

## **NOTIFICATION OF PROPOSALS UNDER SECTIONS 48A, 80A AND 49A OF THE COMMUNICATIONS ACT 2003**

### **Proposals for setting SMP services conditions in relation to BT under section 45 of the Communications Act 2003 and directions to BT under section 49 of the Communications Act 2003**

#### **Background**

1. On 8 January 2020, Ofcom published its consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (the “January 2020 Consultation”). The January 2020 Consultation set out Ofcom’s proposals on its review of fixed telecoms markets including the physical infrastructure, wholesale local access, leased lines access and the inter-exchange connectivity markets.
2. At Volume 5 of the January 2020 Consultation, Ofcom published a notification under section 48A and 80A of the Communications Act 2003 (the “Act”), in accordance with sections 48(1) and section 80(1) of the Act (the “WFTMR Notification”). This set out Ofcom’s proposals for identifying markets, making market power determinations and setting and revoking SMP services conditions to be applied to BT. The WFTMR Notification included Ofcom’s proposals for SMP conditions in the above markets, including the following:
  - a) a price control in respect of physical infrastructure access (“PIA”) contained in proposed SMP condition 12A;
  - b) a price control in respect of dark fibre access (“DFA”) and dark fibre inter-exchange connectivity (“DFX”) contained in proposed SMP condition 12I;
  - c) an obligation to charge fair and reasonable prices in respect of Single Order Generic Ethernet Access (“SOGEA”) contained in proposed SMP condition 1; and
  - d) a basis of charges obligation in respect of each of the following:
    - i) PIA ancillaries relating to network adjustments and other PIA ancillaries contained in proposed SMP conditions 6.2 and 12A.4; and
    - ii) contractor excess construction charges (the “Contractor ECCs”) contained in proposed SMP condition 12G.9.
3. At Volume 5 of the January 2020 Consultation, Ofcom also proposed to impose SMP condition 10 on BT in each of the physical infrastructure, wholesale local access, leased lines access and

inter-exchange connectivity markets which requires it to comply with all such quality of service requirements as Ofcom may from time to time direct and publish all such information as to the quality of service as Ofcom may from time to time direct.

4. Pursuant to proposed SMP condition 10, Ofcom included in Volume 5 of the January 2020 Consultation a notification under s.49 of the Act and proposed to make four directions, which included one direction requiring BT to comply with quality of service standards in respect of the provision of network access in four markets including the leased lines access market in which Ofcom has provisionally found BT as having SMP (“QoS Direction 1”).
5. The period within which representations could be made to Ofcom about its proposals in the January 2020 Consultation ended on 22 May 2020. Ofcom received many comments on its proposals set out in the January 2020 Consultation which Ofcom is still considering.
6. Further to the January 2020 Consultation, Ofcom subsequently published consultations on BT regulatory financial reporting<sup>1</sup>, pricing wholesale local access services in geographic Area 3 with a BT commitment to deploy a fibre network<sup>2</sup>, copper retirement<sup>3</sup> and on proposed QoS remedies<sup>4</sup>. These consultations proposed certain amendments to the WFTMR Notification.
7. In particular, on 6 February 2020, Ofcom published its consultation document entitled “Promoting competition and investment in fibre networks: BT Regulatory Financial Reporting requirements covering wholesale fixed telecoms markets 2021-2026” (the “February 2020 Reporting Consultation”). The February 2020 Reporting Consultation set out Ofcom’s proposals to impose accounting separation and cost accounting SMP conditions on BT in each of the above markets, and to give directions to BT pursuant to the proposed SMP conditions. One of the proposed directions was a Direction setting requirements in relation to preparation, delivery, publication, form and content of the Regulatory Financial Statements (the “Form and Content Reporting Direction”).

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<sup>1</sup> [Promoting competition and investment in fibre networks: BT Regulatory Financial Reporting Reporting requirements covering wholesale fixed telecoms markets 2021-26](#), Ofcom, 6 February 2020.

<sup>2</sup> [Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26 Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network](#), Ofcom, 29 July 2020.

<sup>3</sup> [Consultation: Copper retirement – process for determining when copper regulation can be removed](#), Ofcom, 25 June 2020 and [Consultation: Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges](#), Ofcom, dated 15 October 2020.

<sup>4</sup> [Wholesale Fixed Telecoms Market Review – Openreach Quality of Service - Further consultation on proposed quality of service remedies](#), Ofcom, 23 October 2020.

**Proposed amendments to proposed SMP conditions 2, 6, 7, 12A, 12C and 12I, QoS Direction 1 and the Form and Content Reporting Direction**

8. In the January 2020 Consultation Ofcom invited views on defining markets, assessing SMP and setting remedies, and proposed remedies in the above markets. In light of stakeholder responses to the January 2020 Consultation and further information provided by BT, Ofcom is setting out its further proposals in relation to the proposed remedies for PIA, DFA, DFX, SOGEA, PIA ancillaries relating to network adjustments and other PIA ancillaries, and Contractor ECCs.<sup>5</sup> These further proposals are set out in the consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021 – 2026 – Further consultation on certain proposed remedies” (“the Consultation”) which accompanies this notification.
9. Proposed revisions to SMP conditions, QoS Direction 1 and the Form and Content Reporting Direction as amended by this notification are set out by way of extract as follows:
- a) proposed revisions to SMP conditions are set out in Schedule 1 to this notification;
  - b) proposed revisions to QoS Direction 1 are set out in Schedule 2 to this notification;
  - c) proposed revisions to the Form and Content Reporting Direction are set out in Schedule 3 to this notification.

Deletions to the proposals in the WFTMR Notification (as previously proposed to be amended by the consultations referred to in paragraph 6 above) are shown in strike through text and additions are underlined and highlighted. The WFTMR Notification should be read accordingly.

10. It is proposed that:
- a) SMP conditions 2, 6, 7, 12A, 12C and 12I as amended will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification;
  - b) QoS Direction 1 as amended will take effect from the date of any notification under section 49A of the Act adopting the proposals set out in this notification; and

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<sup>5</sup> In relation to the proposed remedy for Contractor ECCs in the form of basis of charges obligation. Ofcom is clarifying the meaning of the proposed obligation in the Consultation accompanying this notification but is not proposing any revisions to SMP condition proposed in the January 2020 Consultation (SMP condition 12G.9).

c) the Form and Content Reporting Direction as amended will take effect from the date of any notification under section 49A of the Act adopting the proposals set out in this notification.

11. The effect of, and the reasons for making, the amendments set out above at paragraphs 8 to 10 are set out in the Consultation.

### **Ofcom's duties and legal tests**

12. Ofcom considers that the proposed, amended SMP conditions above comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition. Ofcom also considers that the proposed QoS Direction 1 and Form and Content Reporting Direction each comply with the requirements of section 49(2) of the Act.

13. The effect of the proposed amendments, and Ofcom's reasons for making those proposals, are set out in the Consultation.

14. In making all of the proposals referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

15. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

### **Making representations**

16. Representations may be made to Ofcom about any of the proposals set out in this notification and the Consultation by no later than 7 December 2020.

17. Copies of this notification and the Consultation have been sent to the Secretary of State in accordance with sections 48C(1) and 49C(1) of the Act.

### **Interpretation**

18. For the purpose of interpreting this notification —

- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 19 below, and otherwise any word or expression shall have the same meaning as it has in the WFTMR Notification or the Act;
- (b) headings and titles shall be disregarded;
- (c) expressions which are cognate with those referred to in this notification shall be construed accordingly; and
- (d) the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

19. In this notification—

- (a) “**Act**” means the Communications Act 2003 (c. 21);
- (b) “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- (c) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002; and
- (d) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019.

21. The Schedules to this notification shall form part of this notification.

**Signed**

A handwritten signature in blue ink that reads "D. Clarkson".

David Clarkson

Competition Policy Director, Ofcom

**A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002**

5 November 2020

## Schedule 1: SMP conditions

**2.6** Dark Fibre Access including the provision of Access Segments with effect from [17 August  
**(LLA Area** 2021]. In the period from [17 August 2021] to [31 May 2022] the Dominant Provider may  
**3)** comply with this condition by providing only the components of Dark Fibre Access that are  
reasonably necessary for establishing and maintaining such network access, including  
without limitation provisioning and repair.

**6.2** Except where Condition 12 applies, or where Ofcom directs otherwise, the Dominant  
**(PI)** Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that  
each and every charge offered or payable for Physical Infrastructure Access provided  
under Conditions 1 and 2 when averaged over each Relevant Year is reasonably derived  
from the costs of provision based on:

(a) any external charge incurred by the Dominant Provider related to the provision  
of that Physical Infrastructure Access service;

(b) the Dominant Provider's forward looking long run incremental costs related to  
the provision of that Physical Infrastructure Access service;

(c) an appropriate mark-up for recovery of common costs; and

(d) an appropriate return on capital employed.

**7.12** In relation to publication of the Reference Offer relating to Dark Fibre Access, the  
**(LLA** Dominant Provider must publish a Reference Offer:  
**Area**

**3)** (a) by [17 August 2021] which includes all relevant matters set out in Condition 7.8 and  
Condition 7.2 except for the matters specified in Condition 7.2(g)(ii) and (iii); and

(b) by [1 June 2022] which includes all relevant matters set out in Conditions 7.2, 7.7 and  
7.8.

**12A.2**  
**(PI)**

Except in so far as Ofcom may otherwise direct, in each of the Second Relevant Year, Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year for each of the services specified in Condition 12A.1(a) to (j) the Dominant Provider shall not charge more than the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by:

- (a)  $[1 + \text{CPI} + 1.9\%]$  for Facility in Spine duct per metre – single bore;
- (b)  $[1 + \text{CPI} + 3.9\%]$  for Facility in Spine duct per metre – 2 bores;
- (c)  $[1 + \text{CPI} + 1.4\%]$  for Facility in Spine duct per metre – 3+ bores;
- (d)  $[1 + \text{CPI} + 0.9\%]$  for [Simplified Underground PIA Lead-in];
- (e)  $[1 + \text{CPI} - 1.6\%]$  for Facility on pole for Multi-end-user attachment;
- (f)  $[1 + \text{CPI} - 1.5\%]$  for Facility on pole for Single-end-user attachment;
- (g)  $[1 + \text{CPI} - 1.6\%]$  for Pole top equipment;
- (h)  $[1 + \text{CPI} - 1.30\%]$  for Cable up a pole (per cable);
- (i)  $[1 + \text{CPI} + 2.1\%]$  for Facility hosting (per manhole entry);
- (j)  $[1 + \text{CPI} + 1.8\%]$  for Facility hosting (per joint box entry).

**12A.4**  
**(PI)**

This Condition applies to PIA Adjustment Services except:

- (a) PIA Pole Adjustment Services undertaken to provide capacity on a pole to facilitate the provision of a drop wire; and
- (b) PIA Pole Adjustment Services undertaken to replace Defective Pole used for drop wires;

where the charges for such services shall be zero. The Dominant Provider must secure and must be able to demonstrate to the satisfaction of Ofcom that for the purposes of Condition 12A.3 the charges for each separate PIA Adjustment Service within the scope of this Condition shall be reasonably derived from the costs of provision based on:



- (a) any external charge incurred by the Dominant Provider related to the provision of that PIA Adjustment Service;
- (b) the Dominant Provider's forward looking long run incremental costs related to the provision of that PIA Adjustment Service;
- (c) an appropriate mark-up for recovery of common costs; and
- (d) an appropriate return on capital employed.

**12C.1**  
**(WLA**  
**Area**  
**2)**

Subject to Condition 12C.3, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12C.7) in:

- (a) the charge for FTTC 40/10 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(a) applies;
- (b) the charge for FTTC 40/10 PCP Only Install Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(b) applies;
- (c) the charge for FTTC 40/10 Start of Stopped Line Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(c) applies;
- (d) the charge for VULA Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(d) applies;
- (e) the charge for VULA 40/10 Bandwidth Change, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, except for the First Relevant Year

in relation to which the charge ceiling specified in Condition 12C.4(e) applies;

- (f) the charge for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(f) applies;
- (g) the charge for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(g) applies;
- (h) for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(j) applies;
- (i) for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(k) applies;
- (j) for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(l) applies;
- (k) for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(m) applies;
- (l) for Superfast Visit Assure, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are

available, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(n) applies; and

(m) for VULA Cease, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(o) applies; and

(n) for SOGEA 40/10 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(p) applies;

is not more than the Controlling Percentage (as determined in accordance with Condition 12C.8).

**12C.2**  
**(WLA**  
**Area**  
**3)**

Subject to Condition 12C.3, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12C.7 for Condition 12C.2(a) to (n)) in:

(a) the charge for FTTC 40/10 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(a) applies;

(b) the charge for FTTC PCP Only Install Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (a) applies;

(c) the charge for FTTC Start of Stopped Line Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (b) applies;

- (d) the charge for VULA Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (c) applies;
- (e) the charge for VULA Bandwidth Change, only where it relates to:
  - (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (d) applies;
- (f) the charge for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(e) applies;
- (g) the charge for FTTP 40/10 Transition Connection, at locations at which no Copper based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(f) applies;
- (h) for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(i) applies;
- (i) for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(j) applies;
- (j) for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(k) applies;

- (k) for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(l) applies;
- (l) for Superfast Visit Assure, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(m) applies;
- (m) for VULA Cease, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(n) applies; and
- (n) for SOGEA 40/10 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(p) applies;

is not more than the Controlling Percentage (as determined in accordance with Condition 12C.7).

**12C.3**  
**(WLA**  
**Area**  
**2,**  
**WLA**  
**Area**  
**3)**

For each of the products and/or services and basket specified in Condition 12C.1 and 12C.2, where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable, the Dominant Provider shall take all reasonable steps to secure that:

- (a) at the end of the Second Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)$$

- (b) at the end of the Third Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)$$

- (c) at the end of the Fourth Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

*Year 4 charge ceiling*

$$= \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)(100\% + CPI_4 + X_4)$$

- (d) at the end of the Fifth Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

*Year 5 charge ceiling*

$$= \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)(100\% + CPI_4 + X_4)(100\% + CPI_5 + X_5)$$

Where:

*Year 2 charge ceiling* is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable;

*Year 3 charge ceiling* is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the

amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable;

*Year 4 charge ceiling* is the average charge ceiling applicable in the Fourth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable;

*Year 5 charge ceiling* is the average charge ceiling applicable in the Fifth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable;

$\bar{p}_i$  is the amount set out in Condition 12C.4(a) to 12C.4(p) or Condition 12C.6(a) to 12C.6(p), as applicable;

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year

$X$  is as set out in Condition 12C.8(a) and 12C.9(a).

The average charge for the relevant product and/or service in the First Relevant Year, in the Second Relevant Year, in the Third Relevant Year, in the Fourth Relevant Year and in the Fifth Relevant Year shall be calculated by employing the formula set out in Condition 12C.7 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider.

**12C.4**

The Dominant Provider shall not charge more than:

**(WLA  
Area  
2)**

- (a) for FTTC 40/10 Rental, the amount of £61.18 in the First Relevant Year;
- (b) for FTTC 40/10 PCP Only Install Connection, the amount of £47.78 in the First Relevant Year;
- (c) for FTTC 40/10 Start of Stopped Line Connection, the amount of £3.12 in the First Relevant Year;
- (d) for VULA Migration, the amount of £3.12 in the First Relevant Year;
- (e) for VULA 40/10 Bandwidth Change, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, the amount of £5.70 in the First Relevant Year;
- (f) for FTTP 40/10 Voice and Data Connection, at locations at which Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £127.76 in the First Relevant Year;
- (g) for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £100.46 in the First Relevant Year;
- (h) at locations at which no Copper-based network access services are available, for connections to premises that are not new to



Openreach, for FTTP 40/10 Voice and Data Connection, the amount of £0 in each Relevant Year;

- (i) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Transition Connection, the amount of £0 in each Relevant Year;
- (j) for 1 Gbit Cablelink Connection, the amount of £531.42 in the First Relevant Year;
- (k) for 10 Gbit Cablelink Connection, the amount of £1,062.84 in the First Relevant Year;
- (l) for 1 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (m) for 10 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (n) for Superfast Visit Assure, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, the amount of £132.60 in the First Relevant Year;
- (o) for VULA Cease, the amount of £0 in each Relevant Year; and
- (p) for SOGEA 40/10 Rental, the amount of [£147.83] in the First Relevant Year.

**12C.6** The Dominant Provider shall not charge more than:

- (WLA Area 3)**
- (a) for FTTC 40/10 Rental, the amount of £61.18 in the First Relevant Year;

- (b) for FTTC PCP Only Install Connection, the amount of £47.78 in the First Relevant Year;
- (c) for FTTC Start of Stopped Line Connection, the amount of £3.12 in the First Relevant Year;
- (d) for VULA Migration, the amount of £3.12 in the First Relevant Year;
- (e) for VULA Bandwidth Change, only where it relates to: (i) Copper based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, the amount of £5.70 in the First Relevant Year;
- (f) for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £127.76 in the First Relevant Year;
- (g) for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £100.46 in the First Relevant Year;
- (h) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Voice and Data Connection, the amount of £0 in each Relevant Year;
- (i) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Transition Connection, the amount of £0 in each Relevant Year;

- (j) for 1 Gbit Cablelink Connection, the amount of £531.42 in the First Relevant Year;
- (k) for 10 Gbit Cablelink Connection, the amount of £1,062.84 in the First Relevant Year;
- (l) for 1 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (m) for 10 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (n) for Superfast Visit Assure, only where it relates to: (i) Copper-based network access services, or (ii) GEA-FTTP services at locations at which no Copper-based network access services are available, the amount of £132.60 in the First Relevant Year;
- (o) for VULA Cease, the amount of £0 in each Relevant Year; and
- (p) for SOGEA 40/10 Rental, the amount of [£147.83] in the First Relevant Year.

**12C.8**  
**(WLA**  
**Area 2)**

- (a) Subject to Conditions 12C.8(b) to 12C.8(e) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in Condition 12C.1 shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$CPI_t$  is CPI for the Relevant Year,  $t$ ;

X means:

- for the services specified in Condition 12C.1 (a) to (n):  
Zero

- (b) For each of the services specified in Condition 12C.1 , and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year or Fourth Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 7B.4(d).
- (b) For each of the services specified in Condition 12C.1 , and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year or Fourth Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 7B.4(d).
- (c) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 applies, where the Percentage Change at the end of either the First Relevant Year, Second Relevant Year, Third Relevant Year and Fourth Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12C.8(d).
- (d) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 applies, in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = \left[ \frac{(100\% + CPI + X)(100\% + CP_{t-1})}{(100\% + C_{t-1})} \right] - 100\%$$

Where:

$CP_t$  is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year);

$CP_{t-1}$  is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) .

$C_{t-1}$  is the Percentage Change in the Charge for the services specified in Condition 12C.1 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) calculated in accordance with the formula for  $C_t$  set out in Condition 12C.7;

$X$  is as set out in Condition 12C.8(a); and

$CPI$  has the meaning ascribed to it in Part 2 of the Schedule to this Notification.

- (e) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 applies, where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

**12C.9**  
**(WLA**  
**Area 3)**

- (a) Subject to Conditions 12C.9(b) to 12C.9(e) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in Condition 12C.2 shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$CPI_t$  is CPI for the Relevant Year,  $t$ ;

$X$  means:

- for the services specified in Condition 12C.2 (a) to (n):  
Zero

- (b) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year, or

Fourth Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12C.9(d).

- (c) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, where the Percentage Change at the end of either the First Relevant Year, Second Relevant Year, Third Relevant Year, Fourth Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12C.9(d).
- (d) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = \left[ \frac{(100\% + CPI + X)(100\% + CP_{t-1})}{(100\% + C_{t-1})} \right] - 100\%$$

Where:

$CP_t$  is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year);

$CP_{t-1}$  is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year).

$C_{t-1}$  is the Percentage Change in the Charge for the services specified in Condition 12C.2 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) calculated in accordance with the formula for  $C_t$  set out in Condition 7B.3;

$X$  is as set out in Condition 12C.9(a); and

*CPI* has the meaning ascribed to it in Part 2 of the Schedule to this Notification.

- (e) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.



**12C.20** In this Condition 12C:

**(WLA**

**Area 2,**

**WLA**

**Area**

**3)**

- (a) **“1 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;
- (b) **“10 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;
- (c) **“1 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, should the Dominant Provider introduce such a charge after 1 April 2018;
- (d) **“10 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, should the Dominant Provider introduce such a charge after 1 April 2018;
- (e) **“Charge Controlled Service”** means a service and/or product listed in Condition 12C.1,12C.2 or 12C.4;

- (f) **“Controlling Percentage”** is to be determined in accordance with Condition 12C.8 or 12C.9 as applicable;
- (g) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services and/or products listed in Condition 12C.1 or 12C.2, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in Condition 12C.1 or 12C.2 if it had complied with Condition 12C.1 or 12C.2 as applicable;
- (h) **“FTTC 40/10 Rental”** shall be construed as having the same meaning as ‘Up to 40Mbit/s downstream and up to 10Mbit/s upstream (including Simultaneous Provide)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products;
- (i) **“FTTC 40/10 PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (j) **“FTTC PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;

- (k) **“FTTC 40/10 Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (l) **“FTTC Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;
- (m) **“FTTP 40/10 Transition Connection”** shall be construed as having the same meaning as the connection charge for ‘Up to 40Mbit/s / 10Mbit/s "Transition product" (including Simultaneous Provide)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;
- (n) **“FTTP 40/10 Transition Rental”** shall be construed as having the same meaning as the annual rental charge for ‘Up to 40Mbit/s / 10Mbit/s "Transition product" (including Simultaneous Provide)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;
- (o) **“FTTP 40/10 Voice and Data Connection”** shall be construed as having the same meaning as the connection charge for ‘Fibre Voice Access Combination with Generic Ethernet Access

up to 40Mbit/s/10Mbit/s' as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;

(p) **“FTTP 40/10 Voice and Data Rental”** shall be construed as having the same meaning as the annual rental charge for 'Fibre Voice Access Combination with Generic Ethernet Access up to 40Mbit/s/10Mbit/s' as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;

(q) **“Percentage Change”** has the meaning given to it in Condition 12C.7 as applicable;

(r) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12C.7 as applicable;

(s) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12C.7 as applicable;

(t) **“SOGEA 40/10 Rental”** shall be construed as having the same meaning as the annual rental charge for 'Single Order Generic Ethernet Access up to 40Mbit/s/10Mbit/s' as provided by the Dominant Provider where Single Order Generic Ethernet Access is the name given by the Dominant Provider to its GEA-FTTC product where only a broadband service is being provided;

(u) **“Superfast Visit Assure”** shall be construed as having the same meaning as 'Visit Assure – Visit to customer premises' as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;

- (v) **“VLAN Move”** shall be construed as having the same meaning as ‘VLAN moves applied to GEA Cablelink Modify transactions’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;
- (w) **“VULA 40/10 Cancel/Amend/Modify – CRD”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - CRD Amend, order notes amend, order cancellation, Care Level’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, where the change is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (x) **“VULA 40/10 Cancel/Amend/Modify – Regrading”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - Regrading of existing upstream or downstream speed, both at point of sale and in-life’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, where the change is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (y) **“VULA Cease”** shall be construed as having the same meaning as ‘Service cessation (any product variant)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products; and
- (z) **“VULA Migration”** means the transfer of control of a Virtual Unbundled Local Access service between Third Parties purchasing Virtual Unbundled Local Access from the Dominant Provider.

**12I.1** Except in so far as Ofcom may otherwise direct, in the First Relevant Year the  
**(LLA** Dominant Provider shall not charge more than:  
**Area** (a) for Connection for a single fibre circuit the amount of [£1280 to £1560];  
**3)** (b) for Connection for a dual fibre circuit the amount of [£2560 to £3120];  
(c) for Annual rental for a single fibre circuit the amount of [£830 to £1120] per annum; and  
(d) for Annual rental for a dual fibre circuit the amount of [£1660 to £2240] per annum.

**12I.2** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year,  
**(LLA** Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, the Dominant  
**Area** Provider shall not charge more than:

**3)** a) for 12I.1 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI [- 3.2 to + 0.3%])  
b) for 12I.1(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI [- 3.2% to + 0.3%])  
c) for 12I.1(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.8% to 4.8%])  
d) for 12I.1(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.8% to 4.8%])

**12I.3** Except in so far as Ofcom may otherwise direct, in the First Relevant Year the  
**(IEC)** Dominant Provider shall not charge more than:  
(a) for Connection for a single fibre circuit the amount of [£290 to £360], other than where access is provided under Condition 2.7 where the charge shall be £0;  
(b) for Connection for a dual fibre circuit the amount of [£580 to £720], other than where access is provided under Condition 2.7 where the charge shall be £0;

- (c) for Annual rental for a single fibre circuit the amount of [£30 to £40] per annum other than where access is provided under Condition 2.7 where the charge shall be £0;
- (d) for Annual rental for a dual fibre circuit the amount of [£60 to £80] per annum other than where access is provided under Condition 2.7 where the charge shall be £0;
- (e) for Main link rental for a single fibre circuit the amount of [£0.08 to £0.11] per metre per annum;
- (f) for Main link rental for a dual fibre circuit the amount of [£0.16 to £0.22] per metre per annum.

**12I.4** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, **(IEC)** Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, the Dominant Provider shall not charge more than:

- a) for 12I.3 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.8% to 2.4%])
- b) for 12I.3(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.8% to 2.4%])
- c) for 12I.3(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.0% to 4.0%])
- d) for 12I.3(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [8.0% to 4.0%])
- e) for 12I.3 (e) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [6.1% to 2.1%])
- f) for 12I.3(f) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI - [6.1% to 2.1%])

**12I.6** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, **(LLA Area)** Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, for each service referred to in Conditions 12I.5(a) to 12I.5(e) (inclusive) the Dominant

**3,** Provider shall not charge more than the maximum amount permitted to be  
**IEC)** charged for that service in the Prior Relevant Year x (100% + CPI - 0%).



## Schedule 2: QoS Direction 1: Quality of Service Standards

### Direction

A. This Direction is made under section 49 of the Act and SMP Condition 10 and requires the Dominant Provider to comply with quality of service standards in relation to the provision of network access to Relevant Ethernet Services and Dark Fibre Access in the markets for (i) in LLA Area 2 (Relevant Ethernet Services only); (ii) LLA Area 3; (iii) interexchange connectivity in BT Only exchanges; (iv) and interexchange connectivity in BT+1 exchanges.

B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from [1 April 2021].

### Quality of Service Standards

#### Application

1. The Dominant Provider must comply with the following quality of service standards in respect of the provision of Orders for:
  - a. Relevant Ethernet Services; and
  - b. Dark Fibre Access.
  
2. The obligation referred to in paragraph 1 above shall apply in the Relevant Year to Orders that became Accepted Orders on or after the first day of the Relevant Year or that were Accepted Orders before such date but were not Completed Orders on or before such date, and that relate to:
  - a. Supply of Leased Line access in LLA Area 2 (“LL Area 2”) for Relevant Ethernet Services only;
  - b. Supply of Leased Line access in LLA Area 3 (“LL Area 3”) for Relevant

Ethernet Services only;

- c. Interexchange connectivity in BT Only exchanges (“IE”); or
- d. Interexchange connectivity in BT +1 exchanges (“IE BT+1”).

In relation to Dark Fibre Access for LL Area 3, the obligation referred to in paragraph 1 shall come into effect during the second Relevant Year and shall apply to Orders that became Accepted Orders on or after the 1 June 2022 or that were Accepted Orders before such date but were not Completed Orders on such date, and in each subsequent Relevant Year shall apply to Orders that became Accepted Orders on or after the first day of the Relevant Year or that were Accepted Orders before such date but were not Completed Orders on such date.

### Schedule 3: Form and Content Reporting Direction

In Annex B, part B), Additional Financial Information to be provided in respect of the PI Market, after row (iii), insert:

iv)	PIA ancillaries related to network adjustments and other PIA ancillaries	<p>Provide the operating and capital costs of each PIA ancillary related to network adjustments and all other PIA ancillaries.</p> <p>This information does not have to be generated from the cost attribution system.</p> <p>Any assumptions, judgements, calculations or estimates made when providing this information must be explained. This should include an explanation of how assets or costs shared with other PI services have, for the purpose of this schedule, been allocated to (a) PIA ancillaries related to network adjustments and (b) other PIA ancillaries.</p> <p>Where these services are reported in the RFS, a comparison of costs reported in this schedule to those reported in the RFS should be provided, with an explanation of any differences.</p>
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In Annex B, part D), Additional Financial Information to be provided in respect of the Leased Lines Access and Inter-exchange connectivity services markets, after row (i), insert:

ii)	Contractor ECCs	<p>Provide the revenue, operating and capital costs of contractor ECCs.</p> <p>This information does not have to be generated from the cost attribution system.</p> <p>Any assumptions, judgements, calculations or estimates made when providing this information must be explained. This should include an explanation of how assets or costs shared with other ancillary services have been allocated to Contractor ECCs for the purpose of this schedule.</p> <p>Where these services are reported in the RFS, a comparison of costs reported in this schedule</p>
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		to those reported in the RFS should be provided, with an explanation of any differences.
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