

Update – MPF Rental at Service Maintenance Level 1

On 31 March 2017 the charge controls set in the 2014 Fixed Access Market Reviews expired. These controls constrained Openreach's charges for, among other services, MPF. We are presently consulting on new charge controls for MPF in the WLA market review to apply from 1 April 2018.¹

We consulted on a proposal to use our direction making powers in the SMP conditions imposed on BT in the Fixed Access Market Reviews to specify the fair and reasonable charge for MPF at Service Maintenance Level 1 (MPF SML1) in the period prior to the introduction of new charge controls.²

In our proposal, we used the best information available to us at the time to derive a fair and reasonable charge; namely, the charge control model prepared for the 2017 WLA Consultation. That model contains a significant amount of information obtained from BT using our statutory information gathering powers. In the 2017 WLA Consultation we are proposing to set a three-year charge control on MPF SML1 that will glide to our forecast of BT's costs in 2019/20 and 2020/21. Whilst recognising that the charge control model is subject to consultation, we proposed to use it as the basis upon which to ensure that Openreach applies a fair and reasonable charge for MPF SML1 at this time. We proposed a fair and reasonable charge of not more than £84.38, which was our estimate of the nominal price in the first year of a glidepath from BT's current price (£85.29) to our proposed charge control nominal estimate for MPF SML1 in 2019/20 (£82.28).

Sky, TalkTalk and Vodafone argued that our proposals should go further.³

Sky argued that there should be no gap between the expiry of charge controls and prices set by direction. We note Sky's point that under our proposals revised charges for MPF SML1 would not apply from 1 April 2017 (the date on which the previous charge control ceased to apply). However, the legal framework permits obligations to be imposed on a prospective

¹ In the 2017 WLA Consultation, available at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/wholesale-local-access-market-review>

² On 2 August 2016 Openreach made a voluntary commitment to cap charges in the WLA market at the existing levels until 31 December 2017. Ofcom responded to that letter on 4 August 2016. TalkTalk raised concerns with Openreach's commitment in relation to the MPF rental charge. The relevant correspondence has been published on our website. Our consultation on MPF SML is available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0031/99751/MPF-SML1-Rental-condoc.pdf

³ Non confidential versions of stakeholder responses can be viewed here: <https://www.ofcom.org.uk/consultations-and-statements/category-3/mpf-rental-at-service-maintenance-level-1>

basis. We note also that prior to setting a direction, as we proposed, we would need to formally notify the European Commission, BEREC and other national regulatory authorities pursuant to section 49B of the Communications Act 2003. That provision requires Ofcom to wait for a period of one month before taking a final decision.

TalkTalk, Sky and Vodafone argued that the fair and reasonable MPF SML1 charge should be lower to reflect starting charge adjustments arising from Ofcom's Cost Attribution Review, which identified several inappropriate allocation methods in BT's regulated accounts. These respondents referred to the starting charge adjustments made in the Leased Lines Charge Controls set in 2016 Business Connectivity Market Review and argued for similar adjustments in the case of MPF.

Whether or not starting charge adjustments are appropriate for charge controls set the WLA market is properly a matter for consideration in the WLA market review. We have set out the detail of our proposals for MPF charge controls in Volume 2 of the 2017 WLA Consultation. We have proposed not to apply starting charge adjustments. Interested parties have until 9 June 2017 to make submissions on all aspects of those charge control proposals and we will address the question of starting charge adjustments for forward-looking charge controls as part of the WLA market review. However, the detail of the charge control model and the policies underpinning it are not within the scope of our consultation on a direction. As explained above, for the purposes of the proposed direction in relation to MPF SML1 we used the best information available to us at the time – i.e. the model as it stands for the purposes of the 2017 WLA Consultation.

TalkTalk argued that we should consider using directions to determine the fair and reasonable charge for other MPF products, not just the rental charge for MPF SML1. We recognise that there are other products and services falling within the scope of the WLA market for which specific charge controls no longer apply. Openreach is required by SMP regulation to offer these services on fair and reasonable charges. We want to ensure that our regulatory powers are targeted at the services that are most important to competition, and therefore consumers. We therefore focussed our proposal on MPF SML1 given that it is the largest WLA service by external revenues by a significant margin.

Sky and Vodafone argued that Ofcom should also direct BT to introduce lower GEA (VULA) charges in advance of the proposed introduction of a charge control on the 40/10 Mbps service from 1 April 2018. TalkTalk also suggested that Ofcom should consider this step. In the 2014 Fixed Access Market Reviews we did not set a charge control on BT's VULA services. Rather, we allowed BT pricing flexibility subject to the obligation to provide VULA services on fair and reasonable terms conditions and charges, as well as the EOI and no undue discrimination requirements. We also imposed requirements in relation to the margin that BT needed to maintain between its wholesale VULA and retail superfast broadband prices. As there is no charge control expiry issue in relation to VULA, we have not considered it appropriate to exercise of our direction making powers for that service at his time. Openreach remains subject to the fair and reasonable charges obligation in relation to all variants of its VULA service as well as the VULA margin control. Our proposals for a GEA charge control on Openreach's 40/10 product from 1 April 2018 are set out in full in the 2017 WLA Consultation.

Openreach has now confirmed that it will reduce its charge for MPF SML1 to £84.38, effective from 1 July 2017. Openreach's letter setting out its position has been published on our website alongside this update. In light of Openreach's commitment to lower its charge for MPF SML1, we no longer consider that it is necessary or proportionate to exercise our direction making powers to specify the fair and reasonable charge. We consider that

Openreach's commitment achieves the same outcome as we proposed in our consultation but brings certainty and clarity to stakeholders at an earlier stage without the need for regulatory intervention.

31 May 2017