



Leased Lines Charge Control

Adoption of Revised SMP Services Conditions following the
Competition Appeal Tribunal's Directions of 20 September
2010

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Section 1

Amendment to SMP Services Conditions

Background

The Leased Lines Charge Control Statement

- 1.1 On 2 July 2009 Ofcom published the Leased Lines Charge Control statement¹ (the LLCC Statement) imposing charge controls on the supply of some wholesale leased lines services pursuant to sections 45, 87 and 88 of the 2003 Act. More specifically Ofcom imposed new charge controls on the following services²:
- Low bandwidth TISBO³ services up to and including 8Mbit/s;
 - High bandwidth TISBO services above 8Mbit/s up to and including 34/45 Mbit/s (outside the Central and East London, “CELA”, area);
 - Very high bandwidth TISBO services above 34/45Mbit/s up to and including 140/155 Mbit/s (outside the Central and East London, “CELA”, area);
 - Low bandwidth AISBO⁴ services up to and including 1 Gbit/s; and
 - TISBO trunk segments at all bandwidths.
- 1.2 In the LLCC Statement Ofcom set out its conclusions on the design and level of these charge controls, whereby Ofcom:
- i) implemented RPI⁵-X charge controls for most of the services. These charge controls are to expire on 30 September 2012. The core baskets of services subject to charge controls are:
 - TI Basket of services subject to RPI – 3.25%; and
 - AI Basket⁶ of services subject to RPI – 7.00%.
 - ii) implemented a number of sub-caps and other safeguards in order to reduce the likelihood of undue price discrimination;
 - iii) introduced separate PoH rental charges (the New POH Charges) and reduced the 64 kbit/s and 2 Mbit/s external local end prices by the amount of the New PoH Charges; and

¹ <http://stakeholders.ofcom.org.uk/consultations/llcc/statement/>

² The Business Connectivity Market Review Statement (the BCMR Statement) identified these wholesale leased lines services as the ones where BT holds Significant Market Power (SMP) and should be subjected to a charge control.

<http://www.ofcom.org.uk/consult/condocs/bcmr08/>

³ TISBO = Traditional Interface Symmetric Broadband Origination.

⁴ AISBO = Alternative Interface Symmetric Broadband Origination.

⁵ RPI = Retail Price Index.

⁶ The AI Basket includes the low bandwidth AISBO services up to and including 1 Gbit/s listed in paragraph 1.1. The remainder of the wholesale services listed in paragraph 1.1 are included in the TI Basket.

- iv) reduced the price of 1 Gbit/s BES rental services by a further 17%.
- 1.3 The relevant SMP Services Conditions are set out in Schedules 1, 2, 3, 4 and 5 of Annex 9 to the LLCC Statement.
- 1.4 Before publication of the LLCC statement, on 3rd June 2009, BT notified some new starting charges. From 1st October 2009 and following publication of the LLCC Statement, BT was also under an obligation to align all relevant TI Basket starting charges with those included in Annex D to Conditions G4, GG4, GH4 and H4.

The LLCC Appeal

- 1.5 On 2 September 2009, Cable & Wireless UK (C&W) brought an appeal against the LLCC Statement to the Competition Appeal Tribunal (the Tribunal) under s192 of the 2003 Act. The appeal was in relation to TISBO services. Verizon UK Limited (Verizon) and BT both intervened (the Interveners).
- 1.6 On 16 December 2009, the Tribunal referred to the Competition Commission (the CC) the specified price control matters arising in C&W's appeal pursuant to s.193 of the 2003 Act.
- 1.7 On 30 June 2010 the CC notified the Tribunal of their determination of the price control matters⁷.
- 1.8 On 20 September 2010 the Tribunal disposed of the entire appeal (the Ruling)⁸. Having regard to paragraphs 6.120 to 6.217 of the CC's determination and paragraphs 11, 12 and 13 of the Ruling, and pursuant to section 195(3) of the 2003 Act, the Tribunal set the appropriate directions for Ofcom to take in relation to the LLCC Statement in the Annex to its Ruling (see paragraph 1.9).

Directions from the Tribunal to Ofcom

- 1.9 Pursuant to s.195(4) of the 2003 Act, the Tribunal has remitted the decision under appeal to Ofcom with the below directions. The relevant Reference Questions referred to in the Ruling are listed in full in the CC's determination⁹.

“...

2. Subject to paragraph 3 below, in relation to the errors found in Reference Questions

2(aa) and 3(c), the Tribunal directs OFCOM:

(a) to implement a reduction in the price for 2Mbit/s local end rentals of a total £116.76, as indicated in Table 6.6 of the Determination; and

(b) to amend the price control in paragraph G4.5, GG4.5, GH4.5 and H4.5 of Schedules 1, 2, 3 and 5 respectively of Annex 9 to the LLCC Statement, so

⁷ http://www.competition-commission.org.uk/appeals/communications_act/final_determination_excised_version_for_publication.pdf

⁸ http://www.catribunal.org.uk/files/1112_Cable_Wireless_Ruling_200910.pdf

⁹ The Reference Questions for the LLCC Appeal are listed in paragraph 2 of Annex A to CC's determination.

that the Controlling Percentage for the TI Basket specified in paragraphs G4.1(a), GG4.1(a), GH4.1(a), H4.1(a) respectively shall be adjusted in the Relevant Years 2010/2011 and 2011/12 to RPI reduced by 1.75 percentage points, as indicated in Table 6.6 of the Determination.

3. *In the event that the implementation of the remedy in paragraph 2 above does not occur on or before 1 October 2010, the Tribunal directs OFCOM that instead of making the adjustments set out in paragraph 2, it should recalculate the 2 Mbit/s local end price adjustment and the new value of X in accordance with the methodology set out in paragraph 6.187 of the Determination.*
4. *In relation to the error found in Reference Question 4(a)(i), the Tribunal directs OFCOM to assess the reasonableness of the revised BT estimated costs and the determination of the appropriate figure for the new PoH charges.*
5. *In relation to the error found in Reference Question 4(a)(iii), the Tribunal directs OFCOM to assess the various regulatory options for implementing new PoH charges in the light of the matters set out in the Commission's assessment of Reference Questions 4(a)(ii), (iii) and (iv) and in a manner which puts OFCOM in a position to satisfy its relevant statutory obligations.*
6. *In relation to the error found in Reference Question 4(b)(i), the Tribunal directs OFCOM to decide how PoH costs should be recovered in the light of the matters set out in the Commission's assessment of Reference Question 4(b)(i).*

....”

The revised SMP Services Conditions

- 1.10 Pursuant to section 195(6) Communications Act 2003, Ofcom has a duty to comply with the Tribunal's Directions.
- 1.11 As per the Tribunal's directions, the Controlling Percentage for the TI Basket is amended to RPI – 1.75%¹⁰ for the charge control years 2010/11 and 2011/12. Ofcom therefore now adopts the following revisions to SMP Services Conditions G4.5 (a), GG4.5(a), GH4.5(a) and H4.5(a)¹¹. These revisions will take effect from 1st October 2010.

¹⁰ The calculation methodology for the new value of X for the TI Basket is further discussed in paragraphs 6.153 to 6.220 of CC's determination.

¹¹ These conditions can be found in Schedules 1, 2, 3 and 5 of Annex 9 to the LLCC Statement.

- i) “G4.5 Subject to paragraphs G4.6 and G4.7, the Controlling Percentage in relation to any Relevant Year means:
 - (a) for the TI Basket specified in paragraph G4.1(a), RPI reduced by 1.75 ~~3.25~~ percentage points;
 - (b) for the TI Equipment and Infrastructure Basket specified in paragraph G4.1(b), RPI reduced by 0 percentage points;
 - (c) for the TI Ancillary Basket specified in paragraph G4.1(c), RPI reduced by 0 percentage points.”
 - ii) “GG4.5 Subject to paragraphs GG4.6 and GG4.7, the Controlling Percentage in relation to any Relevant Year means:
 - (a) for the TI Basket specified in paragraph GG4.1(a), RPI reduced by 1.75 ~~3.25~~ percentage points;
 - (b) for the TI Equipment and Infrastructure Basket specified in paragraph GG4.1(b), RPI reduced by 0 percentage points;
 - (c) for the TI Ancillary Basket specified in paragraph GG4.1(c), RPI reduced by 0 percentage points.”
 - iii) “GH4.5 Subject to paragraphs GH4.6 and GH4.7, the Controlling Percentage in relation to any Relevant Year means:
 - (a) for the TI Basket specified in paragraph GH4.1(a), RPI reduced by 1.75 ~~3.25~~ percentage points;
 - (b) for the TI Equipment and Infrastructure Basket specified in paragraph GH4.1(b), RPI reduced by 0 percentage points;
 - (c) for the TI Ancillary Basket specified in paragraph GH4.1(c), RPI reduced by 0 percentage points.”
 - iv) “H4.5 Subject to paragraphs H4.6 and H4.7, the Controlling Percentage in relation to any Relevant Year means:
 - (a) for the TI Basket specified in paragraph H4.1(a), RPI reduced by 1.75 ~~3.25~~ percentage points;
 - (b) for the TI Equipment and Infrastructure Basket specified in paragraph H4.1(b), RPI reduced by 0 percentage points;
 - (c) for the TI Ancillary Basket specified in paragraph H4.1(c), RPI reduced by 0 percentage points.”
- 1.12 Consistent with the Tribunal's directions, the price for 2Mbit/s local end rentals (i.e. £686.99) needs to be reduced by a total £116.76¹², as indicated in Table 6.6 of the CC's determination. Ofcom therefore now adopts the following revision to the price of 2 Mbit/s rentals shown in Part 2 of Annex D to Schedules 1, 2, 3 and 5 of Annex 9 to the LLCC Statement. This revision will take effect from 1st October 2010 and the

¹² The level of the adjustment to the price of 2 Mbit/s local end rentals is further discussed in paragraphs 6.153 to 6.220 of CC's determination.

starting price of 2 Mbit/s local end rentals is £570.23. For the avoidance of doubt, the reduction of £116.76 in the price of 2 Mbit/s local end rentals will not count towards BT's compliance with its charge control obligations (i.e. with its requirement to reduce average prices in the TI Basket by 1.75% in real terms).

“Part 2

Services	Initial Price (£)
[...]	[...]
2 Mbit/s local end (external)	570.23 ¹³ 663.76
[...]	[...]
...	

¹³ This is calculated as the price for 2 Mbit/s local end rentals of £686.99 less the level of the adjustment to this price of £116.76 (£686.99 less £116.76 = £570.23).