



Fixed access market reviews

EE Limited's response to Ofcom's further consultation on notification periods, compliance with requirements on the VULA margin, and approach to pricing for TRCs and SFIs

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NON-CONFIDENTIAL VERSION

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Introduction

EE Limited (“EE”) welcomes the opportunity to respond to Ofcom’s Consultation on notification periods, compliance with requirements on the VULA margin, and approach to pricing for TRCs and SFIs published on 16 January 2014 (“the Supplementary FAMR Consultation”).

In addition to the points made below directly in response to the Supplementary FAMR Consultation, EE reiterates, without repeating them, the points made in the following earlier responses submitted to Ofcom in the course of its ongoing fixed access market reviews (“FAMR”):

- EE’s response of 10 January 2013 to Ofcom’s Call for Inputs regarding Wholesale Local Access, Wholesale Fixed Analogue Exchange Lines, ISDN2 and ISDN30 (the “CFI”);
- EE’s response to Ofcom’s *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and remedies* published on 3 July 2013 (the “July 2013 Consultation”) [REDACTED];and
- [REDACTED]

[REDACTED]

Notification periods

3.1 Do you agree with our proposal to reduce from 90 days to 28 days the notification period that BT and KCOM are required to give in respect of reductions to the WLR rental charge? Please provide reasons in support of your views.

EE welcomes this proposal. As explained in EE’s response to the July 2013 Consultation, this will (a) facilitate WLR+SMPF based providers’ ability to swiftly pass on price reductions in WLR rental charges to end-users; and (b) is technology-neutral, as it is consistent with the equivalent proposal made for MPF based providers in the July 2013 Consultation, and thereby fulfils Ofcom’s obligations under the Communications Act 2003 not to discriminate against particular classes of communications providers based on the input services that they consume.

VULA margin compliance

4.1 Do you agree with our proposals for BT to provide information on the VULA margin every six months and on request? Please provide reasons in support of your views.

[REDACTED]

Time Related Charges and Special Fault Investigations

5.1 Do you agree with the charge control proposals for TRCs? Please provide reasons in support of your views.

5.2 Do you agree with the charge control proposals for SFIs? Please provide reasons in support of your views.

5.3 Do you agree with our proposed approach to cost accounting for TRCs and SFIs? Please provide reasons in support of your views.

EE welcomes Ofcom's proposals to set charge controls for TRCs and SFIs. As noted by other stakeholders in response to the July 2013 Consultation, there are no effective competitive constraints on the provision of these services, as the determination of whether a fault warrants a TRC or SFI is a matter of Openreach's sole discretion and work on the Openreach side of the network can only be performed by Openreach engineers.

Contrary to BT's submissions, in EE's experience it is very difficult for communications providers ("CPs") to anticipate in advance when it is necessary to use an Openreach engineer for fault resolution, and when a third party engineer can be used instead. This is because remote diagnostics are not always able to determine whether a fault lies within the customer's home (and is therefore addressable by a third party engineer), or whether the fault is in Openreach's network (requiring an Openreach engineer). By using a third party engineer, a CP should see a large cost reduction over Openreach's SFI and TRC charges. However, due to the difficulty in diagnosis, this approach may well result in increased costs. For example, if a CP sends a third party engineer to a customer's home, and subsequently finds that the fault is within Openreach's network, they will incur the (wasted) cost of the third party engineer, plus the expensive Openreach charges. Conversely, if the CP "plays safe" and always sends an Openreach engineer, they will always incur the high Openreach charges and will never be able to enjoy the savings of using the third party engineer where this is possible. There is accordingly no way to appropriately use competition to lower TRC and SFI costs due to the risk of fault diagnosis being inaccurate.

As a result of the absence of effective competitive constraints, EE considers that Openreach's current pricing for TRCs and SFIs is excessive. [X] In light of this, EE welcomes Ofcom's proposals to implement a charge control by way of one-off adjustment at the beginning of the charge control period.

EE does not set out any further submissions on the detailed structure of the charge control at this stage. [X]