
Wholesale Fixed Telecoms Market Review 2021-26

Further consultation on certain proposed remedies

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[Wholesale Fixed Telecoms Market Review 2021-26: further consultation on certain proposed remedies](#) – Welsh overview

CONSULTATION:

Publication date: 6 November 2020

Closing date for responses: 8 December 2020

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1. Overview

In January 2020, we consulted on our wholesale fixed telecoms markets review (WFTMR) for the period April 2021 to March 2026 (the January 2020 Consultation). This included proposed remedies in the markets for physical infrastructure (PI), wholesale local access (WLA), leased lines access (LLA) and inter-exchange connectivity (IEC), in which we provisionally identified BT as having significant market power (SMP). This was followed on 6 February 2020 by the publication of our regulatory reporting consultation, which set out our proposed regulatory financial reporting requirements on BT in these markets.

This document sets out some changes to our proposed remedies for Physical Infrastructure Access (PIA), Dark Fibre Access (DFA) and Dark Fibre Inter-Exchange Connectivity (DFX), which we have made following responses to our January 2020 Consultation. We also make a change to our proposals for the pricing of fibre-to-the-cabinet (FTTC) services provided via Single Order Generic Ethernet Access (SOGEA). Finally, we set out a change regarding how we intend to interpret the basis of charges obligations for PIA ancillaries related to network adjustments, other PIA ancillaries, and contractor excess construction charges (ECCs) and include proposals on associated regulatory financial reporting obligations.

What we are proposing

PIA pricing: To base the contributions that PIA customers should make for multi-bore duct and chamber products using a simple percentage figure, rather than basing them on utilisation at a particular point in time.

DFA/DFX pricing: A revision to the proposed dark-fibre charge controls, based on new evidence relating to the allocation of costs in BT's regulatory financial statements (RFS).

DFA implementation: To extend the DFA implementation period to 4.5 months from the publication of our statement for all essential elements of the product (provision and repair), and 14 months from statement for all non-essential elements of the product (including billing, novation and service level agreements) and compliance with Ofcom's quality of service standards.

SOGEA: To charge control FTTC 40/10 service provided via SOGEA at CPI-0%, rather than on a fair and reasonable basis.

Basis of charges obligation: To interpret the basis of charges obligations for PIA ancillaries related to network adjustments and other PIA ancillaries by reference to fully allocated costs, and contractor ECCs on the basis of cost pass through plus mark-ups. We also propose some small changes to the legal conditions and propose to require BT to provide us with cost information on these services as part of its regulatory reporting requirements.

Next steps

The closing date of this consultation is 8 December 2020. We expect to publish our final decision relating to the wholesale fixed telecoms market review by 31 March 2021.

2. Introduction

Our January 2020 Consultation

- 2.1 In the January 2020 Consultation we proposed to find BT to have SMP in certain wholesale fixed telecoms service markets. In those markets our proposed remedies included the following:
- Physical Infrastructure (PI): PIA
 - Wholesale Local Access (WLA): SOGEA
 - Leased Lines Access (LLA): DFA
 - Inter-Exchange Connectivity (IEC): DFX
- 2.2 In this Consultation, we are proposing to change some aspects of the proposed PIA, DFA and DFX remedies in view of stakeholder responses to the January 2020 Consultation. We are also modifying our proposals for the pricing of SOGEA, and the basis of charges obligations for PIA ancillaries.
- 2.3 We have also received other comments on the above remedies. We are still considering these and will address them in our Statement.

Impact Assessment and Equality Impact Assessment

- 2.4 The further analysis presented in this document constitutes an impact assessment as defined in Section 7 of the Communications Act 2003. Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policymaking. This is reflected in section 7 of the Act, which means that, generally, we have to carry out impact assessments in cases where our conclusions would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. However, as a matter of policy we are committed to carrying out impact assessments in relation to the great majority of our policy decisions.
- 2.5 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on equality. Equality Impact Assessments (EIAs) also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers. Annex 10 of the January 2020 Consultation sets out our EIA in relation to our proposals including the remedies considered in this further consultation. We do not consider that our EIA is altered by the revised proposals set out in this consultation.

3. PIA pricing

January 2020 Consultation

- 3.1 Section 5 of the January 2020 Consultation described the methodology we propose to apply to calculate the costs of PIA rental.
- 3.2 We proposed that external PIA charges are set as a share of the unit costs of each service. The shares used for the price modelling were based on various assumptions which we considered met our objective of ensuring a level playing field exists between Openreach and competing telecoms providers, whilst providing Openreach with an opportunity to recover its efficiently incurred costs. We explained that achieving our objectives involves the use of regulatory judgement, particularly as there is uncertainty as to how exactly competing telecoms providers will use PIA in their network deployments.
- 3.3 We are consulting in this document on a revised proposal for the shares of unit costs that PIA users pay when using spine ducts with two bores, spine ducts with three or more bores, joint boxes or manholes.
- 3.4 In the January 2020 Consultation, we proposed the following shares:¹

Table 3.1: Shares of unit costs as proposed in the January 2020 Consultation

Network element	Share
2 bore	19%
3+ bore	9%
Joint box	3%
Manholes	14%

- 3.5 We explained the rationale behind these shares in paragraphs 5.31 and 5.34:²
- Spine ducts with two bores, and spine ducts with three or more bores: These ducts are ultimately used to serve a greater number of premises than single bore spine ducts. In general, the greater the number of bores, the greater the number of premises served by that duct.³ For the purposes of setting a charge control, our proposals considered it reasonable to assume that competing telecoms providers deploying one sub-duct⁴ will not compete for all end customers served by multi-bore spine duct, and/or that there

¹ It should be noted that these are rounded figures and actual figures we applied when proposing prices were to several decimal places.

² We are not making new proposals on lead-in and single bore so have not included descriptions of our previous proposals here.

³ In general, in BT's tree and branch network architecture, a duct that is closer to the exchange has more bores and carries more cables.

⁴ Where competing telecoms providers install multiple subducts, they will pay multiple charges and thus pay a larger share of the unit cost.

is greater potential for multiple competing telecoms providers to be sharing these ducts. Therefore, we considered that competing telecoms providers should pay a smaller share of the unit cost of these multi-bore spine ducts than they do for single-bore spine ducts.⁵ We proposed shares based on the PIA pricing methodology used in 2018 WLA and 2019 PIMR, which estimated shares based on the most recent average number of 25mm diameter sub-duct equivalents in that type of duct across BT's network.⁶

- Joint Boxes and Manholes: competing telecoms providers and Openreach can simultaneously use manholes and joint boxes to provide services to consumers. We considered it reasonable to assume that competing telecoms providers installing one sub-duct would not compete for all end customers served by these chambers, and/or that there is greater potential for multiple competing telecoms providers to be sharing these chambers. We proposed shares based on the PIA pricing methodology used in 2018 WLA and 2019 PIMR. This estimated shares again using the most recent average number of 25mm diameter sub-duct equivalents in the types of duct accessing manholes or joint boxes.

Stakeholder responses

- 3.6 Two stakeholders submitted responses on this issue, Openreach and BT Group.⁷
- 3.7 Openreach agreed with our objectives but argued that basing the shares of unit costs on the latest utilisation data (i.e. average number of 25mm diameter sub-duct equivalents in the relevant duct) was not appropriate and would lead to pricing instability.
- 3.8 Openreach said that in some cases utilisations had increased reflecting its own FTTP network deployment and would rise further in the short term as more fibre is deployed and fibre and copper networks are run concurrently. Openreach argued that updating the utilisations over time would lead to a falling share of unit costs that a PIA user pays, with Openreach being asked to contribute an increasing share of costs even though its share of value (in terms of the proportion of potential customers it could connect to) remained unchanged. Moreover, in the long-term utilisations are likely to fall (and PIA prices will rise) as copper cables are retired.
- 3.9 Openreach requested that we review the allocation of costs. It suggested that a fairer allocation should be based on the number of network operators expected to serve customers in an area. It proposed that shares for multi-bore duct services should adopt a similar methodology to that used for lead in and single bore duct services but assume

⁵ We proposed that where a second telecoms provider uses single bore spine duct, the costs would be shared equally between them, each paying 50%. For the purposes of setting a charge control, we considered it reasonable to assume that competing telecoms providers deploying one sub-duct would be able to compete for the same end customers served by that duct in the medium term.

⁶ See paragraph 5.65 of Volume 3 of the 2018 WLA Market reviews

(https://www.ofcom.org.uk/_data/assets/pdf_file/0023/112469/wla-statement-vol-3.pdf) and paragraph A25.9 in Annex 25 (https://www.ofcom.org.uk/_data/assets/pdf_file/0020/112493/wla-statement-annexes-17-27.pdf)

⁷ BT Group referred to Openreach's response and made the same arguments. See BT Group response, paragraphs 6.25 to 6.29.

three rival networks. That might lead to shares of one third each for dual and multi-bore ducts and manholes. Shares for joint boxes would be higher as these are nearer the edge of the network and so connect lead in and single bore duct routes as well as multi-bore duct routes. Openreach estimated a weighted average share of around 46%.

Our revised proposal and reasoning

- 3.10 Given these responses, we are proposing to modify our approach to setting the shares for multi-bore duct and chamber products.⁸ We are proposing to break the direct link between the latest utilisation data and the calculation of those shares.
- 3.11 As explained above, in our January 2020 Consultation, we proposed shares based on the PIA pricing methodology used in 2018 WLA and 2019 PIMR.⁹ This was the approach used in the original 2011 pricing model constructed by Openreach. In 2018 WLA, we updated the utilisation assumptions, alongside all other inputs to the model, to ensure that it was based on the best data possible. In our January 2020 Consultation, we again updated the utilisation assumptions.¹⁰
- 3.12 We based our assessment of the reasonableness of the pricing approach we adopted in the January 2020 Consultation on whether the resulting shares of unit costs that a PIA user would pay were appropriate given our objectives. It was not our intention that the share of unit costs that a PIA user would pay would fall in future review periods as Openreach (or any other telecoms provider using PIA) deploys an FTTP network.
- 3.13 We recognise that the increases in utilisations since 2018 WLA are likely to reflect Openreach's FTTP deployments, at least in part.¹¹ In addition, the most recent data we have from Openreach shows that utilisations have again risen since those used in January 2020 Consultation, mainly as a result of increased fibre deployment by Openreach.¹²
- 3.14 Although any decisions on the approach to PIA pricing in future market reviews would take account of all relevant factors at the time, we acknowledge that using the latest utilisation figures to determine the precise share of unit costs risks setting an expectation that the share of unit costs will fall in future review periods. We also note Openreach's arguments that that trend might subsequently be reversed if Openreach were to remove copper cables from its network post-copper retirement. If that were to happen, that would not be in the interest of ensuring stable prices in the long run.
- 3.15 We therefore propose to set the shares for multi-bore duct and chambers products as a simple percentage figure, rather than basing them solely on utilisation figures at a point in time. We think this sends a clearer signal to all stakeholders that the share of unit costs will

⁸ We do not propose revising our approach to the shares of lead in or single bore that we proposed in the January 2020 Consultation.

⁹ The 2019 PIMR just set prices were set equal to the WLA price

¹⁰ Using data provided by Openreach in the response dated 11 October 2019 to the s.135 notice titled Promoting investment and competition in fibre networks dated 27 September 2019, question 9.

¹¹ Part of the increase could also be down to improvements in the quality of Openreach's utilisation data.

¹² Openreach response dated 2 June 2020 to question 4 of our s135 request date 6 May 2020.

not automatically change (i.e. fall) as a result of Openreach or rival telecoms providers deploying more network in BT's physical infrastructure. This is similar to our approach to single bore and 2 bore duct, where the share of unit costs is set at 90% and 50% respectively.

- 3.16 As we noted in the January 2020 Consultation, setting these shares involves the use of regulatory judgement, given the uncertainty as to how exactly competing telecoms providers will use PIA in their network deployments. This judgement is based on our assessment of how competing telecoms providers might use the physical infrastructure over the medium term, the opportunity to earn revenues related to that usage, and the consequential impact on Openreach's opportunity to earn revenues from its own network.
- 3.17 We do not agree with Openreach's proposal to base these shares on an assumption that there are three competing operators throughout the network. Multi-bore duct and chambers tend to be located further inside the Openreach network (i.e. closer to the exchange with cables that go on serve many more premises). Given this, we remain of the view that it is reasonable to assume that competing telecoms providers deploying one sub-duct¹³ will not compete for all end customers served by that duct/chamber, and/or that there is greater potential for multiple competing telecoms providers to be sharing these ducts/chambers.
- 3.18 Consistent with this, we propose to base the shares on simple percentage figures which are similar to the shares we consulted on in the January 2020 Consultation¹⁴, and the shares used to determine the PIA rental prices in place today. The shares we propose are given in the table below. We consider that these shares are appropriate given our objective of ensuring a level playing field exists between Openreach and competing telecoms providers, whilst providing Openreach with an opportunity to recover its efficiently incurred costs.

Table 3.2: Proposals vs original methodology

Network element	Current Proposal	2018 WLA/ 2019 PIMR	Jan 2020 Proposal
2 bore	25.0%	22.1%	19.3%
3+ bore	10.0%	9.8%	8.8%
Joint Boxes	15.0%	14.4%	14.4%
Manholes	3.3%	3.3%	3.3%

- 3.19 We consider that these proposed shares reflect reasonable assumptions for how BT's physical infrastructure might be used by other telecoms providers. In January, we said that it is reasonable to assume that competing telecoms providers deploying one sub-duct will not compete for all end customers served by multi-bore spine duct, and/or that there is

¹³ Where competing telecoms providers install multiple subducts, they will pay multiple charges and thus pay a larger share of the unit cost.

¹⁴ We note that for 2 bore duct the share has increased from the January 2020 proposal, but we explain why we think this is appropriate in paragraph 3.19.

greater potential for multiple competing telecoms providers to be sharing these ducts. With respect to the specific shares we are now proposing, we observe the following:

- 2 bore duct: a share of 25% is consistent with an assumption that a competing telecoms provider deploying one 25mm sub-duct will compete for 50% of the customers ultimately served by that 2 bore duct. Under this assumption, the competing telecoms provider would share half of the costs of that 2 bore duct equally with Openreach.¹⁵ We consider this to be a reasonable assumption, noting there is uncertainty about how competing telecoms providers will use PIA.¹⁶
- 3+ bore duct: a share of 10% is consistent with an assumption that a competing telecoms provider deploying one 25mm sub-duct will compete for 20% of the customers ultimately served by that 3+ bore duct. Under this assumption, the competing telecoms provider would share one-fifth¹⁷ of the costs of that 3+ bore duct equally with Openreach.¹⁸ We consider this to be a reasonable assumption, noting there is uncertainty about how competing telecoms providers will use PIA.¹⁹
- Joint boxes: telecoms providers pay for each entry and exit (so the share for an entry and an exit is 30%). As most joint boxes are nearer the periphery of the Openreach network it would be expected that joint boxes are generally used to connect duct routes with relatively few bores. A share of 30% lies between the share for single bore duct (50%) and the share for 2 bore duct (25%) and is consistent with recent utilisation statistics.
- Manholes: telecoms providers again pay for each entry and exit (so the share for an entry and an exit is 6.6%). These are generally located deeper within Openreach's network and so will have many routes entering and exiting. The chances of a CP deploying one sub-duct competing for all customers served by routes entering and exiting manholes is therefore much reduced. As most manholes are probably used to connect routes involving multi bore ducts – mainly 3+ bores – it might be expected that that an appropriate share might be around half of the 3+ bore duct routes, i.e. around 5%. For manholes, the share we are proposing is slightly lower than this but is consistent with the share we proposed in both the 2018 PIMR and the January 2020 Consultation based on utilisation measures.

¹⁵ i.e. 50% of the cost shared equally (50% each) = $50\% \times 50\% = 25\%$.

¹⁶ Given this uncertainty, we cannot rule out the possibility that a competing telecoms provider deploying one 25mm sub-duct could compete for more than 50% of the customers ultimately served by the 2 bore duct. Even in the extreme case where a competing telecoms provider deploying one 25mm sub-duct could compete for all customers ultimately served by the 2 bore duct, a share of 25% would not be without foundation. A share of 25% could be justified on the basis that the competing telecoms provider would only be using one of the two bores, and if half the costs were attributed to each bore, a share of 25% of the total cost would be consistent with sharing the costs of that bore equally with Openreach.

¹⁷ We note that it seems plausible that routes with 3 or more bores have roughly 5 bores on average in each route. Therefore, it seems reasonable to assume that these routes serve 2.5 times as many customers as 2 bore duct.

¹⁸ 20% of the cost shared equally (50% each) = $20\% \times 50\% = 10\%$.

¹⁹ Given this uncertainty, we cannot rule out the possibility that a competing telecoms provider deploying one 25mm sub-duct could compete for more than 20% of the customers ultimately served by the 3+ bore duct. Even in the extreme case where a competing telecoms provider deploying one 25mm sub-duct could compete for all customers ultimately served by the 3+ bore duct, a share of 10% would not be without foundation. A share of 10% could be justified on the basis that the competing telecoms provider would only be using one of the five bores, and if one-fifth of the costs were attributed to each bore, a share of 10% of the total cost would be consistent with sharing the costs of that bore equally with Openreach.

Impact of our proposals

3.20 To provide stakeholders with an assessment of the impact of our proposals, the table below shows the revised 'X's that result from applying these revised shares on our 2017 model.²⁰

Table 3.3: Comparison of proposed control for duct and footway box PIA services

PIA service	Current charge ²¹	Charge at April 2021	Jan 2020 Consultation: control to 2025/26 ²²	New proposal: control to 2025/26 ²³
Duct services				
Facility in Spine duct per metre – 2 bores	£0.18	£0.19	CPI - 2.0%	CPI + 3.9%
Facility in Spine duct per metre – 3+ bores	£0.13	£0.14	CPI - 2.0%	CPI + 1.4%
Footway box services				
Facility hosting (per manhole entry)	£8.66	£8.87	CPI + 0.4%	CPI + 2.1%
Facility hosting (per joint box entry)	£2.08	£2.14	CPI + 0.8%	CPI + 1.8%

Consultation question

Question 3.1: Do you agree with our revised proposals relating to calculating the shares of unit costs to be reflected in PIA rental charges? Please set out your reasons and supporting evidence for your response.

²⁰ These calculations are based on the model we published alongside the January consultation that used 2017/18 base data. As noted above we intend updating the model in the statement to use 2019/20 base data.

²¹ Openreach. [Product Prices: Physical Infrastructure Pricing](#) [accessed 14 October 2020]

²² Note that we present the control as CPI +/- X but the legal condition will present it as 1 + CPI +/- X as the control is applied to the previous year's price.

²³ Making this modelling change affects the way the unit cost is attributed to each service, leading to a change to the CPI +/- X. The calculations are explained in Annex 20 of the January 2020 Consultation.

4. Dark fibre pricing

- 4.1 In the January 2020 Consultation, we proposed a requirement for BT to provide DFA in Area 3 of the LLA market and DFX in the IEC market. In this consultation, we are proposing a revision to the proposed dark-fibre charge controls based on new evidence relating to the allocation of costs in BT's RFS. We also provide some further clarity relating to the proposed pricing of dark fibre ancillary services.

January 2020 Consultation

- 4.2 In the January 2020 Consultation, we proposed to impose a cost-based charge control on DFA and DFX with the following aspects:
- **Cost standard** – charges are based on current cost accounting (CCA) fully allocated costs (FAC) from either BT's Regulatory Financial Statement (RFS) or our own estimates when the RFS did not contain the relevant information.
 - **RFS costs based on active ethernet services** – dark fibre service charges follow a similar structure as charges for an EAD circuit i.e. a connection charge, a fixed annual rental charge and a distance-related annual main link charge. We also proposed a separate one-off charge for initial testing and a per annum charge associated with using a patch panel (both at the customer end and a BT exchange).
 - **Charge control design** – we set maximum charges for each dark fibre service as we do not consider a basket approach to be appropriate for these services.
 - **Pricing of ancillary dark fibre services** – we identified two ancillary services specific to providing dark fibre services: a cessation charge and a right when tested (RWT) charge. Where existing ancillary services are relevant to providing dark fibre services (e.g. TRCs and ECCs), we proposed that they are offered and charged on the same basis as for active services.

Clarification of proposals

- 4.3 On 30 September 2020, we published a letter sent to Openreach that clarified our proposals for setting a cost-based charge control for dark fibre services.²⁴ We explained that as with MPF and FTTC services, our proposal in the January 2020 Consultation was to set the charge control for dark fibre services based on Openreach's national costs.
- 4.4 We consider that our proposed approach allows Openreach cost recovery overall (i.e. across Area 2 and Area 3) and is consistent with cost recovery over time. We also consider that setting charges based on national costs will allow for the recovery of forward-looking incremental costs in Area 3.

²⁴ [Ofcom's proposed approach to setting prices for dark fibre services](#), September 2020,

Revised charges and CPI-X controls for dark fibre

4.5 We are proposing a revision to the proposed dark fibre charge controls based on the new allocation of fibre and duct costs in the most recent RFS. This new allocation of costs impacts the initial charges for connections, rentals, and main link but has no impact on the ancillary services.

4.6 We set out our proposed ranges for dark fibre initial charges and Xs based on new evidence in Table 4.1 below:

Table 4.1: Initial charges in 2021/22 and charge control X's for dark fibre services²⁵

	Access tail (single fibre)	Access tail (dual fibre)	Inter-exchange (single fibre)	Inter-exchange (dual fibre)
Connection (per circuit)	£1280 to £1560 (CPI-3.2% to CPI+0.3%)	£2560 to £3120 (Xs same as single fibre)	£290 to £360 (CPI-8.8% to CPI-2.4%)	£580 to £720 (Xs same as single fibre)
Rental (per circuit per year)	£830 to £1120 (CPI-8.8% to CPI-4.8%)	£1660 to £2240 (Xs same as single fibre)	£30 to £40 (CPI-8.0% to CPI-4.0%)	£60 to £80 (Xs same as single fibre)
Main link dark fibre (per metre per year)	n/a	n/a	£0.08 to £0.11 (CPI-6.1% to CPI-2.1%)	£0.16 to £0.22 (Xs same as single fibre)
Patch panel at customer premises (per panel per year)	£19 (CPI-0%)	£19 (CPI-0%)	£19 (CPI-0%)	£19 (CPI-0%)
Patch panel at exchange (per panel per year)	£86 (CPI-0%)	£86 (CPI-0%)	£86 (CPI-0%)	£86 (CPI-0%)
Initial testing	£119 (CPI-0%)	£119 (CPI-0%)	£119 (CPI-0%)	£119 (CPI-0%)
Cessation charge	£170 (CPI-0%)	£170 (CPI-0%)	£170 (CPI-0%)	£170 (CPI-0%)
RWT charge	£305 (CPI-0%)	£305 (CPI-0%)	£305 (CPI-0%)	£305 (CPI-0%)
TRCs for dark fibre	Same as for actives	Same as for actives	Same as for actives	Same as for actives
ECCs for dark fibre	Same as for actives	Same as for actives	Same as for actives	Same as for actives

Source: Ofcom top-down cost model

²⁵ Note that we present the control as CPI +/- X% but the legal condition will present it as 1 + CPI +/- X% as the control is applied to the previous year's price.

4.7 We have continued to calculate the proposed initial charges using 2017/18 RFS costs but will use the most up-to-date and appropriate cost information for the Statement. Therefore, we have made the following adjustments to account for expected improvements in the allocation of 2019/20 RFS costs:

The 2017/18 RFS costs are based on usage factors that assume the average EAD standard circuit has two access fibre ends. We consider this to be an over-simplification that results in some 2017/18 access fibre costs being allocated away from EAD LA to EAD standard. We expect the updated base year costs to reflect new usage factors that improve the allocation of access fibre costs between EAD standard and EAD LA.²⁶

We expect changes in the 2019/20 RFS allocation of access fibre and duct costs.²⁷ These changes will result in a reallocation of fibre and duct costs from WLA fibre services to Ethernet access services, resulting in an increase in local access costs for dark fibre. We also expect a reduction in costs for DFX.

4.8 In our January 2020 Consultation, the proposed CPI-X controls were estimated using our base case cost forecast assumption (e.g. base case efficiency, Service Level Guarantee (SLG) costs, cumulo costs).²⁸ However, in this consultation we have proposed ranges that are constructed to account for the uncertainty with regards to our cost forecasts in our top-down model.

4.9 In response to the January 2020 Consultation, Openreach argued that the proposed DFA remedy will result in additional costs due to rapid migration to dark fibre. We are still considering this issue and will address it in the Statement. However, we expect that the proposals in our January 2020 Consultation to charge control leased line active services in Area 3 at CPI-0% could allow for the expected recovery of these additional costs. Therefore, consistent with our January 2020 Consultation, the CPI-X ranges above for dark fibre services do not account for these additional costs.

Dark fibre ancillary services

4.10 In our January 2020 Consultation, our proposal for pricing ancillary services was in general to set a CPI-0% cap, with a few exceptions. However, we proposed CPI-CPI charge controls for patch panels and initial testing which did not reflect our policy position. By way of clarification, we consider the patch panel and initial testing services to be dark fibre ancillary services. Therefore, consistent with our approach with other dark fibre ancillary services, we are proposing a CPI-0% charge control for patch panel and initial testing service charges.²⁹

²⁶ See Section 3.27 of [BT's Change Control Notification](#), 31 March 2020.

²⁷ See Section 3.25 and Section 3.26 of BT's Change Control Notification, 31 March 2020

²⁸ We set out our forecasting assumptions for the top-down cost model in the January 2020 Consultation, see paragraphs A16.50 to A16.119, https://www.ofcom.org.uk/data/assets/pdf_file/0031/188923/wftmr-annexes-1-23.pdf

²⁹ We note that the draft legal instruments in our January 2020 Consultation proposed CPI-CPI charge controls for patch panels and initial testing which did not reflect our policy position. We have proposed amendments to SMP condition 121.6 to reflect our policy intentions.

Consultation question

Question 4.1: Do you agree with our revised proposals relating to dark fibre pricing?
Please set out your reasons and supporting evidence for your response.

5. Dark Fibre Access implementation

Introduction

5.1 In our January 2020 Consultation, we proposed to require BT to introduce a DFA product in Area 3 of the LLA market within one month of our statement. In this section, we set out stakeholder responses on this issue, and our revised proposals and reasoning. In summary, we now propose to require a phased approach to the launch of DFA in Area 3 of the LLA market, with a soft launch on 17 August 2021 and a full launch on 1 June 2022.

January 2020 Consultation

5.2 We proposed to require BT to launch the DFA product, including the publication of the Reference Offer (RO), within one month of the publication of our statement. We said this DFA product should be comparable to the optical elements of the corresponding active wholesale products, i.e. EAD and EAD LA products used for access (parity requirement).

5.3 We proposed to require BT to include in the DFA RO certain information including on Service Level Agreements (SLAs) and Service Level Guarantees (SLGs) for the completion of provision of service and fault repair times, which it would have to agree as part of industry negotiations regarding product specification within this RO. We also proposed that Openreach would be required to meet certain Quality of Service (QoS) requirements in relation to the provisioning and repair of DFA.

Stakeholder responses

5.4 Openreach was the only stakeholder to provide substantial comments on the DFA implementation timeframe. It said our proposed DFA implementation timescales are not realistic given the system development and training required. It argued that June 2022 is a sensible date for full product launch.³⁰

Our revised proposal and reasoning

Our revised proposals

5.5 In response to Openreach's comments and our subsequent engagement with them, and on the basis that we expect the relevant SMP conditions to come into force on 1 April 2020, we are now proposing a longer implementation period for DFA. This comprises a soft launch by 17 August 2021 and a full launch by 1 June 2022, as set out in Table 5.1 below.

³⁰ Openreach response to the January 2020 Consultation, paragraphs 1.23(c)(iii) and 7.185-7.251.

Table 5.1: Summary of proposed DFA implementation obligations on BT

	17 August 2021 – soft launch	1 June 2022 – full launch
Functionality	BT to automate DFA provision from 17 August 2021 and DFA repair from October 2021. ³¹	BT to automate all non-essential DFA functionality (e.g. novation ³² and billing).
Reference Offer³³	BT to publish DFA RO agreed as part of industry negotiations. This excludes SLAs and SLGs.	BT to publish DFA RO, to include SLAs and SLGs agreed as part of industry negotiations.
Parity with active wholesale products	DFA, to the extent implemented, to be comparable to the optical elements of the corresponding active wholesale products (i.e. EAD and EAD LA).	DFA to be comparable to the optical elements of the corresponding active wholesale products (i.e. EAD and EAD LA).
Quality of Service	Reporting requirements apply from 1 April 2021. Key Performance Indicators (KPIs) requirements apply.	QoS standards apply. Compliance will begin from 1 June 2022.

Our reasoning

- 5.6 We consider that our revised proposal for DFA implementation is appropriate and proportionate to support the DFA obligation, and in relation to BT’s market power in Area 3 of the LLA market.
- 5.7 The aim of our proposals for DFA implementation is to enable telecoms providers to consume DFA at scale as soon as possible. In designing this requirement, we have taken into account all other DFA proposals, including the proposed parity requirement.

One-month DFA implementation period is insufficient

- 5.8 In our January 2020 Consultation we set out our reasoning for proposing a one-month implementation period for DFA. In particular, we noted that Openreach published a dark fibre RO in December 2016 following the publication of the BCMR 2016 in April 2016. We did not consider it necessary for Openreach to make significant amendments to the 2016 DFA product to reflect its implementation in Area 3 of the LLA market. Furthermore, we

³¹ DFA repair would be available as a manual process between 17 August 2021 and October 2021.

³² The novation service enables communications providers already established as Openreach customers to request the transfer of specific product contracts from one legal entity to another. This facility can be of use in business change scenarios such as merger and acquisitions, sale or corporate re-structuring. See [Openreach price list](#).

³³ The effect of draft SMP condition 7.10 of the proposed legal instruments in the January 2020 Consultation would have been to require Openreach to publish both a DFA RO and a DFX RO within one month of our statement. Given that, following the BCMR 2019, Openreach has already published a DFX RO, we are proposing to revise draft SMP condition 7.10 to remove the DFX RO from the scope of this condition. This would require Openreach to publish a DFX RO either on the day of our statement or to have already published one prior to that day.

noted that Openreach has experience in launching a dark fibre product, having already done so with DFX for the inter-exchange market following the BCMR 2019.

- 5.9 In its response, Openreach explained that it cannot reuse the 2016 DFA remedy because, [§]. Openreach also said it has been over four years since the 2016 DFA design was completed and that in the intervening time period numerous system and product enhancements have been implemented for the EAD product journey. Therefore, in order to ensure that the 2021 DFA remedy is comparable to the current Openreach active wholesale products, Openreach said it would need to build the 2021 DFA remedy into the current EAD component codebase rather than re-build in line with the 2016 DFA design.³⁴
- 5.10 Openreach said it is not possible to complete this task within one month. Instead it suggested an alternative DFA implementation timeframe with a soft launch that includes automation of all essential features of the product (provision and repair) on 1 October 2021, and a full launch that includes automation of all non-essential features of the product (e.g. novation, billing, SLGs) and introduction of QoS standards on 1 June 2022.³⁵
- 5.11 Based on this new information, we now consider that a one-month implementation period is insufficient to fully launch the DFA product.

Manual DFA launch is not appropriate

- 5.12 We explored the option of requiring a manual launch of the DFA product (i.e. without systems development) within one month from the date of our statement. According to Openreach, a manual launch would involve it setting up a dedicated 'live desk' staffed with trained people to manage the orders. At each stage in the order process, one of those people would need to acknowledge and action the task in order to progress to the next stage of the process.³⁶
- 5.13 In its response to the January 2020 Consultation, Openreach noted three main issues with a manual launch:
- a) **No parity with EAD:** Openreach said that a manual launch would result in a lower quality product that is not compliant with the requirement for parity with EAD products. A manual process would be limited in the number of orders it could physically process. Telecoms providers would not have the ability to change, modify and track order progress without contacting Openreach. Openreach also said that "[...] for every human 'touch point' involved in processing an order journey, the likelihood of an (unintentional) error increases".³⁷

³⁴ Openreach response to the January 2020 Consultation, paragraphs 7.200-7.204.

³⁵ Openreach response to the January 2020 Consultation, paragraphs 7.218-7.219.

³⁶ Openreach response to the January 2020 Consultation, paragraph 7.238.

³⁷ Openreach response to the January 2020 Consultation, paragraphs 7.239 and 7.241-7.244.

- b) **Poor customer experience:** Openreach said a manual process would also deliver a poor customer experience. The CP would need to set up a corresponding manual facility to receive and retrieve order information.³⁸
- c) **Delay to full DFA launch:** Openreach said designing a manual solution would divert key Openreach design resources away from developing a strategic product (as work would need to be focused in the short term on developing manual process solutions). Diverting this resource would delay the progress of a strategic design, and the allocation to a future systems release would be unavoidably delayed.³⁹
- 5.14 In our subsequent correspondence, Openreach submitted that a manual launch would push back the soft and full launches suggested in its consultation response by four months.⁴⁰
- 5.15 Based on the above information, we have identified two possible approaches for DFA implementation. We could require Openreach to do a manual launch of the DFA product followed by a soft automated launch (automation of provision and repair) and full automated launch (automation of all non-essential functionality). This scenario would provide a manual process for consuming DFA on 1 May 2020 followed by a soft automated launch on 1 February 2022 and full automated launch on 3 October 2022. Alternatively, we could require Openreach to do only the soft and full automated launches. This would mean that DFA would not be available in any form until the soft automated launch for provision on 17 August 2021⁴¹ but would lead to earlier introduction of a fully automated product on 1 June 2022.
- 5.16 We believe telecoms providers are interested in consuming a DFA product that is on par with active leased lines (parity requirement) and to do so at scale. We do not believe that a manual DFA launch would satisfy either of these requirements. In particular, a manual launch of the DFA product would result in an inferior product with poor customer experience during the first phase of implementation and a four-month delay to the second and third phase. We therefore believe that a manual DFA launch would not be appropriate.

Setting an appropriate DFA implementation period

- 5.17 In its response to the January 2020 Consultation, Openreach set three main areas of work for DFA implementation:
- **System development:** Openreach said DFA would require seven systems releases in total to deliver a complete solution, four of which will be dedicated to deliver the essential features of the product (provide and repair). Openreach said all systems

³⁸ Openreach response to the January 2020 Consultation, paragraph 7.245.

³⁹ Openreach response to the January 2020 Consultation, paragraph 7.247.

⁴⁰ Email from [redacted] (Openreach) to [redacted] (Ofcom), entitled "DFA implementation", dated 29 October 2020.

⁴¹ This soft launch date for provision was identified by Openreach and Ofcom in a meeting dated 22 September 2020. See paragraph 5.18 below. DFA repair will be available as a manual process from 17 August 2021 and as an automated process from October 2021.

releases up to March 2021 are taken up with changes either agreed with its customers or developments underpinning the critical DPA and FTTP products.⁴²

- **Contracts:** Openreach said it would need to negotiate and agree with industry a RO and product documentation to support the DFA remedy.⁴³
- **Operational readiness:** Openreach said it would need to implement a national training programme for its desk and field teams. Openreach said training would need to be staggered and targeted so that it does not disrupt or have a negative impact on other products, such as EAD or FTTP.⁴⁴

5.18 Since its consultation response, we have had a number of meetings⁴⁵ with Openreach to understand better the steps involved in DFA implementation and explore ways in which the DFA remedy could be implemented as soon as possible. As a result of this engagement, Openreach has provided an expedited implementation plan for the DFA product. This is set out in Figure 5.2 below.

Figure 5.2: Openreach proposed expedited DFA implementation timeline



Note: DFA repair will be available as a manual process from 17 August 2021 and as an automated process from October 2021.

Source: Openreach response to the January 2020 Consultation, meetings between Ofcom and Openreach regarding DFA implementation dated 30 July 2020 and 22 September 2020.

5.19 Based on Openreach’s response and our subsequent engagement, we believe that the revised implementation plan set out in Figure 5.2 is appropriate. In particular, we believe this ensures the quickest implementation (4.5 + 9.5 months) of an automated DFA product⁴⁶ that can be used at scale. This is longer than our original proposal (1 month), but less than Openreach’s proposal included in its consultation response (6 + 8 months) and less than a scenario with an additional manual launch (1 + 9 + 8] months).

5.20 In relation to QoS, we propose to make no changes to the reporting requirements. This is to ensure that Ofcom and stakeholders can begin monitoring the DFA product as soon as it becomes available and regardless of the implementation stage. However, we now propose to apply QoS standards to DFA product in Area 3 of the LLA from 1 June 2022, the date of the full launch of the DFA product. This is to allow Openreach to fully implement and

⁴² Openreach response to the January 2020 Consultation, paragraphs 7.205-7.217.

⁴³ Openreach response to the January 2020 Consultation, paragraphs 7.220-7.225.

⁴⁴ Openreach response to the January 2020 Consultation, paragraphs 7.227-7.236.

⁴⁵ Meetings between Ofcom and Openreach regarding DFA implementation dated 30 July 2020 and 22 September 2020.

⁴⁶ DFA repair will be available as a manual process from 17 August 2021 and as an automated process from October 2021.

automate the DFA product before it is obliged to comply with the proposed QoS standards. We also expect take-up to be gradual between soft and full launch which would likely result in volatile QoS performance.

- 5.21 In order to avoid delays in implementation, we would actively monitor progress. This is consistent with our approach to the revision of the PIA remedy in 2018 and the introduction of the DFX remedy in 2019.

Consistency with the BEREC Common Position

- 5.22 In formulating our proposals above, we have taken utmost account of the BEREC Common Positions on wholesale leased lines⁴⁷ which appear to us to be particularly relevant in this context. Specifically, we have taken into account the contents of BR16b on requiring SMP operators to publish a Reference Offer within reasonable time. We consider that our proposals are consistent with the best practice set out in the BEREC Common Position.

Consultation question

Question 5.1: Do you agree with our revised proposals relating to DFA implementation? Please set out your reasons and supporting evidence for your response.

⁴⁷ BEREC, 2012. [BEREC Common Position on best practice in remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale leased lines](#) (BoR (12) 126), [accessed 27 October 2020]

6. SOGEA pricing

Introduction

- 6.1 Virtual Unbundled Local Access (VULA) services are provided by Openreach using its Fibre to the Cabinet (FTTC) deployment in two ways:
- a) By supplying VULA as an overlay to the existing copper services it has developed (i.e. WLR and MPF); or
 - b) Via Single Order Generic Ethernet Access (SOGEA) where the copper bearer is included within the VULA service so that it can be purchased without also purchasing WLR or MPF.

Our January 2020 Consultation

- 6.2 In our January 2020 Consultation, we proposed a charge control on FTTC at speeds of 40/10 where this is provided by supplying VULA as an overlay to the existing copper services. We proposed a charge control at CPI-0%.⁴⁸
- 6.3 Where the copper bearer is not provided via MPF, but SOGEA, we proposed that any charges related to the copper bearer must be fair and reasonable, which we would interpret as reflecting the costs of providing that bearer. While we proposed to consider BT's approach to pricing on a case-by-case basis, our view was that the charge controlled MPF service provided a reasonable starting point for considering the cost-based charges for the copper bearer.

Our proposal

- 6.4 Absent regulation, Openreach would have the incentive and ability to fix and maintain prices for WLA services at an excessively high level and/or impose a price squeeze so as to have adverse consequences for end-users (including through a weakening of retail competition).
- 6.5 We consider that charge controlling FTTC 40/10 provided using SOGEA will more directly address the competition concerns resulting from a proposed SMP finding than a fair and reasonable requirement.
- 6.6 Therefore, for FTTC at speeds of 40/10, we are proposing to align the approach we take to controlling charges so that services provided using SOGEA are treated on the same basis as services provided using VULA as an overlay to the existing copper service.

⁴⁸ In our January 2020 Consultation, we proposed this in relation to Geographic Area 2. In our July 2020 Consultation, relating to BT's Commitment in Geographic Area 3, we proposed this in relation to Geographic Area 3.

- 6.7 For those customers that rely on FTTC provided using SOGEA (rather than FTTC using VULA as an overlay to the existing copper service), our proposal will provide more certainty and clarity about the maximum charge that they will face for the service.
- 6.8 We propose that for VULA services that are subject to a charge control (i.e. for FTTC services at speeds of 40/10), the FTTC service provided via SOGEA is also charge controlled.
- 6.9 We propose that the first year maximum charge for SOGEA should be equal to the proposed MPF charge control cap plus the VULA 40/10 cap. Based on our proposals for MPF and VULA 40/10 set out in the January 2020 Consultation, the first year maximum charge for SOGEA would therefore be equal to £147.83. Consistent with our proposals for MPF and VULA, we also propose a charge control cap of CPI-0% for subsequent years.
- 6.10 The effect of our proposals is that the maximum charge for the SOGEA 40/10 service should be equivalent to the maximum MPF charge plus the maximum VULA 40/10 charge.
- 6.11 We propose that this applies in both WLA Area 2 and WLA Area 3.

Consultation question

Question 6.1: Do you agree with our proposal that the maximum charge for the SOGEA 40/10 service should be equal equivalent to the maximum MPF charge plus the maximum VULA 40/10 charge? Please set out your reasons and supporting evidence for your response.

7. Basis of charges obligations

7.1 In Volume 4 of the January 2020 Consultation we proposed to apply basis of charges obligations on:

- PIA ancillaries related to network adjustments and other PIA ancillaries; and
- Contractor ECCs.

7.2 In this section we explain how we intend to interpret the basis of charges obligations for these services and propose some small changes to the legal conditions. We also propose to require BT to provide us with cost information on these services as part of its regulatory reporting requirements.

Interpretation of the basis of charges obligation

PIA ancillaries relating to network adjustments and other PIA ancillaries

7.3 In addition to rental charges, PIA has a range of associated ancillary services relating to network adjustments and other ancillaries (e.g. engineer accreditation activities or survey activities requiring input from Openreach).

7.4 These ancillary services enable other telecoms providers to make use of BT's physical infrastructure. Given our provisional findings that BT has SMP in the PI market, we set out in the January 2020 Consultation the risk that BT could set excessively high ancillary charges which could have adverse consequences for end users.⁴⁹

7.5 To limit BT's ability to set excessively high prices, we proposed that charges for PIA ancillary activities should be based on the cost of provision, i.e. should be based on forward looking long-run incremental costs, allowing an appropriate mark up for the recovery of common costs, including an appropriate return on capital employed.⁵⁰ We believe that, given the current value of ancillary services, a charge control would be disproportionate in this case and a basis of charges obligation is more appropriate. In the January 2020 Consultation we did not expand on what we meant by basis of charges obligation. However, in 2010 we interpreted the basis of charges obligation to mean that BT's prices must, as a first order test, be between DLRIC and distributed standalone cost (DSAC).⁵¹ At the time this applied to all PIA products.

7.6 Given that we proposed that the basis of charges obligation would only apply to PIA ancillary products, we do not think that DSAC is an appropriate benchmark, as any efficiency benefits of providing BT with the additional flexibility that DSAC offers (over FAC)

⁴⁹ January 2020 Consultation, paragraph 5.6.

⁵⁰ January 2020 Consultation, paragraph 5.97.

⁵¹ 2010 WLA Statement, paragraph 5.58, 5.79 and 7.76. Historically, DSAC has been used as an upper bound to prices covered by a basis of charges obligation, to strike a balance between (i) providing the regulated firm with enough pricing flexibility to recover its costs, including its common costs, in an economically efficient manner, and (ii) ensuring that this flexibility is sufficiently bounded to prevent the regulated firm from exploiting its market power to set anti-competitive, exploitative or otherwise unreasonable charges.

are likely to be small, and outweighed by the risk that BT exploits this additional flexibility to the detriment of PIA users, and ultimately, consumers.⁵²

- 7.7 Instead we consider that the basis of charges obligation in this case means the price for each PIA ancillary service should reflect any incremental external charges paid by BT (e.g. the cost of external labour used to provide the ancillary), plus an allowance for any incremental costs incurred by BT when providing ancillaries (e.g. BT's internal labour and costs of any planning and ordering systems relating to PIA ancillaries), including an appropriate mark-up for common costs (e.g. general overheads) and a return on capital employed (where applicable).
- 7.8 To ensure prices reflect the cost of provision, we consider that total costs associated with PIA ancillary services under the basis of charges obligation should be consistent with the operating and capital costs of the relevant PIA ancillaries in the Regulatory Financial Statements (RFS), i.e. we expect prices for PIA ancillaries to be similar to fully allocated costs (FAC) rather than an alternative cost standard such as distributed standalone cost (DSAC). We consider that this would ensure prices for PIA ancillaries are not excessive while allowing BT to recover its efficiently incurred costs. Referencing FAC is also consistent with the way we are proposing to charge control other PIA services.
- 7.9 We recognise there is a gap between BT setting prices and contemporaneous cost information becoming available, but we would expect BT to be able to explain and justify any significant differences between PIA ancillary prices and associated FAC for the purposes of the basis of charges obligation.
- 7.10 We propose to make some small changes to the SMP conditions set out in Annex 5 to reflect the proposals above.⁵³

Contractor ECCs

- 7.11 In the January 2020 Consultation, we proposed to apply a basis of charges obligation on contractor ECCs (i.e. where BT engages contractors to undertake excess construction work). We said that this would require BT to demonstrate that contractor ECC charges are reasonably derived from the cost of provision and include a margin that covers common costs.
- 7.12 Consistent with previous reviews, our intention is that Contractor ECC charges should be based on the charge paid by BT to contractors, plus BT's relevant incremental costs (e.g. relevant wayleaves), plus an appropriate mark-up for common costs.⁵⁴ As with PIA ancillary charges above, to ensure charges reflect the cost of provision, we would expect total costs

⁵² A key difference between DSAC and FAC is that DSAC allows the regulated firm more flexibility to recover all its costs. FAC represents one specific view of cost allocation and allows the regulated firm little flexibility if it wishes to recover all its costs. If any price is below FAC, then another price needs to be above FAC for the firm to recover its costs. In contrast, charges can be below DSAC and still allow for full cost recovery. This is because the sum of DSACs exceeds BT's total costs.

⁵³ We proposed to amend SMP conditions 6.2 and 12A.4.

⁵⁴ See for example, paragraph 8.5 of Volume 2 of the [2016 BCMR Statement](#).

associated with Contractor ECCs to be consistent with the operating and capital costs of these services in the RFS.⁵⁵

- 7.13 We do not propose any changes to the basis of charges condition (Condition 12G.9), but we consider that changes to the regulatory reporting requirements are necessary.

Regulatory reporting requirements

- 7.14 To allow us to understand the costs associated with services where a basis of charges obligation applies, we propose to require BT to provide Ofcom with annual cost information for i) PIA ancillaries related to network adjustments and other PIA ancillaries and ii) Contractor ECCs.⁵⁶
- 7.15 We propose that BT should provide us with the operating and capital costs associated with each of these services. These costs should be compared to service cost information reported in the RFS and BT should provide an explanation of any assumptions and judgements it has made when estimating the costs for each service. For Contractor ECCs we also propose that BT provides us with information on revenues, as these may not be reported in the RFS.⁵⁷
- 7.16 We expect many of these individual service costs to be relatively small compared to other regulated parts of BT such that it would not be proportionate to require BT to estimate these costs through its cost accounting system (though it could if it wished). We propose that BT could estimate these service costs outside of its cost accounting system, but it would need to explain to us any assumptions it has made and compare total costs to the associated services reported in the RFS.
- 7.17 We recognise that these costs will not necessarily be those relied on by BT to demonstrate compliance with the basis of charging obligation (e.g. because prices may be set at the start of the period while cost information may only be available at the end of the period), but we would expect BT to be able to explain any significant differences between the charges for relevant services and the cost information provided.
- 7.18 To implement these proposals, we propose an addition to Annex B of the proposed 'direction setting requirements in relation to preparation, delivery, publication, form and content of the Regulatory Financial Statements' (the 'form and content reporting direction'). The additional text is set out below and in Annex 5.

⁵⁵ Where Contractor ECCs are not separately reported in the RFS but aggregated with other services, we would expect BT to take a reasonable approach when applying a mark-up for common costs. For example, one possible approach in relation to a mark-up for general overheads would be to make this consistent with the percentage of total costs for these aggregated services represented by general overheads.

⁵⁶ This is consistent with our proposal in the February Reporting Consultation that BT should provide us with information on electricity costs, which is also subject to a basis of charges obligation.

⁵⁷ In the February 2020 Reporting Consultation, we proposed that ancillaries in the leased lines and inter-exchange connectivity markets would only be published where annual revenues exceed £5m.

B) Additional Financial Information to be provided in respect of the PI Market

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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D) Additional Financial Information to be provided in respect of the Leased Lines Access and Inter-exchange connectivity services markets

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 to those reported in the RFS should be provided, with an explanation of any differences.</p>
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Consultation questions

Question 7.1: Do you agree with our proposed interpretation of the basis of charges obligations for PIA ancillaries related to network adjustments and other PIA ancillaries and contractor ECCs?

Question 7.2: Do you agree with our proposed changes to the legal conditions related to PIA ancillaries related to network adjustments and other PIA ancillaries?

Question 7.3: Do you agree with our proposal to require BT to provide us with cost information on i) PIA ancillaries related to network adjustments and other PIA ancillaries and ii) contractor ECCs as part of its regulatory reporting requirements?

8. Legal tests

- 8.1 We are making revised proposals on setting SMP conditions on BT in relation to the markets for WLA in Area 2 and Area 3; Leased Lines Access in Area 3; Inter-Exchange Connectivity; and Physical Infrastructure to give effect to the proposed pricing remedies and DFA implementation proposals described above. As a consequence, we propose to amend the draft SMP conditions set out in the January 2020 Consultation (as revised by the July 2020 Consultation, the June 2020 Consultation⁵⁸ and the October 2020 Consultation⁵⁹) as set out in Annex 5.
- 8.2 To give effect to our proposals we also intend to amend our proposed Preparation, Delivery, Publication, Form and Content Direction (“RFS Direction”). We propose to give this Direction in relation to the cost accounting and accounting separation SMP conditions we proposed for BT in the February 2020 Reporting Consultation, which we are imposing in relation to each of the proposed SMP markets, although the amendments to it on which we are consulting here relate to the markets for Physical Infrastructure, Leased Lines Access and Inter-Exchange Connectivity.
- 8.3 Regarding the proposed, longer period for DFA implementation, we also intend to amend Direction 1 of the QoS Directions (“QoS Direction 1”), as proposed in the January 2020 Consultation and revised by the proposals in the further consultation on quality of service remedies⁶⁰ (“QoS Consultation”).
- 8.4 For the reasons set out below, we consider that the proposed amended SMP conditions and Directions continue to meet the relevant legal tests.

Section 88

- 8.5 We explain in the January 2020 Consultation, as supplemented by the July 2020 Consultation, the June 2020 Consultation and the October 2020 Consultation (as appropriate), why we consider that the setting of the draft SMP conditions is consistent with the requirements set out in section 88 of the Act. Specifically, how there is a risk that, absent regulation, BT might fix and maintain prices at an excessively high level and/or impose a price squeeze so as to have adverse consequences for end-users (including through a weakening of retail competition); how the setting of the draft SMP conditions would be appropriate for purposes of promoting efficiency, promoting sustainable competition and conferring the greatest possible benefits on end users of public electronic communications services; and how we have taken account of the extent of BT’s investment in the matters to which the draft conditions relate.

⁵⁸ Consultation: Copper retirement – process for determining when copper regulation can be removed, 25 June 2020.

⁵⁹ Consultation: Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges, 15 October 2020.

⁶⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0018/205245/qos-further-consultation.pdf, Ofcom, 23 October 2020

8.6 We consider that the setting of the draft SMP conditions as revised by the proposals set out in this consultation continue to meet those requirements for the reasons previously set out. We also consider that our proposed amendments to the RFS Direction and QoS Direction 1 are necessary for price controls and the DFA remedy to be effective.

Section 47 tests

8.7 When imposing SMP obligations, we need to demonstrate that the obligations in question are based on the nature of the problem identified, proportionate and justified in light of the policy objectives as set out in Article 8 of the Framework Directive. The January 2020 Consultation, as supplemented by the July 2020 Consultation, the June 2020 Consultation and the October 2020 Consultation (as appropriate), sets out how our WFTMR proposals meet the relevant legal tests set by section 47 of the Act. For the reasons set out in those consultations and for the reasons set out in this consultation document, we consider that each draft, revised SMP condition set out in this consultation, continues to satisfy those tests, namely that each obligation is:

- objectively justifiable in relation to the networks, services or facilities to which it relates;
- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what the condition is intended to achieve; and
- transparent in relation to what it is intended to achieve.

Section 49 tests

8.8 Section 49(2) of the Act further requires that Ofcom must be satisfied that any direction we give satisfies the test in that section, which requires directions to be objectively justifiable, non-discriminatory, proportionate and transparent.

8.9 The RFS Direction provides details of the financial information to be included in the published RFS and to be provided to Ofcom privately. It therefore plays an important role in ensuring the RFS provide relevant information to stakeholders and Ofcom. Some elements of the published RFS relate to all of BT while others are specific to particular markets. To preserve the integrity and consistency of the RFS, we consider that all proposed SMP markets should be subject to appropriate reporting requirements.

8.10 We explain in the February 2020 Reporting Consultation why we consider that the Preparation, Delivery, Publication, Form and Content of the RFS Direction meets the tests set out in section 49(2) of the Act. For the reasons explained in that document and this consultation, we consider that the draft, revised direction continues to meet the relevant tests.

8.11 We explain in the January 2020 Consultation and the QoS Consultation why we consider that QoS Direction 1 meets the tests set out in section 49(2) of the Act. For the reasons

explained in that document and this consultation, we consider that the draft, revised direction continues to satisfy the tests set out in Section 49(2) of the Act.

Ofcom's duties

- 8.12 The changes we are proposing in this consultation have not changed our provisional view set out in those consultations that our proposed package of draft SMP conditions both individually and together, and our proposed directions, meet our duties in sections 3 and 4 of the Act.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document by 5pm on 8 December 2020.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/2021-26-wholesale-fixed-telecoms-market-review>. You can return this by email to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to wftmr@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please email WFTMR@ofcom.org.uk.

Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a statement in March 2021.
- A1.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website shortly after we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

Question 3.1: Do you agree with our revised proposals relating to calculating the shares of unit costs to be reflected in PIA rental charges? Please set out your reasons and supporting evidence for your response.

Question 4.1: Do you agree with our revised proposals relating to dark fibre pricing? Please set out your reasons and supporting evidence for your response.

Question 5.1: Do you agree with our revised proposals relating to DFA implementation? Please set out your reasons and supporting evidence for your response.

Question 6.1: Do you agree with our proposal that the maximum charge for the SOGEA 40/10 service should be equal equivalent to the maximum MPF charge plus the maximum VULA 40/10 charge? Please set out your reasons and supporting evidence for your response.

Question 7.1: Do you agree with our proposed interpretation of the basis of charges obligations for PIA ancillaries related to network adjustments and other PIA ancillaries and contractor ECCs?

Question 7.2: Do you agree with our proposed changes to the legal conditions related to PIA ancillaries related to network adjustments and other PIA ancillaries?

Question 7.3: Do you agree with our proposal to require BT to provide us with cost information on i) PIA ancillaries related to network adjustments and other PIA ancillaries and ii) contractor ECCs as part of its regulatory reporting requirements?

A5. Draft legal instruments

- A5.1 Draft legal instruments are [available in a separate document](#), with our proposed additions underlined and highlighted and our proposed deletions struckthrough. The draft legal instrument may not be fully accessible, including to those with screen readers. We have therefore published a second, clean version – incorporating the proposed changes without these being marked up – on the webpage for this consultation.