



[REDACTED]

Openreach proposed FTTP Offer starting 1 April 2023
Response to Ofcom's consultation dated 3 February 2023

Executive summary

Sky agrees with Ofcom's provisional conclusion that the Equinox 2 Offer will not have a material adverse impact on competition and that Ofcom should take no action to prevent the new terms from being introduced.

The Equinox 2 Offer has clear consumer benefits. It will enable Sky to promote FTTP services more strongly and therefore further drive FTTP take up by our customers. The Equinox 2 Offer, including its Order Mix Targets ("**OMTs**") and forecasting requirements, does not deter Sky from placing some of its demand with altnets (including cable).

Since the Equinox 1 Offer came into effect, Sky has successfully prioritised the adoption of Openreach FTTP services by new and upgrading customers where it is available [REDACTED]. We are confident that placing orders with altnets would be unlikely to jeopardise Sky's ability to continue to meet the OMTs under the Equinox 2 Offer, regardless of the levels of network overlap. Even if it did, this could be easily remedied by Sky activating the Failsafe Mechanism to have its performance against the OMTs assessed only in Openreach's FTTP footprint where there is no network overlap with Sky's other suppliers. We consider the Failsafe Mechanism to be practically workable and acceptable.

Further, the Equinox 2 Offer pricing is not set at a level that prevents altnets from profitably competing for Sky's business. Openreach's average price under the Equinox 2 Offer (which is what matters when assessing whether its pricing unfairly inhibits competition), will be considerably above the 40/10 Mb/s FTTP regulated price cap which Ofcom uses as an initial cross-check to assess whether Openreach's pricing is too low. Therefore, an altnet would still be able to set attractive wholesale prices compared with the Equinox 2 Offer prices that allow it to recover its efficiently incurred costs in Area 2.

Sky does not consider that the Equinox 2 Offer is part of an Openreach practice of repeatedly amending its FTTP prices that could act as a barrier to altnet entry and expansion. Openreach notifying the Equinox 2 Offer 18 months after the Equinox 1 Offer does not amount to "*repeatedly amending*" its FTTP prices. [REDACTED]

Equinox 2 will not act as a barrier to the entry and expansion of altnets

The Equinox 2 Offer will not act as a barrier to the entry and expansion of altnets as we consider that its features (including the OMTs, forecasting requirements and average price levels) will not deter Sky from moving its demand to altnets.

The OMTs will not deter Sky from moving its demand to altnets

Sky prioritises Openreach FTTP services for new and upgrading customers where it is available

Since the start of the Equinox 1 Offer, Sky has prioritised putting new and upgrading customers on Openreach FTTP services where it is available [REDACTED]

[Redacted].¹ The Equinox 2 Offer will enable us to promote Sky FTTP broadband more strongly to further drive FTTP take-up by our customers. As with the Equinox 1 Offer, the Equinox 2 Offer provides an important incentive for Sky to maximise its proportion of FTTP orders relative to copper orders in advance of copper 'stop-sell' being triggered.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

The Failsafe Mechanism will ensure that Sky is never disincentivised from placing orders with altnets

The Equinox 2 Offer includes a Failsafe Mechanism intended to address any risk of ISPs being disincentivised from placing orders with altnets by allowing ISPs to have their performance against the OMTs assessed outside of any network overlapping areas. Sky is comfortable that it could

¹ [Redacted]

² [Redacted]

³ [Redacted]

comply with the necessary steps to activate and complete the Failsafe Mechanism in the unlikely event that this were necessary. Furthermore, we consider the process (including the safeguards that prevent Openreach from accessing any confidential data that we submit) to be acceptable. As Ofcom notes in the consultation, the Failsafe Mechanism is similar to provisions already contained in other Openreach discount contracts (e.g., GEA volume agreement) that are already in effect and which Sky considers to be practically workable and acceptable.

For completeness, Sky does not consider that the risk of future amendment of the Failsafe Mechanism would deter it from using one or more altnets. Sky is comfortable that natural variation of legacy sales within Openreach's FTTP footprint is very unlikely to result in Sky inadvertently failing the Legacy Cross-Check. We also note that any future amendment taken by Openreach must be targeted only at reducing the proportion of an ISP's legacy orders to below the Legacy Cross-Check threshold. Therefore, ISPs can be certain that Failsafe Mechanism will ostensibly remain in full force and would not be deterred from moving demand to altnets.

In summary, Sky has successfully prioritised the adoption of FTTP services since the Equinox 1 Offer came into effect [REDACTED]. Placing orders with altnets would be unlikely to jeopardise Sky's ability to continue to meet the OMTs under the Equinox 2 Offer (regardless of the levels of network overlap). If it did, this could be easily remedied by Sky activating the Failsafe Mechanism.

The forecasting requirements will not deter Sky from using altnets

The introduction of the forecasting requirements in the Equinox 1 Offer have not impacted Sky's ability to negotiate with altnets regarding potential deals. While the Equinox 2 Offer introduces changes to the existing forecasting requirements, namely:

- Openreach may recover compensation (subject to a cap) if an ISP's FTTP forecast is inaccurate by a certain margin of error; and
- changes to the definition of bulk moves for the calculation of the percentage of new FTTP orders,

from Sky's perspective, these changes will not impact Sky's ability to negotiate with altnets regarding potential deals. [REDACTED]

[REDACTED]

[REDACTED]

Lower Openreach FTTP prices will not act as a barrier to altnet entry and expansion

Sky agrees with Ofcom's conclusion that the lower prices under the Equinox 2 Offer are unlikely to act as a barrier to altnet entry and expansion.

Contrary to assertions by some altnets, just because the Equinox 2 Offer prices for some slower speed FTTP services are lower than the 40/10 Mb/s FTTP regulated price cap, this does not mean that altnets cannot compete profitably with Openreach in Area 2. Ofcom has used this price cap for the 40/10 Mb/s FTTP anchor product as an initial cross-check when considering whether the Equinox 1 Offer prices were set above Ofcom's estimate of the price an altnet would need to charge to

[REDACTED]

recover its costs.⁴ As all Equinox 1 Offer prices were above this regulated price cap, it was not necessary for Ofcom to consider the issue further. In practice however, what really matters is whether altnets can profitably compete with the average blended price that Openreach will earn under the Equinox 2 Offer. Accordingly, it does not matter if some FTTP prices are below the level of the price cap if the Openreach FTTP average price is above an altnet's profitable price.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Equinox 2 Offer is not part of an Openreach practice of repeatedly amending its FTTP prices that could act as a barrier to altnet entry and expansion

Sky does not consider that the Equinox 2 Offer is part of an Openreach practice of repeatedly amending its FTTP prices that could act as a barrier to altnet entry and expansion.

Frequency

The Equinox 1 Offer was notified by Openreach on 6 August 2021 and the Equinox 2 Offer was notified on 3 February 2023. We are not aware of any other FTTP discount offers being planned by Openreach. Sky does not consider that Openreach notifying the Equinox 2 Offer 18 months after the Equinox 1 Offer amounts to "repeatedly amending" its FTTP prices.

In any event, the frequency of Openreach's FTTP discount offers has no bearing on Sky's ability to make decisions on whether to use altnets. This is because Sky:

⁴ We note that the price cap is above the range of profitable altnet prices that Ofcom forecast at the WFTMR and, given the cap has been inflated by CPI since then whereas altnet costs would have likely risen more slowly, the gap between the price cap and profitable altnet prices is even greater still today.

- knows that Openreach offers cannot introduce (i) discounts that prevent altnets from profitably competing for Sky's business and / or (ii) loyalty inducing features that prevent Sky from shifting some of its demand to altnets; and

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

[Redacted]

[Redacted]

March 2023