

Public consultation on the draft BEREC Guidelines on the minimum criteria for a reference offer

Openreach response to BEREC consultation

NON-CONFIDENTIAL VERSION

19 July 2019

Foreword

This response is provided by Openreach Limited¹. Openreach is a wholesale network provider. We support more than 600 Communications Providers (CPs) to connect the 30 million UK homes and business to their networks. We sell our products and services to CPs so they can add their own products and provide their customers with bundled landline, mobile, broadband, TV and data services. Our services are available to everybody and our products have the same prices, terms and conditions, no matter who buys them.

¹ Openreach Limited is a wholly-owned subsidiary of BT Group Plc.

1. A reference offer needs to balance the need for a framework for the supply of the service and a living (i.e. "practical") document(s) that can encompass the product life cycle and enable changing customer requirements to be delivered. Transparency is critical to this process and we agree that contractual elements for both parties should be set out within a legal framework, however fluidity is also important and is required to enable system changes, technology developments and requests for product enhancements, for example. Changes required by the industry need to be able to be facilitated through a balanced approach incorporating both specific obligations and flexible approaches where needed.
2. The construct of a reference offer can (and is, in Openreach's case) be made up of multiple different documents of which, when combined, form our reference offer. We consider this to be best practice.
3. Openreach supports the need for a consistent application of a reference offer criteria across Europe in order to promote transparency. Openreach's reference offers already include an extensive set of information that goes beyond what is required under SMP regulation set by Ofcom, and we support the ambition to encourage a degree of consistency between the detail set out in the reference offers of other regulated operators.
4. Where Openreach has introduced new products in recent years, our reference offers have followed what we consider to be best practice by including information over and above the minimum required and as agreed with industry. This has been done through close consultation with our customers to create a reference offer that meets the requirements of both parties.
5. On a general basis, Openreach agrees with the key requirements that BEREC has referenced as the core elements that should be included within a reference offer: terms and conditions for the provision of network access; details of the operational processes; service supply and quality conditions; general conditions and conditions of the agreement. We consider that these overarching requirements mirror the elements of our reference offers already.
6. We do not consider that further additions to the list proposed would promote an environment where operators have sufficient flexibility to meet the needs of their customers. The guidelines should provide details of the "minimum" requirements and should not be considered an exhaustive list of elements that *could* be contained with a reference offer. These should be best left to the contracting parties to agree.

Terms and conditions for the provision of network access

7. In relation to the criteria listed under "3.1 Terms and conditions for the provision of network access," Openreach agrees that these elements should be provided as part of the overall reference offer.

Details of operational processes

8. In relation to the criteria listed under "3.2 Details of operational processes," Openreach agrees that overall, details of process and procedures should also be provided as part of the overall reference offer.
9. However, the draft guidelines currently place specific onus on the regulated operator when in fact there may be customer considerations which therefore means specific outcomes cannot necessarily be determined. For example, in relation to the criteria to include rules of allocation of

space between the parties when supply facilities or co-location space is limited, Openreach provides specific products for co-location which the customer can opt for, and general information is provided in the product descriptions. However, it is usually the choice of the contracting customer to determine the delivery location of a specific product or service. The customer specifies this during the order journey. We therefore believe that this requirement should not form part of the *minimum* information in a reference offer as it should be up to the contracted parties to determine whether or not it is required.

10. BEREC's draft guidelines also set out that "changes to IT systems²" should be included in the reference offer, "to the extent that it impacts alternative operators." We would welcome clarification on this guideline as currently it could be read to mean that any minor system update or details of system consumption processes for new product enhancements need to be included within the reference offer. We disagree with this approach. This could potentially inhibit our capability to develop new service offerings in timescales that would be able to meet market requirements and could therefore inhibit innovation and product development.
11. Openreach provides detailed information in relation the establishment processes that are required to be met in order for a customer to place orders on our systems. This information is included within our reference offers. What is not currently included (nor do we think it should be) are the details of the regular system release updates that occur periodically (6 times per year). These are communicated to customers via separate and dedicated robust processes but are not included in the contract. These are managed through the formal industry working groups that are in place.
12. Openreach considers that it would be more appropriate to amend this guideline to specify that this obligation relates to the timing of specific IT "outages" (i.e. in relation to the period of time the IT systems will be unavailable) in order to prevent introducing a new requirement which will potentially stifle innovation by preventing flexibility and the ability to implement improvements and fixes in acceptable timeframes. We believe that the process that we operate currently provides our customers with sufficient information to support the requirements of each party involved.

Service supply and quality conditions

13. Openreach understands the proposal to include the quality standards that must be met in order to perform contractual obligations within the reference offer. We agree that providing information about expected delivery timescales and service level agreements (SLAs) not only provides transparent information regarding the services offered but offers customers general information about lead times.
14. However, this should not be so rigid that the regulated entity is not able to change its reference offer for future services as this could cause unintended consequences. For example, operators should be able to have the freedom to innovate and develop new ways of working to be able to keep pace with technological change and adapt to meet customer's changing requirements. Where there are strict regulatory conditions on specific elements contained in the reference offer, this may be inhibiting.
15. Therefore, the guidelines should be positioned in such a way that if there are not any agreements between parties on what SLA and Service Level Guarantees (SLGs) should be, and if

² Section 3.2

there is evidence that regulatory intervention is therefore required, National Regulated Authorities could require SLA and SLG to be part of the reference offer.

16. We also note that it may not be appropriate for new products to have SLG payments associated with their delivery, particularly during “bedding in” periods. The guidance should reflect this.

General terms and conditions of the agreement

17. In relation to the criteria listed under “3.4 General terms and conditions of the agreement,” Openreach agrees that these elements should be provided as part of the overall reference offer.

Best practice examples

18. Openreach already provides information in our reference offers that goes beyond the minimum required. For example, in developing previous product reference offers (such as our Physical Infrastructure Access product) we have engaged in an extensive consultation process in collaboration with industry, facilitated with the Office of the Telecommunications Adjudicator³ (OTA2).
19. This has involved, for example, agreeing clear terms of reference for the reference offer process with scheduled meetings, project plans, clear line of sight of the documents involved from the outset, visibility of changes to document drafts of product specification at regular periods throughout the engagement process. This is all documented on a dedicated page on our website. In this regard we consider that we have developed a best practice framework for developing and implementing a reference offer.

³ “OTA2 is an independent organisation tasked by Ofcom to oversee co-operation between communications providers and enable a competitive environment in the telecommunications sector. We are independent of both the regulator and industry” - <http://www.offta.org.uk/>