

## **Explanatory Statement accompanying Ofcom's Modification of Wholesale Fixed Telecoms Market Review SMP Conditions and Direction 4 of the Quality of Service Directions**

On 18 March 2021, Ofcom published its [Wholesale Fixed Telecoms Market Review Statement](#) (the Statement) including the SMP Conditions and Directions contained in Ofcom's notifications dated 18 March 2021 in [Volume 7](#) of the Statement.

Following publication of the Statement, we have identified a number of inadvertent errors or inconsistencies in the SMP Conditions and Direction 4 of the Quality of Service Directions which did not reflect our policy decisions correctly.

In the notification appended to this statement in Annex 1 we are correcting and clarifying the issues we have identified in respect of the SMP Conditions and Direction 4 of the Quality of Service Directions notified on 18 March 2021 (the Modification). The notification sets out all the SMP Conditions and the relevant parts of Direction 4 of the Quality of Service Directions which we have corrected. A corrected version contained in the notification does not contain any of the original errors and inconsistencies. To provide additional transparency, we have set out in Annex 2 the corrected SMP Conditions and relevant parts of Direction 4 of the Quality of Service Directions showing all changes we have made against the original version of the SMP Conditions and Direction 4. These are shown as insertions and deletions. We summarise the corrections and clarifications below.

The Modification will take effect from 1 April 2021.

Following a query from Openreach, we have also identified that the guidance that we gave on the scope of the Dark Fibre Access remedy which we imposed on BT in the Statement requires further explanation. Therefore, we also set out in this document certain clarifications in relation to the scope of the Dark Fibre Access remedy.

Lastly, following a query from Openreach, we clarify the requirements in relation to KPIs (iii)(a) for FTTC and KPIs (xx) to (xxiii) under Schedule 1 of Direction 4 of the Quality of Service Directions and have made a correction in relation to Annex 10.

### **Corrections to the SMP Conditions and Direction 4**

We have identified that the SMP Conditions<sup>1</sup> and Direction 4 of the Quality of Service Directions require corrections and clarifications as follows:

- Correcting errors relating to the first year prices for several services used to determine the level of the charge control ceiling in SMP Condition 12B.4 and SMP Condition 12C.2. Table 1 sets out the first year prices as set out in the SMP Conditions published on 18 March 2021 and the corrected first year price for each service.

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<sup>1</sup> The references in this statement to relevant SMP Conditions are to the SMP Conditions as numbered in the Modification.

Table 1

	Service	First Year price as published on 18 March 2021	Corrected First Year price
<b>Condition 12B.4</b>	MPF rental	£85.54	£85.98
	MPF single service migration	£24.70	£24.96
	MPF bulk service migration	£18.06	£18.25
	MPF standard line test	£4.24	£4.20
<b>Condition 12C.2</b>	FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach does not have an active FTTC connection and no new requests for FTTC 40/10 Rental can be made in relation to the premises	£126.13	£99.17
	SOGEA 40/10 rental	£145.94	£146.38

- Correcting missing references to IEC DF Transition in the margin regarding the scope of SMP Conditions 5.3, 7.7 and 7.8.
- Correcting typographical and cross referencing errors in SMP Conditions 5.3, 8.7, 12C.2(c), 12C.17(i), 12C.17(n), 12C.17(r), 12D.7, 12F.10, 12G.2 and 12I.2(c).
- Capturing the decision that charges for cable coil hosting and in-line splice hosting and distribution joints be set at £0 in new SMP Condition 12A.2A.
- Including a definition of Ducted Lead-in in SMP Condition 12A.10(b).
- Correcting SMP Condition 12B.11 to ensure that it covers the same reporting period for the build volumes as that set out at Annex A to Regulatory Financial Reporting Direction 2.
- Removing a requirement in SMP Condition 12C.11(c). This requirement is redundant as we decided not to impose basket controls for VULA services.
- Making clarificatory changes to the wording of SMP Conditions 12C.1 and 12C.2 and including a new definition of FTTC in SMP Condition 12C.17(h). These clarificatory changes are being made to better reflect our policy decisions relating to setting the charges for FTTP connections as Openreach deploys its fibre network and retires its copper network in the SMP Conditions. This makes clear our policy that consumers should have access to a

regulated 40/10 product and not have to pay a connection charge in circumstances where they are already on a FTTC service for which a wholesale connection charge would already have applied.

- Removing a reference to the link at which Cablelink services are described in the Annex to SMP Condition 12E given that Cablelink does not fall within the scope of that condition.
- Correcting errors and making clarificatory changes in Direction 4 relating to transparency requirements regarding quality of service; the time period referenced in Schedule 2, paragraphs 1 and 2 was not updated from quarterly to six monthly as required under paragraph 8 of Direction 4 and restating the list of relevant KPIs in paragraph 4 of Schedule 1.

## Clarifications and corrections to the statement

Openreach submitted two queries to Ofcom in relation to the scope of the Dark Fibre Access (DFA) remedy – one in relation to continuous end to end dark fibre access and the other to dark fibre access with a main link.

### Continuous End to End Dark Fibre Access

Paragraph 6.56 of Volume 3 of the Statement states that “[w]e disagree with Openreach that where DFA connects two end-user sites, both ends would need to be in Area 3. Our approach to remedies is to require Openreach to provide dark fibre where this will not undermine the deployment of competing networks. In Area 3, there is not, and there is unlikely to be potential for, material and sustainable competition to BT in the commercial deployment of competing networks. Requiring Openreach to provide DFA for such connections is unlikely to undermine competitive network deployment.”

On 23 March 2021, Openreach asked Ofcom to clarify whether Openreach is required to provide continuous end to end dark fibre access where one customer site is in Area 3 and the other in Area 2, only if all segments of the service are required under the DFA and DFX remedies. It gave examples of 1) two access segments connecting an end-user site in Area 3 to one in Area 2 via a BT exchange and 2) two access segments connecting an end-user site in Area 3 to one in Area 2 separated by a connecting backhaul segment (i.e. main link).

Since both examples involve the connection of two end-user sites, they fall to be considered under SMP Condition 2.7 as Continuous End to End Dark Fibre Access (as defined in SMP Condition 2.12). Irrespective of whether or not a main link is required (the difference between examples 1 and 2), the provision of network access between an end user site in Area 3 and one in Area 2 is unlikely to undermine competitive network deployment. Therefore, consistent with paragraph 6.56 of Volume 3 of the Statement, we will interpret the Continuous End to End Dark Fibre remedy to require the provision of dark fibre access from an end-user site in Area 3 to one in Area 2, provided that if there is a backhaul segment i.e. main link, it must be required under the DFX remedy (see paragraph 6.62 of Volume 3 of the Statement). To clarify the position in relation to the second access segment which connects to the end-user site in Area 2, we have modified SMP Condition 2.12.

### **Dark Fibre Access with a main link**

On 25 March 2021, Openreach asked Ofcom to clarify whether it is required to provide DFA with a main link, where the serving exchange is a BT Only exchange with no competing networks close by, or where either the serving or the distant exchange is a BT Only exchange with no competing networks close by.

Paragraph 6.62 of the Statement, states that “[...] we have decided that Openreach will only be required to provide dark fibre between two exchanges as part of the DFA remedy, if there is a requirement to provide dark fibre between those two exchanges as part of the DFX remedy”.

SMP Condition 2.5 requires Openreach to provide Dark Fibre Inter-exchange (DFX) between: (a) a BT exchange which is identified as a “BT Only DF” exchange in Schedule 4 of this notification; and (b) another BT exchange appearing in Schedule 4 of this notification.

Therefore, Openreach is required to provide DFA with a main link where either exchange is a BT Only exchange with no competing network close by.

### **Direction 4 of the Quality of Service Directions, Schedule 1, paragraph 1**

On 24 March 2021, Openreach asked Ofcom to clarify the requirements in relation to KPI(iii)(a) for FTTC and KPIs (xx) to (xxiii) under paragraph 1 of Direction 4 of the Quality of Service Directions, Schedule 1.

These requirements were redrafted in the legal instruments published on 18 March 2021 to clarify that the regional level reporting (only required for each Relevant Region where there are 100,000 or more active connections in that Relevant Region) is required to be provided to Third Party Customers subject to the threshold in accordance with paragraph 4 of Schedule 1. An aggregated UK wide figure for these KPIs is not required to be provided to Third Party Customers unless the threshold is exceeded in all Relevant Regions.

### **Annex 10**

KPI(d) on page 117, should have been blank under column ‘Split by region’ so that the requirement is only for BT to report the ‘Total’.