

Guidance Note 1

Equivalence of Inputs and Equal Treatment

April 2019

This Guidance Note sets out what Equivalence of Input and Equal Treatment means for Openreach customers

Equivalence of Inputs (EOI)

Commitments section

5:
Equal Treatment

EOI is a regulatory remedy imposed by Ofcom in some of the markets where we have significant market power (SMP). The Commitments also state that we should provide services on an EOI basis where required by SMP remedies.

Any services supplied into a market where the EOI remedy applies must be made available to all CPs (including BT) on equivalent terms i.e.:

- the **same timescales**
- the **same prices**
- the **same contractual terms**
- the **same service levels**
- via the **same systems and processes** for orders, provisions, repairs, etc.

We must also provide all CPs (including BT) with the **same Commercial Information** about products, services, systems and processes

Where SMP is removed from a market, we face no obligation to supply any services on EOI terms

Equal Treatment

Commitments section

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Equal Treatment

Equal Treatment is a concept introduced in the Commitments whereby Openreach will **treat all customers equally in the exercise of its functions**.

It is different to EoI: it applies to everything that Openreach does (or intends to do) with the services that customers buy (or would like to buy) and the Openreach network over it provides those services – including services in markets where there is no EoI obligation.

It is therefore much broader than EoI – it seeks to set down how culturally Openreach should more generally deal with all its customers: e.g. consult with them on product and network development, assess their strategic priorities and look to develop our own investment plans in short, medium and long term.

In a nutshell:

- Openreach should treat, and in practice be seen to treat, all of its customers in a straightforward, honest, fair and transparent manner.
- No customer should ever be unduly favoured relative to others
- All customers should have an appropriate opportunity to engage with Openreach, on a confidential basis, about commercial and strategic issues.

Equal Treatment does not mean that all customers must always be treated identically. Customers may be of different size or have different requirements of Openreach. Equal Treatment does not necessarily guarantee the same outcome from engagement with different customers.

But Openreach should be consistent in its approach and look to apply the same criteria when dealing with customers in similar circumstances. Where different outcomes arise from dealings with different customers, we should make sure there is a clear rationale for this. If in doubt, consult regulatory and legal teams.

Equal Treatment where no EOI remedies in place

Commitments section

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Equal Treatment

Where we do not have any EOI remedies in place, we must still ensure that we comply with the Equal Treatment commitment.

In practice, this means that - in non-SMP markets - while Openreach could offer the same services to different CPs (including BT) on different prices, service levels or other terms and conditions, Openreach must still ensure each CP is dealt with in an equal way when carrying out its activities.

If, for instance, two separate CPs asked Openreach to supply the same service, it could – where no SMP is in place – agree to do so on different terms. But Openreach should provide each CP with the same opportunities to discuss their needs and propose a commercial solution. Openreach should also identify and capture why different commercial outcomes may arise as a result of those discussions. It may be because of the volume of business each CP was offering or because of longer term commitments that had been made.

This is a potentially complex area and one where we recommend to people in the business that they engage early with regulatory and legal colleagues so they can advise on the nature of risks posed under specific circumstances.



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