



Charge control for LLU and WLR services

Adoption of revised SMP Services Conditions
following the Competition Appeal Tribunal's Directions of
29 April 2013

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Section 1

Background

Introduction

- 1.1 On 7 March 2012, Ofcom published the statement *Charge control review for LLU and WLR services* (“the 2012 Statement”).¹ In the 2012 Statement Ofcom imposed charge controls on the supply by British Telecommunications (“BT”) of certain Local Loop Unbundling (“LLU”) and Wholesale Line Rental (“WLR”) services for two years ending on 31 March 2014 pursuant to sections 45, 87 and 88 of the Communications Act 2003 (“the 2003 Act”). These charge controls were imposed as a consequence of Ofcom’s 2010 reviews of the Wholesale Local Access and Wholesale Fixed Analogue Exchange Line markets, which identified BT (Openreach) as having significant market power in those markets and determined that charge controls were necessary as a remedy to address Openreach’s ability to fix or maintain prices at an excessively high level for LLU and WLR services.²
- 1.2 The SMP services conditions imposing the charge controls are contained in Schedule 1 to Part I (LLU) and Schedule 1 to Part IV (WLR) of Annex 12 of the 2012 Statement. Specifically, the charge controls were set at the following levels:

Figure 1: LLU charge controls

Basket/service	Charge control for 2012/13	Charge control for 2013/14
MPF rental	£87.41	RPI-5.9 %
SMPF rental	£11.92	RPI-15.9 %
MPF Single Migration	£33.54	RPI-11.3 %
MPF New Provide	£51.16	RPI-14.2 %
SMPF Single Migration	£33.54	RPI-11.3 %
SMPF Provide	£33.54	RPI-11.3 %
MPF ancillary services basket	-3.6%	RPI-9 %
SMPF ancillary services basket	-7.6 %	RPI-13 %
Co-mingling ancillary services basket	1.8 %	RPI-3.6 %

¹ Available at: <http://stakeholders.ofcom.org.uk/consultations/wlr-cc-2011/statement-march2012/>

² Available at: <http://stakeholders.ofcom.org.uk/consultations/wla/statement> and <http://stakeholders.ofcom.org.uk/consultations/review-wholesale-fixed-exchange/statement>

Figure 2: WLR charge controls

Basket/service	Charge control for 2012/13	Charge control for 2013/14
WLR Rental	£98.81	RPI-7.3 %
WLR Transfer	£3.29	RPI+0 %
WLR New Connection	£50.44	RPI-9.8 %

Price control appeals

- 1.3 The 2012 Statement was subject to two separate appeals to the Competition Appeal Tribunal (“the Tribunal”) brought by (i) BT and (ii) British Sky Broadcasting Limited (“Sky”) and TalkTalk Telecom Group PLC (“TalkTalk”) (acting as co-appellants).
- 1.4 As the appeals related to price control matters, the matters were subject to determination by the Competition Commission (“CC”) pursuant to section 193 of the 2003 Act. On 24 July 2012 the Tribunal referred to the CC a number of questions addressing the specified price control matters arising in BT’s appeal. On 28 September 2012 the Tribunal referred to the CC a number of questions addressing the specified price control matters arising in Sky and TalkTalk’s appeal.
- 1.5 On 27 March 2013, the CC notified the Tribunal of its determination of the price control matters referred to it.
- 1.6 By a ruling of 29 April 2013, the Tribunal decided pursuant to sections 193(6) and 195(2) of the 2003 Act that those grounds of appeal encapsulated in:
- 1.6.1 Reference Questions 1(i) and (ii) of Sky and TalkTalk’s appeal; and
- 1.6.2 Reference Questions 1(ii), (iv), (vi) and (vii) of the BT appeal,
- are upheld to the extent found in the CC’s determination.
- 1.7 The Tribunal dismissed the other grounds of appeal.

Directions from the Competition Appeal Tribunal to Ofcom

- 1.8 Pursuant to section 195(4) of the 2003 Act, the Tribunal has remitted the decision under appeal to Ofcom with the following directions:
- “(…)
2. *In order to correct the errors identified in Reference Questions 1(ii), (iv), (vi) and (vii) in BT’s Appeal and Reference Question 1(i) in Sky and TalkTalk’s appeal, OFCOM shall:*
- (a) *amend Condition AAAA4(WLR) in Part IV, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for Analogue Core WLR Rental in the unelapsed period of the Second Relevant Year is £93.27;*

- (b) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for MPF Rental in the unelapsed period of the Second Relevant Year is £84.26;*
 - (c) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for SMPF Rental in the unelapsed period of the Second Relevant Year is £9.75; and*
 - (d) *amend Condition FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement, so that the charge ceiling for each of MPF Transfer and SMPF Connection in the unelapsed period of the Second Relevant Year is £30.65.*
3. *In relation to the error identified in Reference Question 1(ii) of Sky and TalkTalk's Appeal, OFCOM shall correct the error in accordance with the Determinations, taking account of the guidance set out in paragraph 14.186 of the Determinations, and amend Conditions FAA4(A) in Part I, Schedule 1, to Annex 12 of the Statement and AAAA4(WLR) in Part IV, Schedule 1, to Annex 12 of the Statement accordingly as soon as reasonably practicable."*

Section 2

The revised SMP services conditions

- 2.1 Under section 195(6) of the 2003 Act, Ofcom has a duty to comply with the Tribunal's directions. In accordance with the Tribunal's directions, Ofcom is amending the charge controls with effect from 30 April 2013 such that the Dominant Provider shall not charge more than the following for the remainder of the charge control period (the period 1 May 2013 to 31 March 2014):
- 2.1.1 for MPF Rental the amount of £84.26;
 - 2.1.2 for SMPF Rental the amount of £9.75;
 - 2.1.3 for Analogue Core WLR Rental, the amount of £93.27;
 - 2.1.4 for MPF Transfer the amount of £30.65; and
 - 2.1.5 for SMPF Connection, the amount of £30.65.

LLU services: revisions to SMP services condition FAA4(A)

- 2.2 Ofcom now adopts the following revisions to SMP Conditions FAA4(A).1, FAA4(A).2, FAA4(A).5, FAA4(A).8, FAA4(A).9, FAA4(A).10 and FAA4(A).14, all of which are to take effect from 30 April 2013.

Condition FAA4(A) – Charge control

FAA4(A).1 Without prejudice to the generality of Condition FAA4, and subject to paragraphs FAA4(A).3 and FAA4(A).6, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with paragraphs FAA4(A).4 and FAA4(A).5, as applicable) in:

- (a) the aggregate of charges for SMPF Ancillary Services;
- (b) the aggregate of charges for MPF Ancillary Services;
- (c) the aggregate of charges for Co-Mingling Services;
- ~~(d) the charge for MPF Transfer, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph FAA4(A).2(c) applies;~~
- (e) the charge for MPF New Provide, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph FAA4(A).2(d) applies;
- ~~(f) the charge for SMPF Connection, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph FAA4(A).2(e) applies;~~
- ~~(g) the charge for MPF Rental, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph FAA4(A).2(a) applies;~~

- ~~(h) the charge for SMPF Rental, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph FAA4(A).2(b) applies;~~
- (i) the charge for MPF Connection;

in each of the ~~five~~ nine categories of products and/or services specified in paragraphs FAA4(A).1(a) to ~~(c), (e) and~~ (i) above is not more than the Controlling Percentage (as determined in accordance with paragraph FAA4(A).8).

FAA4(A).2 The Dominant Provider shall not charge more than:

- (a) for MPF Rental, the amount of £87.41 in the First Relevant Year, the amount of £85.04 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £84.26 for the remainder of the Second Relevant Year;
- (b) for SMPF Rental, the amount of £11.92 in the First Relevant Year the amount of £10.40 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £9.75 for the remainder of the Second Relevant Year;
- (c) for MPF Transfer, the amount of £33.54 in the First Relevant Year the amount of £30.82 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £30.65 for the remainder of the Second Relevant Year;
- (d) for MPF New Provide, the amount of £51.16 in the First Relevant Year;
- (e) for SMPF Connection, the amount of £33.54 in the First Relevant Year the amount of £30.82 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £30.65 for the remainder of the Second Relevant Year;
- (f) for MPF Cease, the amount of £0.00 in each of the First Relevant Year and the Second Relevant Year;
- (g) for SMPF Cease, the amount of £0.00 in each of the First Relevant Year and the Second Relevant Year;
- (h) for MPF Singleton Jumper Removal, the amount of £25.81 in the First Relevant Year;
- (i) for SMPF Singleton Jumper Removal, the amount of £28.15 in the First Relevant Year
- (j) for MPF Bulk Jumper Removal, the amount of £19.63 in the First Relevant Year; and
- (k) for SMPF Bulk Jumper Removal, the amount of £22.99 in the First Relevant Year.

FAA4(A).5 The Percentage Change for the purposes of each of the categories of products and/or services specified (each of which is referred to in this paragraph as a “single charge category”) in paragraphs ~~FAA4(A).1(d), FAA4(A).1(e), FAA4(A).1(f), FAA4(A).1(g), FAA4(A).1(h) and FAA4(A).1(i)~~ respectively shall be calculated for the purposes of complying with paragraph FAA4(A).1 by employing the following formula:

$$C_t = \frac{(p_t - p_0)}{p_0}$$

where:

C_t is the Percentage Change in charges for the specific product and/or service in the single charge category in question at a particular time t during the Relevant Year;

p_0 is (i) for the First Relevant Year, the charge specified in paragraph FAA4(A).2 in respect of the single charge category in question; and (ii) for the Second Relevant Year, the published charge made by the Dominant Provider for the specific product and/or service in the single charge category in question at the beginning of the Relevant Year excluding any discounts offered by the Dominant Provider; and

p_t is the published charge made by the Dominant Provider for the specific product and/or service in the single charge category in question at the time t during the Relevant Year excluding any discounts offered by the Dominant Provider.

FAA4(A).8 Subject to paragraphs FAA4(A).9 and FAA4(A).10, the Controlling Percentage in relation to any Relevant Year means:

- (a) for the category of products and/or services specified in paragraph FAA4(A).1(a),
 - i. for the First Relevant Year, -7.6 percentage points, and
 - ii. for the Second Relevant Year, RPI decreased by 13 percentage points;
- (b) for the category of products and/or services specified in paragraph FAA4(A).1(b),
 - i. for the First Relevant Year, -3.6 percentage points, and
 - ii. for the Second Relevant Year, RPI decreased by 9 percentage points;
- (c) for the category of products and/or services specified in paragraph FAA4(A).1(c),
 - i. for the First Relevant Year, 1.8 percentage points, and
 - ii. for the Second Relevant Year, RPI decreased by 3.6 percentage points;
- ~~(d) for the category of products and/or services specified in paragraph FAA4(A).1(d), for the Second Relevant Year, RPI decreased by 11.3 percentage points;~~
- (e) for the category of products and/or services specified in paragraph FAA4(A).1(e), for the Second Relevant Year, RPI decreased by 14.2 percentage points;
- ~~(f) for the category of products and/or services specified in paragraph FAA4(A).1(f), for the Second Relevant Year, RPI decreased by 11.3 percentage points;~~
- ~~(g) for the category of products and/or services specified in paragraph FAA4(A).1(g), for the Second Relevant Year, RPI decreased by 5.9 percentage points;~~
- ~~(h) for the category of products and/or services specified in paragraph FAA4(A).1(h), for the Second Relevant Year, RPI decreased by 15.9 percentage points;~~
- (i) for the category of products and/or services specified in paragraph FAA4(A).1(i),
 - i. for the First Relevant Year, -3.6 percentage points, and
 - ii. for the Second Relevant Year, RPI decreased by 9 percentage points

For the avoidance of doubt, the ~~MPF Transfer~~, MPF New Provide, ~~MPF Rental~~, ~~SMPF Connection~~, ~~SMPF Rental~~, MPF Singleton Jumper Removal, SMPF Singleton Jumper

Removal, MPF Bulk Jumper Removal and SMPF Bulk Jumper Removal charges are constrained by FAA4(A).2 in the First Relevant Year.

FAA4(A).9 Where the Percentage Change in the First Relevant Year is less than the Controlling Percentage (the “Excess”), then for the purposes of each of the categories of products and/or services specified in paragraphs FAA4(A).1(a), FAA4(A).1(b), FAA4(A).1(c), ~~FAA4(A).1(d)~~, FAA4(A).1(e), ~~FAA4(A).1(f)~~, ~~FAA4(A).1(g)~~, ~~FAA4(A).1(h)~~ and FAA4(A).1(i) respectively the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph FAA4(A).8, but increased by the absolute value of the Excess.

FAA4(A).10 Where the Percentage Change in the First Relevant Year is more than the Controlling Percentage (the “Deficiency”), then for the purposes of each of the categories of products and/or services specified in paragraphs FAA4(A).1(a), FAA4(A).1(b), FAA4(A).1(c), ~~FAA4(A).1(d)~~, FAA4(A).1(e), ~~FAA4(A).1(f)~~, ~~FAA4(A).1(g)~~, ~~FAA4(A).1(h)~~ and FAA4(A).1(i) respectively the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph FAA4(A).8, but decreased by the absolute value of the Deficiency.

FAA4(A).14 The Dominant Provider shall record, maintain and supply to OFCOM in writing, no later than three months after the end of each Relevant Year, the data necessary for OFCOM to monitor compliance of the Dominant Provider with the price control by performing the calculation of the Percentage Change. The data shall include:

- (a) pursuant to Condition FAA4(A).4 and FAA4(A).5, as applicable, the calculated Percentage Change relating to each category of products and services listed in conditions FAA4(A).1 (a) through to (c), (e) and (i);
- (b) pursuant to Condition FAA4(A).3, calculation of the revenue accrued as a result of all relevant individual charge changes during any Relevant Year compared to the target revenue change;
- (c) all relevant data the Dominant Provider used in the calculation of the percentage change C_t pursuant to Condition FAA4(A).5, for the category of products and services specified in paragraph ~~FAA4(A).1(d)~~, FAA4(A).1(e), ~~FAA4(A).1(f)~~, ~~FAA4(A).1(g)~~, ~~FAA4(A).1(h)~~ and FAA4(A).1(i);
- (d) all relevant data the Dominant Provider used in the calculation the percentage change C_t pursuant to Conditions FAA4(A).4, for the category of products and services specified in paragraph FAA4(A).1(a), FAA4(A).1(b) and FAA4(A).1(c);
- (e) all relevant data the Dominant Provider used in the calculation of the revenue change and target revenue change pursuant to Condition FAA4(A).3;
- (f) all relevant revenues accrued during the Prior Financial Year in respect of the specific product or service;
- (g) published charges made by the Dominant Provider at time t during the Relevant Year excluding any discounts offered by the Dominant Provider;
- (h) the relevant published charge at the start of the Relevant Year; and
- (i) other data necessary for monitoring compliance with the charge control.

WLR services: revisions to SMP services condition AAAA4(WLR)

- 2.3 Ofcom now adopts the following revisions to SMP Conditions AAAA4(WLR).1, AAAA4(WLR).2, AAAA4(WLR).4, AAAA4(WLR).5, AAAA4(WLR).6, AAAA4(WLR).7, and AAAA4(WLR).9 all of which are to take effect from 30 April 2013.

Condition AAAA4(WLR) - Charge control

AAAA4(WLR).1 Without prejudice to the generality of Condition AAAA3, and subject to paragraph AAAA4(WLR).3, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with paragraph AAAA4(WLR).4, as applicable) in:

- (a) ~~the charge for Analogue Core WLR rental, except for the First Relevant Year in relation to which the charge ceiling specified in paragraph AAAA4(WLR).2(a) applies;~~
- (b) the charge for WLR Transfer except for the First Relevant Year in relation to which the charge ceiling specified in paragraph AAAA4(WLR).2(b) applies; and
- (c) the charge for WLR New Connection except for the First Relevant Year in relation to which the charge ceiling specified in paragraph AAAA4(WLR).2(c) applies;

in each of the ~~three~~ two single charge categories of products and/or services specified in paragraphs AAAA4(WLR).1(a) ~~(b)~~ to (c) above is not more than the Controlling Percentage (as determined in accordance with paragraph AAAA4(WLR).5).

AAAA4(WLR).2 The Dominant Provider shall not charge more than:

- (a) for Analogue Core WLR rental, the amount of £98.81 in the First Relevant Year, the amount of £94.75 for the period beginning 1 April 2013 and ending on 30 April 2013 and the amount of £93.27 for the remainder of the Second Relevant Year;
- (b) for WLR Transfer, the amount of £3.29 in the First Relevant Year;
- (c) for WLR New Connection, the amount of £50.44 in the First Relevant Year.

AAAA4(WLR).4 The Percentage Change for the purposes of each of the products and/or services specified (each of which is referred to in this paragraph as a “single charge category”) in ~~paragraphs AAAA4(WLR).1(a), AAAA4(WLR).1(b) and AAAA4(WLR).1 (c)~~ respectively shall be calculated for the purposes of complying with paragraph AAAA4(WLR).1 by employing the following formula:

$$C_t = \frac{(p_t - p_0)}{p_0}$$

where:

C_t is the Percentage Change in charges for the specific product and/or service in the single charge category in question at a particular time t during the Relevant Year;

p_0 is (i) for the First Relevant Year, the charge specified in paragraph AAAA4(WLR).2 in respect of the single charge category in question; and (ii) for the Second Relevant Year, the published charge made by the Dominant Provider for the specific product and/or service in the single charge category in question at the beginning of the Relevant Year excluding any discounts offered by the Dominant Provider; and

p_t is the published charge made by the Dominant Provider for the specific product and/or service in the single charge category in question at the time t during the Relevant Year excluding any discounts offered by the Dominant Provider.

AAAA4(WLR).5 Subject to paragraphs AAAA4(WLR).6 and AAAA4(WLR).7, the Controlling Percentage in relation to any Relevant Year means:

- (a) ~~for the category of products and/or services specified in paragraph AAAA4(WLR).1.(a) for the Second Relevant Year, RPI decreased by 7.3 percentage points;~~
- (b) for the category of products and/or services specified in paragraph AAAA4(WLR).1.(b) for the Second Relevant Year, RPI;
- (c) for the category of products and/or services specified in paragraph AAAA4(WLR).1.(c) for the Second Relevant Year, RPI decreased by 9.8 percentage points.

For the avoidance of doubt, the charges for each of these products and/or services are constrained by AAAA4(WLR).2 in the First Relevant Year.

AAAA4(WLR).6 Where the Percentage Change in either of the First Relevant Year is less than the Controlling Percentage (the “Excess”), then for the purposes of each of the categories of products and/or services specified in paragraphs ~~AAAA4(WLR).1(a),~~ AAAA4(WLR).1(b) and AAAA4(WLR).1(c) respectively the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph AAAA4(WLR).5, but increased by the absolute value of the Excess.

AAAA4(WLR).7 Where the Percentage Change in either of the First Relevant Year is more than the Controlling Percentage (the “Deficiency”), then for the purposes of each of the categories of products and/or services specified in paragraphs ~~AAAA4(WLR).1(a),~~ AAAA4(WLR).1(b) and AAAA4(WLR).1(c) respectively the Controlling Percentage for the following Relevant Year shall be determined in accordance with paragraph AAAA4(WLR).5, but decreased by the absolute value of the Deficiency.

AAAA4(WLR).9 The Dominant Provider shall record, maintain and supply to OFCOM in writing, no later than three months after the end of the Relevant Year, the data necessary for OFCOM to monitor compliance of the Dominant Provider with the price control by performing the calculation of the Percentage Change. The data shall include:

- (a) pursuant to Condition AAAA4(WLR).4, the calculated Percentage Change relating to each category of products and services listed in paragraphs AAAA4(WLR).1 ~~(a) through (b)~~ to (c);
- (b) pursuant to Condition AAAA4(WLR).3, calculation of the revenue accrued as a result of all relevant individual charge changes during any Relevant Year compared to the target revenue change;

- (c) all relevant data the Dominant Provider used in the calculation of the percentage change C_t pursuant to Conditions AAAA4(WLR).4 for the category of products and services specified in paragraphs AAAA4(WLR).1 ~~(a) through (b)~~ to (c);
- (a) all relevant data the Dominant Provider used in the calculation of the revenue change and target revenue change pursuant to Condition AAAA4(WLR).3;
- (b) all relevant revenues accrued during the Prior Financial Year in respect of the specific product or service;
- (c) published charges made by the Dominant Provider at time t during the Relevant Year excluding any discounts offered by the Dominant Provider;
- (d) the relevant published charge at the start of the Relevant Year; and
- (e) other data necessary for monitoring compliance with the charge control.