



VMO2 response to Ofcom's Consultation on Quality of Service for Ethernet and Dark Fibre products

Non-confidential

Introduction

We welcome the opportunity to respond to Ofcom's Consultation which sets out proposed modifications to QoS Directions and related KPIs for Ethernet and Dark Fibre products. We have structured our response in two parts. First, we explain why we do not support changing QoS regulation (or other parts of wholesale regulation) mid review period unless in exceptional circumstances and why making such changes would not be consistent with Ofcom's strategic approach to setting wholesale regulation for five-year periods. Secondly, we respond to the individual questions that Ofcom consults on.

We do not support mid review changes to wholesale regulation

Markets where BT is designated with SMP are vulnerable to the risk that Openreach, absent QoS regulation, would not deliver the QoS that customers need and want. This recognition led Ofcom to introduce QoS regulation that protects Openreach customers against poor QoS whilst at the same time encouraging Openreach to improve its QoS. This regulation, which consists of QoS standards and transparency requirements, plays an important role in facilitating effective downstream competition and increases the role of QoS as a driver of competition at a network level. We support this regulation and the objectives it seeks to achieve.

Ofcom now proposes modifying the QoS standard in respect of repair for Ethernet and Dark Fibre products and associated KPIs. Other parts of QoS or other wholesale regulation set by Ofcom for 2021 WFTMR would remain unchanged until the next review period.

We believe it is beneficial for wholesale regulation to be set at review with no changes to then be made mid review unless justified by exceptional circumstances. As we explain in our responses to individual questions below, we do not consider that conditions present are sufficient to justify making the proposed changes in QoS regulation. Before turning to these responses, we set out the considerations that underpin our reservation with respect to making mid review changes to wholesale regulation.

Ofcom's rationale to set regulation for the duration of review periods is to increase longer-term certainty for Openreach, its customers and rival infrastructure providers.¹ Wholesale regulation would apply for the entire review period in the knowledge that it would not be changed *unless in exceptional circumstances*. The importance of certainty and long-term focus were considerations for Ofcom to extend the duration of review periods to five years. As such, Ofcom is generally committed to set regulation at review and to then not make changes to this regulation until the next review.

Changing QoS regulation with respect to the repair standard could risk setting a precedent in terms of the materiality and evidence required for Ofcom to make mid review changes to wholesale regulation. This is something that Ofcom must be cautious about as it could have an adverse effect on the confidence that market participants (Openreach, customers and other infrastructure providers) have for changes to regulation to be made only in exceptional circumstances.

Also, an isolated change undermines the benefit of WFTMR being a review of consolidated markets that allows Ofcom to balance differing considerations in the round. Changing one aspect of the WFTMR remedies, namely QoS regulation, and having these changes be limited to some yet not all WFTMR markets would dilute this benefit.

We also identify a risk that if Ofcom makes changes to wholesale regulation now this may reduce the options available to it in deciding on its approach to QoS, or individual elements of QoS regulation, at the next review. For instance, it would seem there would be a substantial barrier for Ofcom to consider reverting to an OTR repair standard at WFTMR 2026, if it now makes the proposed changes. Furthermore, these changes may restrict Ofcom's ability to assess Openreach's performance over the longer five-year period and so reduce the evidence base for what otherwise would have been a full reassessment of QoS remedies at WFTMR 2026.

Our responses to Ofcom's consultation questions

Question 1 – Do you agree that the fault mix on relevant Ethernet and Dark Fibre products has changed significantly enough to justify a change to the OTR minimum standard in the (regulated) markets for the supply of LL access and IEC?

We disagree.

¹ We note that Openreach itself recognised the value of stability and predictability as illustrated by what it said in paragraph 8.179, point b of its response to Ofcom's 2021 WFTMR Consultation.

Ofcom accepts Openreach's argument that easier to resolve faults have decreased as a proportion of overall faults², and that this change in fault mix makes it more difficult for Openreach to deliver against the target of the current OTR standard. We have a similar experience with respect to changes in fault mix that we encounter in running our network and the variation in propensity to fix differing fault categories.

It is not clear to us however that the change in fault mix – and its impact on Openreach's ability to deliver on repair performance – is significant enough to support a modification of QoS regulation set for 2021 WFTMR. Such change requires strong evidence that fault mix will continue to change significantly over the next years and that the combination of changes in fault mix and variation in propensities to repair across fault categories makes it materially more difficult for Openreach to deliver on repair performance compared to what Ofcom's expectations were when it decided on 2021 WFTMR. We note that Openreach formally wrote to Ofcom less than 2 years into the five-year WFTMR period (and may have had informal engagement on this topic even earlier). It is not clear to us that sufficient trend data has emerged to conclude that Ofcom's assessment and expectations that underpinned the set of remedies it decided on for 2021 WFTMR have proven incorrect.

This depends on what Ofcom understood or projected to happen with the fault mix when it set QoS regulation in 2021. Given our reservation with respect to making mid review changes to wholesale regulation, we are not convinced that the evidence presented in this Consultation is sufficient to justify a change. We encourage Ofcom to review whether changes in fault mix have gone significantly beyond what it projected in 2021, and how this – in combination with changes in propensities to repair across fault categories – affected Openreach's ability to deliver against what were reasonable expectations in 2021.

Ofcom identifies two options for changing the OTR standard: 1) reducing the OTR standard to a more achievable level to account for the change in fault mix, or 2) changing standard to mean time to repair (MTTR) and setting a target for this standard. It proposes to go with the change to MTTR standard as this would better incentivise Openreach to improve its performance repairing faults that have passed the common 5hr SLA threshold.

The basis on which Ofcom propose to change standard from OTR to MTTR is thin. Visual inspection of Figure 1 of the Consultation suggests that Openreach repair performance becomes weaker once it has missed the 5-hr threshold and we agree that MTTR standard may provide stronger incentives to Openreach to repair faults that have taken more than

² Because relative volumes of customer faults have decreased whilst those of fibre (field) and MBORC incidents increased.

5hrs. But there will be other considerations in terms of how either change option could incentivise Openreach performance, including interplay between QoS regulation and SLAs.

It is not clear to us why Ofcom has not given more detailed thought to retaining OTR as standard and revising its target. This would reduce the scope of changes to QoS regulation set for the review period, and it would allow for a more comprehensive assessment of potential changes to QoS regulation at 2026 WFTMR. Moreover, it would be more transparent for Openreach customers to understand the extent to which Ofcom proposes to adjust the target for repair standard as a function of the challenges to repair performance that Openreach faces.

Question 2 – Do you agree with the proposal to continue to include MBORC in the measure?

A mid review decision in relation to a single QoS standard is neither the right time nor way for Ofcom to change its policy with respect to MBORC events across regulated markets. We consider it more appropriate for Ofcom to revisit its policy on this matter at 2026 WFTMR.

If Ofcom were to do that, we expect to support a policy change as we recognise the advantages if genuine MBORC events are excluded from an assessment of Openreach's QoS performance. But we note that stakeholders have raised concerns about Openreach's categorisation of MBORC events in relation to FTTP QoS.³ Such concerns mean that caution is required regarding the potential exclusion of MBORC faults from an assessment of Openreach's QoS performance. If Openreach addresses concerns over the next years, there could be a better basis for Ofcom to change its treatment of MBORC at 2026 WFTMR, or where concerns remain, to consider improvements to Openreach's application of MBORC events.

It is important that Openreach reports its performance on this fault category as a separate KPI if Ofcom were to decide to exclude MBORC faults in a future review. That would allow Ofcom, customers and other stakeholders to monitor Openreach's performance and understand how it is affected by developments in relation to drivers of MBORC events.

Question 3 – Do you agree with the proposal to exclude customer faults from the new measure?

We disagree.

Subject to robust fault categorisation, exclusion of genuine customer faults would allow for a better assessment of Openreach's performance with respect to faults under its control. This

³ See paragraphs 3.18-3.20 of https://www.ofcom.org.uk/_data/assets/pdf_file/0017/263303/2023-openreach-monitoring-report.pdf.

would be informative to customers and support a more robust and fair assessment of Openreach performance. But given our reservations to making mid-review changes, we do not support exclusion of customer faults at this point. Instead, we propose that Ofcom reviews potential exclusion of customer and MBORC faults at 2026 WFTMR. That would allow for more holistic policy making in relation to wholesale regulation set across integrated markets.

Question 4 – Do you have any views on the appropriate period for the MTTR standard?

Ofcom proposes that the MTTR target should reflect recent performance of 3hr33m plus 10% to account for the additional challenges that Openreach will experience in relation to repairing faults on Ethernet and Dark Fibre products over the next years. The Ofcom proposed target of 3hr50m is substantially below the 5hr proposed by Openreach.

If Ofcom decides to change the repair standard to MTTR, it must set the target on a forward-looking basis covering the years until the next review period. This requires accounting for developments forecast to affect the fault mix and Openreach's ability to repair faults on time. Against this backdrop, it is important that Ofcom accounts for changes in fault mix, growth of dark fibre volumes or other relevant developments and estimates their impact on future Openreach repair performance. For example, Openreach's exchange closure programme has the potential to be a new source of faults on these products, driven by the need for incremental network rearrangement.

The developments identified by Openreach are real and mean that a mark-up on top of its recent performance appears in place. Based on the figures that Openreach reported, we consider a 10% addition to recent performance to be more proportionate than the far greater mark-up proposed by Openreach. The latter risks setting the target at a level that Openreach could meet whilst degrading its repair performance compared to the current level. This could involve an unacceptable deterioration in customer experience. As such, based on the evidence we have seen we consider Ofcom's proposal more proportionate than the target proposed by Openreach.

Question 5 – Do you have any views on applying a longer assessment period initially of more than 12 months, beginning from the publication of any decision?

We prefer that Openreach performance on a new MTTR standard (or revised target of OTR standard) is assessed against the remainder of the financial year following publication of a future Ofcom decision, and then separately for the subsequent financial year. That would be more consistent with Ofcom having introduced QoS regulation to assess Openreach performance against QoS standards on a yearly basis.

Variation of faults occurring across the year can expose Openreach to greater risk of unanticipated events as it could temporarily encounter a higher proportion of more difficult to repair faults. This could make Openreach's performance over shorter periods more susceptible to fault volatility. It is not however clear that any such risk is material as Ofcom noted there is no evidence of significant variation of demand for repairs across the year.⁴

Assessing performance over a longer period means that weak performance in the initial period can go undetected when outweighed by stronger performance in the subsequent full financial year. This is a concern as Ofcom's recently opened investigation into Openreach's compliance with its QoS obligations in 2022/23 indicates that Openreach may not have provided appropriate service to its customers, including on the area of fault repairs.⁵ In such circumstances it is important that an assessment of Openreach performance is maintained against the same standards, and not potentially smoothed over a longer period.

Question 6 – Do you agree with the proposal to make a direction adding the two new KPIs to those already required in the markets for the supply of LL access and IEC in regulated markets?

It is important that existing KPIs with respect to current OTR standard are maintained if Ofcom were to change the standard from OTR to MTTR. Also, there is merit in adding new KPIs with respect to the new standard that complements information inherent in Openreach's performance on the new standard itself. This includes KPIs with respect to MTTR performance for customer and total faults as Ofcom proposed.

We believe it would be reasonable that a KPI with respect to MBORC faults is added. Information on this metric is of interest to Openreach customers as it would help to provide a fuller picture of how their overall QoS experience is comprised of factors that Openreach do and do not control. Jointly, the two KPIs proposed by Ofcom and the additional KPI we suggest would allow customers to understand and monitor how Openreach performance in relation to distinct fault categories faults evolves as a function of underlying drivers.

⁴ See paragraph 2.30 of Ofcom's Consultation on Modification to QoS directions for Ethernet and Dark Fibre.

⁵ See <https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/open-cases/2022-23-openreach-quality-of-service-performance>.