

OTA2 Scheme Charter

Terms of reference.

01 April 2021

OTA2 Scheme

Terms of Reference for the OTA2 Scheme

1. Background

- 1.1 The vision for the OTA2 Scheme is that:
 - 1.1.2 Communications Providers (CPs) will benefit from a competitive telecommunications infrastructure services market based on Openreach products that has no operational barriers to success.
 - 1.1.3 there will be implementation (as quickly as is reasonably possible) of new product functionality, features and services relating to In-scope Products that will be seamlessly introduced.
 - 1.1.4 migrations within and between broadband and narrowband products of both Openreach and other Communications Providers will be seamless, timely and with minimal interruption to service for end users, and in line with relevant Ofcom policies and General Conditions;
 - 1.1.5 dips in operational quality performance of In-scope Products provided by Openreach will be proactively managed by Openreach to ensure the least impact on Communications Providers and end users. The OTA2 may take a lead in monitoring, investigating and reviewing operational issues as needed.
 - 1.1.6 participation by Communications Providers and Openreach in the OTA2 Scheme will be widespread and representative.
- 1.2 The OTA2 scheme aims to create and maintain an environment in which substantial agreement on how new and enhanced product functionality and / or processes for In-scope Products are to be delivered is reached effectively, formalising or implementing agreements reached (by effecting amendments to contracts and/or ancillary documents) thereby improving implementation and reducing the possibility of Formal Dispute Proceedings in circumstances where there are industry wide implications.
- 1.3 In order for facilitation to be successful, the OTA2, Openreach and CPs will need to work effectively together. The respective roles and responsibilities for the OTA2 and Openreach and CPs are outlined in paragraph 8 below.

- 1.4 The OTA2 will publish via the OTA2 website regular progress updates and summaries of its work and the status of the issues within the Scope (as defined in paragraph 2 below).

2. Scope of the OTA2

- 2.1 The OTA2 will, via the exercise of facilitation, assist all parties to reach agreement on and, where necessary, make recommendations on appropriate product functionality, process specifications, change management, implementation plans and monitoring activities for In-scope Products to maintain appropriately industrialised products and processes including, where new functionality for In-scope Products is introduced, ensuring that such new functionality is reasonably fit for the purpose it is intended to fulfil. These will relate to improvements to existing In-scope Products and In-scope Product processes. The Scope of the OTA2 (the "**Scope**") will include a role in facilitating the agreement of specifications and plans. The extent of that role is set out below:

- 2.1.1 **Product functionality** - which refers to the definition, specification (including timing of availability) and functionality of In-scope Products and associated facilities and activities necessary for In-scope Products, including (but not limited to) the publication of key performance indicators and progress against plans;
 - 2.1.2 **Process specification** - which refers to the specification and availability of the processes involved through the life-cycle of relevant In-scope Products and other process specification which will also include facilitating the agreement of reasonable quality levels, service level agreements and service level guarantees;
 - 2.1.3 **Change management** - which refers to on-going modifications, enhancements and improvements of products and processes;
 - 2.1.4 **Implementation plans** - which refers to the implementation of new and changed In-scope Products and processes and will include, inter alia, the project plans, timescales and reasonable resourcing required to delivery these products and processes; and
 - 2.1.5 **Monitoring activities** - which refers to necessary on-going activities to monitor implementation of non-binding recommendations of the OTA2 – will include, inter alia, the use of appropriate key performance indicators where relevant.

- 2.2 For the avoidance of doubt, regulated charge setting, and regulatory policy development will not be included in the Scope of the OTA2, but will remain matters for Ofcom. Commercial discussions will however progress through industry groups managed by the OTA2 such as the CFPCG, EPCG and PIAPCG which are chaired by the OTA2. Ofcom may also seek insight and expertise in developing new policy including consultation through the OTA2 with industry.
- 2.3 The OTA2 maintains an active role in the UK wide Number Porting arena, chairing both the NPESG (Number Port Executive Steering Group) which deals with strategy and major policy changes (including Ofcom regulatory demands) and the NPP&CG (Number Port Process and Commercial Group), which manages operational and lower level issues within the UK Number Porting processes. Additionally, the OTA2 publish and maintain the industry agreed Number Porting processes, Best Practise guides and associated documentation, alongside facilitating the resolution of 'in-life' Number Porting issues (e.g. number ownership disputes, etc). The scope of the OTA2 involvement includes Geographic and Non-Geographic Number Porting, but excludes mobile numbers.

3. The Facilitation Rules

- 3.1 In making recommendations on issues within the Scope, the OTA2 will work on the basis of the principles outlined in paragraphs 3.2 and 3.3 below and, will act in an independent, fair objective and reasonable manner (the "**Principles**").
- 3.2 The objective for the OTA2 is to help ensure the delivery (as soon as is reasonably possible) of new and /or enhanced product functionality for In-scope Products and processes which:
 - 3.2.1 are in the best interests of end users;
 - 3.2.2 are, and remain, fit for purpose and appropriately industrialised; and
 - 3.2.3 support broad take-up of In-scope Products.
- 3.3 The OTA2 shall, where relevant, take account of, *inter alia*:
 - 3.3.1 reasonable resource constraints (including training requirements) of CPs and Openreach and their ability to increase resources, although the OTA2 is able to recommend reasonable increases in resources;
 - 3.3.2 efficiently incurred and reasonable costs, and the need to avoid wasteful expenditure by CPs and Openreach;
 - 3.3.3 likely future demand levels and forecasts;
 - 3.3.4 reasonable cost recovery and reasonable profit;

- 3.3.5 the policy context as set by Ofcom and regulatory rules (including any relevant Ofcom Conditions and guidelines, the BT Commitments, and competition law) in relation to In-scope Products and other relevant products and such policy / regulatory rules as are amended from time to time;
 - 3.3.6 existing product / processes;
 - 3.3.7 existing end users;
 - 3.3.8 network security and network integrity;
 - 3.3.9 the activities and recommendations of other related groups such as the Network Interoperability Consultative Committee and Billing Industry Forum;
 - 3.3.10 system implications and complexity of requirement; and
 - 3.3.11 where relevant, Ofcom's statutory duties.
- 3.4 The objective of the facilitation role is to create and maintain an environment in which the CPs and Openreach may quickly reach substantial agreement on the specification of enhanced product functionality/processes and how new and enhanced product functionality/processes are to be implemented, thereby accelerating implementation within reasonable timescales and reducing the possibility of Formal Dispute Proceedings in circumstances where there are industry wide implications.
- 3.5 Facilitation by the OTA2 shall comprise the OTA2 undertaking the following activities:
- 3.5.1 working with the CPs and Openreach to agree the working approaches, including (without limitation) the role of different groups including Existing Industry Groups, the membership and empowerment of different groups and reporting between CPs and Existing Industry Groups;
 - 3.5.2 to document minutes of discussions and record outcomes and decisions and to keep an archive of same for future reference by all parties at meetings chaired by the OTA2.
 - 3.5.3 To maintain a register of CPs (or appointed representatives) and limit attendance unless by agreement to meetings chaired by the OTA2.
 - 3.5.4 facilitating working groups;
 - 3.5.5 facilitating the sharing of appropriate information between CPs, subject to compliance with the BT Commitments and all relevant regulatory and competition law obligations;

- 3.5.6 maintaining close dialogue with each of the CPs and Openreach to understand their individual concerns, constraints, capabilities and issues;
 - 3.5.7 working with the all CPs to understand and prioritise their demands and requirements and presenting consensus (if possible) of their requirements to Openreach;
 - 3.5.8 if necessary, recommending the priorities of CPs to present to Openreach;
 - 3.5.9 helping the CPs to agree appropriate product / process definitions and specifications;
 - 3.5.10 helping the CPs and Openreach to resolve potential disagreements between themselves rapidly prior to initiating Formal Dispute Proceedings;
 - 3.5.11 where agreement on matters within the Scope is not forthcoming between CPs and Openreach, rapidly making clear non-binding recommendations based on OTA2 judgement and available evidence; and
 - 3.5.12 monitoring implementation of non-binding recommendations of the OTA2.
- 3.8 Recommendations made in this role are non-binding on the CPs and Openreach but, by participation, the CPs and Openreach are indicating their willingness to cooperate in facilitation in good faith and their commitment to attempt to resolve issues through facilitation.

4. Constitution and Governance

- 4.1 The OTA2 is an individual, supported by a team, who shall undertake his role in accordance with these terms of reference. The OTA2 will be responsible for undertaking facilitation, including (without limitation) making non-binding recommendations.
- 4.2 The OTA2 may suggest to the CPs that they might wish to form appropriate groups. This shall not prevent any CPs forming groups that they wish outside of the OTA2 Scheme.
- 4.3 The OTA2 has formed the OTA2 Executive which comprises of invited CPs, representative industry groups, Openreach and Ofcom. The purpose of the group is to review and support the OTA2 work plan and agree priorities for the OTA2. Where there are any conflicts of interest the OTA2 will agree specific priorities and consequently agree full plan with Ofcom. A separate senior group has been established by the OTA2 for PIA due to potential conflict of interests.

5. Selection

- 5.1 The OTA2 will be selected for his expertise, knowledge and understanding of the relevant In-scope Products / process issues, as well as for his ability to act effectively as a facilitator.

6. Information gathering

- 6.1 The OTA2 may request and obtain information from CPs and Openreach relevant for OTA2 consideration of the issues. This may be in the form of, *inter alia*, a formal written submission, disclosure of documents or attendance to give oral submissions.
- 6.2 The CPs will provide such information as the OTA2 reasonably requests in reasonable time but will not be obliged to provide information they regard as confidential or which is legally privileged. CPs should not unreasonably withhold information.
- 6.3 The OTA2 may request any Communication Provider to submit confidential information to the OTA2 where the OTA2 believes that it would help in facilitation but for the avoidance of doubt no Communication Provider shall be obliged to provide such information. If confidential information is provided to the OTA2, the OTA2 shall, at the providing providers request, destroy or return such confidential information when it is no longer required for the purpose for which it was provided.
- 6.4 CPs expect that Ofcom will provide relevant information in its possession to the OTA2 to the extent that it is consistent with Ofcom's statutory obligations.
- 6.5 The OTA2 will keep all confidential information received from any Communication Provider, Openreach or Ofcom confidential from any other parties and put in place appropriate measures to keep confidential information secure.

7. Existing arrangements

All CPs and Openreach are still required to comply with all relevant contractual, regulatory and competition law obligations. The OTA2 Scheme does not prejudice any other legal rights.

8. Roles and Responsibilities

- 8.1 The success of the OTA2 Scheme will depend on commitment from senior representatives of CPs to adhere to the Principles and objectives of the OTA2 Scheme and to ensuring its effective operation.

Ofcom

- 8.2 To help ensure the success of the OTA2 Scheme, Ofcom will:
- 8.2.1 provide full and visible support to the OTA2 Scheme and the OTA2;
 - 8.2.2 provide confidential and bi-lateral advice to the OTA2;
 - 8.2.3 identify issues for resolution and/or facilitation by the OTA2; and
 - 8.2.4 provide proactive and constructive guidance.
 - 8.2.5 consult with the OTA2, where appropriate, in the resolution of disputes.

Communication Providers and Openreach

- 8.3 To help ensure the success of the OTA2 Scheme, Openreach, CPs and appointed representatives will be expected to:
- 8.3.1 maintain appropriate senior management level involvement as reasonably required by the OTA2;
 - 8.3.2 provide appropriate access for the OTA2 to empowered management as required;
 - 8.3.3 ensure that there is clear unambiguous ownership and leadership of significant issues with any In-scope Products and between products and processes for In-scope Products;
 - 8.3.4 ensure that the OTA2 Scheme and the intent of the OTA2 Scheme is well understood and adopted by relevant staff;
 - 8.3.5 ensure that participants in various groups have the necessary level of skills, expertise and empowerment to take decisions;
 - 8.3.6 ensure that relevant staff are made available in a timely fashion;
 - 8.3.7 ensure continuity of staff involved where reasonably possible;
 - 8.3.8 provide full and relevant information, including without limitation responses to enquiries by the OTA2, (subject to confidentiality and legal privilege) in a timely fashion;
 - 8.3.9 take due care to verify the accuracy of information;
 - 8.3.10 act in a professional, responsive manner and use all reasonable commercial endeavours to help the OTA2 meet the objectives in facilitation;

- 8.3.11 through the industry working groups support and commit to agreements and outcomes to allow Openreach to incorporate into product and services contracts, ancillary documents and best practice guides.
- 8.3.12 bring all issues that have industry wide impact in relation to In-scope Products and Services to the OTA2:
 - (i) in a timely fashion; and
 - (ii) for facilitation;
- 8.3.13 provide accurate performance reports to the OTA2, such performance reports to be in the form as reasonably required by the OTA2 from time to time;
- 8.3.14 demonstrate full and constructive support of the OTA2 Scheme and the OTA2; and
- 8.3.15 work collaboratively with one another.

9. Ofcom direct requests of the OTA2

Recognising that the core role of the OTA2 is to focus on products and services provided by Openreach to CPs and associated activities such as number port management, Ofcom may directly request the OTA2 to undertake an activity or work package which may extend beyond this boundary to other areas of Telecommunication services and infrastructure.

This would take the form of a direct request from Ofcom that identifies the ask, parties involved and where necessary related funding.

The governance of said activity would be articulated as part of the Ofcom ask that outlines the task, objective, duration, timescales, and stakeholders to be engaged with final reporting back to Ofcom.

Assessment by the OTA2 will propose required resources, budget and approach to request. In some circumstances the OTA2 might decline where it is unable to fulfil request. The same 'principles' to facilitation and engagement would be followed.

OTA2 Scheme

Definitions

"Act" means the Communications Act 2003, as it may be amended or re-enacted from time to time;

"BT"

"The Commitments" means the commitments made to Ofcom on 1 October 2018

"Communications Provider" means, unless the contrary intention appears:

- (i) a person who provides a Public Electronic Communications Network or provides an Public Electronic Communications Service;

"Existing Industry Groups" means groups such as CFPCG, EPCG etc;

"Formal Dispute Proceedings" means, in relation to any issue, the commencement of any court or arbitral proceedings or (as applicable) formal referral to Ofcom for dispute resolution;

"In-scope Agreement" means any agreement between Openreach and a Scheme Participant for the delivery or supply of an In-Scope Product;

"In-scope Products" means, collectively and not exclusively:

- (i) All Copper and Fibre products.
- (iii) geographic number portability and broadband of both BT and other Communications Providers where migration impacts may occur; and
- (iv) Ethernet
- (v)
- (vi) Service Products and Infrastructure
- (vii) PIA (Passive Infrastructure Access)
- (vi) Dark Fibre products
- (vii) geographic number portability and broadband of both BT and other Communications Providers where migration impacts may occur; and
- (viii) others as necessary and reasonably agreed from time to time;

"Ofcom" means the Office of Communications;

"Openreach" means the Openreach subsidiary of BT created pursuant to the BT Commitments;

"OTA2 Scheme" has the meaning as per Terms of Reference;

"OTA2" has the meaning Office Telecommunications Adjudicator

"Principles" has the meaning given to it in paragraph 3.1 (*Terms of Reference for the OTA2 Scheme*);

"Scheme Member" means a Communications Provider (including BT, and/or the lines of business of BT) who is a member of the OTA2 Scheme;

"Scope" has the meaning given to it in paragraph 2.1 (Terms of Reference for the OTA2 Scheme); and

"Terms of Reference" as described in OTA2 Scheme Terms of Reference.