KPIs including, for the avoidance of doubt, on provision of services by the Dominant Provider to itself.

#### **KPIs relating to specific quality of service standards**

##### **KPI (i) – Percentage first available date appointment availability**

In relation to Appointed Orders and Street Cabinet Appointments accepted on the Equivalence Management Platform in the relevant month (that is, either those placed by Third Parties and accepted by the Dominant Provider or those placed by the Dominant Provider), except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the percentage of such Appointed Orders and Street Cabinet Appointments for which the first available date offered by the Dominant Provider for an appointment was:

- (a) on or before the Required First Appointment Date;
- (b) on or before two Working Days before the Required First Appointment Date;**
- (c) within one Working Day of the Required First Appointment Date;
- (d) within two Working Days of the Required First Appointment Date;
- (e) within five Working Days of the Required First Appointment Date;
- (f) within ten Working Days of the Required First Appointment Date; and
- (g) within twenty Working Days of the Required First Appointment Date;

from the date on which the corresponding Order was placed on the Equivalence Management Platform by a Third Party.

##### **KPI (ii) – Percentage installation completion**

The percentage of all Completed Orders that were completed during the relevant month by;

- (a) the Committed Date;
- (b) one Working Day beyond the Committed Date;

- (c) two Working Days beyond the Committed Date;
- (d) five Working Days beyond the Committed Date;
- (e) ten Working Days beyond the Committed Date; and
- (f) twenty Working Days beyond the Committed Date.

**KPI (iii) – Percentage Repair completion**

- (a) In respect of services subject to Service Maintenance Level 1, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1.
- (b) In respect of services subject to Service Maintenance Level 2, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 2;

- (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2.
- (c) In respect of services subject to Service Maintenance Level Business 2 Plus, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
- (i) the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus.
- (d) In respect of services subject to Service Maintenance Level 3, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
- (i) the Repair Service Maintenance Level for Service Maintenance Level 3;

- (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3.
- (e) In respect of services subject to Service Maintenance Level 4, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
- (i) the Repair Service Maintenance Level for Service Maintenance Level 4;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4.

## **KPIs to monitor quality more broadly**

### **KPI (iv) – Average first available appointment date**

In relation to Appointed Orders and Street Cabinet Appointments accepted on the Equivalence Management Platform in the relevant month (that is, either those placed by Third Parties and accepted by the Dominant Provider or those placed by the Dominant Provider), except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment.

### **KPI (v) – Percentage of Rejected Orders**

The percentage of Orders submitted during the relevant month that became Rejected Orders.

### **KPI (vi) – Percentage of Appointed Orders becoming Completed Orders**

The percentage of Appointed Orders and Street Cabinet Appointments that became Completed Orders during the relevant month for Appointed Orders by;

- (a) the Committed Date;
- (b) one Working Day beyond the Committed Date;
- (c) two Working Days beyond the Committed Date;
- (d) five Working Days beyond the Committed Date;
- (e) ten Working Days beyond the Committed Date; and
- (f) twenty Working Days beyond the Committed Date.

### **KPI (vii) - Average installation time (Appointed Orders)**

In relation to Appointed Orders and Street Cabinet Appointments that became Completed Orders in the relevant month, except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order.



**KPI (viii) - Average installation time (other Orders)**

In relation to Orders that became Completed Orders in the relevant month other than Appointed Orders and Street Cabinet Appointments, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order.

**KPI (ix) – Percentage of Orders affected by MBORC Declarations that missed the Committed Date**

The total number of Completed Orders affected by MBORC Declarations which were not completed by the Commitment Date in the relevant month.

**KPI (x) – Percentage of Orders reported as having a Fault within eight calendar days**

The percentage of Completed Orders during the month preceding the relevant month that were reported as having a Fault within eight calendar days of the date of becoming a Completed Order.

**KPI (xi) – Percentage of Orders reported as having a Fault within 28 calendar days**

The percentage of Completed Orders during the month preceding the relevant month that were reported as having a Fault within 28 calendar days of the date of becoming a Completed Order.

**KPI (xii) – Average time to restore service**

The average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2;
- (c) Service Maintenance Level Business 2 Plus;
- (d) Service Maintenance Level 3; and
- (e) Service Maintenance Level 4.

**KPI (xiii) – Percentage of Repairs affected by MBORC Declarations that missed the Repair Service Level Commitment**

The total number of Faults affected by MBORC Declarations where restored Service was not achieved within the Repair Service Level Commitment.

**KPI (xiv) – Average time to restore service for Repairs that have exceeded the Repair Service Level Commitment by more than 20 Working Days**

The average time (in working days) for the Dominant Provider to achieve Restored Service for Faults that exceeded the Repair Service Level Commitment by 20 Working Days or more in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2;
- (c) Service Maintenance Level Business 2 Plus;
- (d) Service Maintenance Level 3; and
- (e) Service Maintenance Level 4.

**KPI (xv) – Percentage of repeat Faults**

The percentage of reported Faults that achieved Restored Service in the month preceding the relevant month where a Fault was reported within 28 calendar days of the Dominant Provider having achieved Restored Service of the previous Fault.

**KPI (xvi) – Percentage of Installed Base reported as having a Fault**

The number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base.

**KPI (xvii) – Percentage of missed Repair Appointments**

The percentage of Repair Appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xviii) – Percentage of missed Appointed Order appointments at end user premises**

The percentage of Appointed Order appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xix) – Percentage of missed Street Cabinet Appointments**

The percentage of Street Cabinet Appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xx) – Number of delayed Orders completed**

The number of Completed Orders that were completed during the relevant month where the date each Order became a Completed Order exceeded the Committed Date by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

**KPI (xxi) – Number of delayed Repairs completed**

The number of Faults that achieved Restored Service during the relevant month where the time taken for each Fault to achieve Restored Service after it has been registered exceeded the Service Level Commitment by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

**KPI (xxii) – Number of delayed Orders not completed**

The number of Orders that are not Completed Orders where the date at the end of the relevant month exceeds the Committed Date for each Order by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and

- (c) 120 calendar days.

**KPI (xxiii) – Number of delayed Repairs not completed**

The number of Faults where the date at the end of the relevant month exceeds the Service Level Commitment for each Fault by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

## Schedule 2 to Direction 4

### Transparency report on long term delays to installations and repairs (the “Delayed Installations and Repairs Report”)

The Delayed Installations and Repairs Report shall contain the content specified in this Schedule 2 (as amended from time to time by OFCOM and provided in a format agreed by OFCOM):

1. Information on all Orders (i.e. installations) in the relevant quarter where the date when the Order that became a Completed Order exceeded the Committed Date by more than 120 calendar days.
2. Information on all Repairs during the relevant quarter where period from registration of the Fault to the date when the Dominant Provider achieved Restored Service exceeded the Repair Service Level Commitment by more than 30 calendar days.
3. An explanation of the root causes of the Delayed Installations and Repairs identified in the report.
4. A summary of the number of Completed Orders in the form of charts including:
  - (a) comparison of (i) Completed Orders within Committed Date; (ii) Completed Orders exceeding Committed Date by no more than 120 calendar days of Order; and (iii) Completed Orders exceeding Committed Date by more than 120 calendar days;
  - (b) Completed Orders split by root cause;
  - (c) Completed Orders split by time to complete in excess of/ beyond the order original Committed Date;
  - (d) Completed Orders split by Relevant Region;
  - (e) Completed Orders split by Third Party;
  - (f) copper product Completed Orders split by root cause;
  - (g) FTTC Completed Orders split by root cause;
  - (h) FTTP Completed Orders split by root cause; and

- (i) new-site Completed Orders split by root cause.
5. A list of all Completed Orders containing the following information for each Completed Order:
- (a) unique order identifier;
  - (b) Relevant Region;
  - (c) exchange;
  - (d) Third Party;
  - (e) original Committed Date;
  - (f) time to complete in excess of/ beyond the order original Committed Date;
  - (g) primary root cause;
  - (h) product;
  - (i) product line; and
  - (j) whether or not complaint received.
6. A summary of the number of Repairs in the form of charts including:
- (a) comparison of (i) completed Repairs within Repair Service Level Commitment; (ii) completed Repairs exceeding Repair Service Level Commitment by no more than 30 calendar days; and (iii) completed Repairs exceeding Repair Service Level Commitment by more than 30 calendar days;
  - (b) completed Repairs split by root cause;
  - (c) completed Repairs split by time to complete repair in excess of Repair Service Level Commitment;
  - (d) completed Repairs split by Relevant Region; and
  - (e) completed Repairs split by Third Party.
7. A list of Repairs containing the following information for each Repair:
- (a) unique order identifier;

- (b) Relevant Region;
- (c) exchange;
- (d) Third Party;
- (e) original Repair Service Level Commitment;
- (f) time to complete the Repair beyond original Repair Service Level Commitment;
- (g) primary root cause;
- (h) product;
- (i) product line; and
- (j) whether or not complaint received.