



Vodafone Response: MPF Rental at Service Maintenance Level 1

May 2017

1. Vodafone welcomes Ofcom's proactive intervention to put in place specific measures to address the prices of MPF Care level 1 during the charge control lacuna. Lacuna periods generate uncertainty in the market and greatly increase the risk of over-recovery. Indeed, Frontier Economics' own assessment of the causes of over-recovery recognised the risk caused by charge control lacuna¹.
2. The issue of over-recovery in regulated markets is a significant one and while the causes of it cannot all be attributed to lacuna; it is undoubtable a contributing factor. In October 2016, Frontier Economics calculated that BT had made excess profits in regulated markets of around **£9.7 billion** since 2005. This is in addition to the **£13.8 billion** of allowed and predicted profit BT has earned over the same period through the sale of regulated services. The excess profit recorded in 2016 alone was **£1.1 billion**².

Regulation to minimise consumer over-charging

3. Timely and accurate regulation is therefore important to minimise the risk of consumers over-paying for services. Historically, the best Ofcom has been able to achieve when faced with a charge control lacuna is a commitment from BT that prices will not increase. However, this still leaves consumers at risk of an over-charge that is never clawed back through future Charge Controls or at best is clawed back later than it should have been.
4. The only beneficiary of a charge control lacuna is BT, as it delays the implementation of further regulation. Whilst it would be preferable if a lacuna could be avoided in the future it would be useful to take a 'belts and braces' approach by putting in place regulation that would be triggered should two charge controls not align and a regulatory gap occurs. If there is clarity over the process that is to be followed when two charge controls don't align then there is no gap in regulatory certainty and consumers can and should expect that charges that are above FAC will be addressed during the lacuna and they will not have to wait until the delayed charge control actually commences before over-recovery starts to be tackled.
5. We would like to see all future charge control obligations contain clear and unambiguous roll over provisions to ensure there is no regulatory pricing gaps going forward. This should be fair to all stakeholders, allowing Ofcom to take account of the

¹ See Recommendation 3 (p.39: <https://www.vodafone.com/content/dam/group/policy/downloads/the-relationship-between-BT-profitability-and-charge-controls.pdf>)

² <https://mediacentre.vodafone.co.uk/pressrelease/planned-reforms-openreach-required-new-report-highlights-bt-excess-profits-increased/>



best available evidence to ensure the consumer interest is being served and the opportunity for extended periods of excess profitability are minimised.

GEA Customers are being over-charged for the next 3 years

6. In the case of FTTC GEA pricing, we note that Ofcom is proposing to charge control Openreach's 40/10 GEA product for the first time from April 2018. Arguably this is a year late, given that any charge control for this new product would have been implemented at the same time as the charge control for the existing copper based LLU products, i.e. 1st April 2017. We estimate that as a result of the 12-month delay in implementing this initial charge control and the subsequent delay in further reductions, UK consumers are being over-charged by around **£140m** for these services alone. This windfall gain would allow Openreach to invest in FTTP to cover a city the size of Cardiff or make a substantial contribution towards improving the quality of rural broadband³.

The Lacuna proposals do not take account of Cartesian's analysis

7. Ofcom has recently undertaken extensive analysis of BT's cost allocations, using external consultant, Cartesian to dig deep into BT's allocation methodologies. In doing so Ofcom recognised that a number of errors (totalling ~£5M PA) and inappropriate cost allocations (a further ~£155M PA) had been found, that impacted on the cost base of Wholesale Local Access⁴. However, it is not clear how these costs have been addressed in the lacuna charge control. If, as we suspect, these costs have not been removed from overall charges, we are at risk again of BT benefiting from meritless over-recovery. We would urge Ofcom to remedy this by introducing immediate starting charge adjustments to ensure inappropriate cost allocations, accounting errors & the impact of charge control delays that preserve prices above FAC are not perpetuated and contribute further to BT's regulatory excess profitability. None of these factors would be considered part of a 'fair bet' or legitimate risk

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³ Based on an FTTP roll out cost of £400 per home passed (based on Kcom costs quoted at: <http://www.ispreview.co.uk/index.php/2016/09/kcoms-ftp-broadband-roll-hull-uk-reaches-100000-premises.html>), with 50% of Openreach FTTC volumes on the anchor 40/10 product, with a UK overall FTTC customer base of 7.3M by the end of 17/18 rising to over 11M by 2021 – with pricing based on the central estimates provided in Ofcom's WLA charge control consultation published in March 2017.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0016/81412/review-bt-cost-attribution-method.pdf