

Annex 15

Draft legal instruments

PART I - NOTIFICATION OF PROPOSALS UNDER SECTION 48A OF THE COMMUNICATIONS ACT 2003

Proposals for the setting of SMP services conditions in relation to BT under section 45 of the Communications Act 2003

Background

1. On 3 July 2013, OFCOM published a consultation document entitled “*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*” (the “**FAMR Consultation**”). Part I of Annex 11 to the FAMR Consultation set out the notification under sections 48A and 80A of the Act in which OFCOM proposed to:
 - identify certain markets;
 - make market power determinations; and
 - set SMP services conditions,(the “**FAMR Notification**”).
2. In relation to BT, OFCOM proposed in the FAMR Notification that BT has Significant Market Power in the following markets over the period of the review undertaken in the FAMR Consultation:
 - a. The supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area;
 - b. Wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area;
 - c. Wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area; and

- d. Wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area.
3. As a result of the proposed market power determinations in the markets listed above, OFCOM proposed in the FAMR Notification to set a number of SMP services conditions and directions on BT in each of those markets. These included SMP services conditions imposing charge controls in each of the markets referred to at paragraphs 2(c) and 2(d) above.
4. OFCOM confirmed in the FAMR Consultation that its proposals for charge controls on BT in the markets referred to at paragraphs 2(a) and 2(b) above would be set out in a separate notification. On 11 July 2013, OFCOM published a document entitled "*Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*" (the "**LLU and WLR Charge Control Consultation**"). Annex 17 of the LLU and WLR Charge Control Consultation set out the notification under sections 48A and 80A of the Act in which OFCOM proposed to set the additional charge controls in respect of Local Loop Unbundling and Wholesale Line Rental services (the "**LLU and WLR Charge Control Notification**"). These proposals were made by reference to the proposed market power determinations in the FAMR Notification and, as such, were to be treated as supplementary to the FAMR Notification.
5. Further, in the FAMR Consultation, OFCOM confirmed that it would publish a separate consultation containing proposals on certain aspects of BT's quality of service at a later date.
6. The period within which representations could be made to OFCOM about its proposals in both the FAMR Consultation and the LLU and WLR Charge Control Consultation ended on 25 September 2013. OFCOM received representations from several respondents to the proposals set out in the FAMR Consultation and the LLU and WLR Charge Control Consultation. In light of OFCOM's consideration of those representations, in this notification OFCOM sets out its further proposals in relation to certain of the SMP conditions proposed to be set in respect of BT in the markets set out at paragraph 2 above.

Summary of additional proposals in this notification

7. OFCOM proposes , in relation to the proposed SMP services conditions to be set for BT only:

- a. a new proposed SMP services condition 7A (LLU charge control);
- b. a new proposed SMP services condition 7C (WLR charge control);
- c. certain amendments to SMP services condition 7D (Wholesale ISDN30 services charge control);
- d. certain amendments to SMP services condition 7E (Wholesale ISDN2 services charge control);
- e. a new proposed SMP services condition 12 (Minimum standards for quality of service); and
- f. a change to the definition of “Relevant Region” in Part 2 of the proposed SMP services conditions as set out in Schedule 1 to the FAMR Notification and a new proposed Schedule 3 to the FAMR Notification.

Proposed SMP services condition 7A – LLU charge control

8. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for the supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area to set the SMP price control conditions on BT as set out in proposed Condition 7A, which is set out in Schedule 1 to this notification, pursuant to their powers under section 87(9) of the Act. This proposed SMP services condition 7A replaces the proposed SMP services condition 7A set out in Part I to the LLU and WLR Charge Control Notification.¹ It is proposed that this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.
9. The effect of, and the reasons for making, the amended proposal set out above at paragraph 8 above are set out in the consultation document accompanying this notification.

Proposed SMP services condition 7C – WLR charge control

¹ In order to provide transparency as to the differences between the LLU charge control proposed in the LLU and WLR Charge Control Notification and the charge control proposed in this notification, Schedule 1 to this notification provides a comparison (with the use of underlining and strikethrough) of the two charge controls. Underlining and strikethrough highlights those changes which we propose to make in this notification against the charge control proposed in the LLU and WLR Charge Control Notification. We have also adopted this approach in Schedules 2 to 5 of this notification.

10. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale fixed analogue exchange line access in the United Kingdom excluding the Hull Area to set the SMP price control conditions on BT as set out in proposed Condition 7C, which is set out in Schedule 2 to this notification, pursuant to their powers under section 87(9) of the Act. This proposed SMP services condition 7C replaces the proposed SMP services condition 7C set out in Part II to the LLU and WLR Charge Control Notification. It is proposed that this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.
11. The effect of, and the reasons for making, the amended proposal set out above at paragraph 10 are set out in the consultation document accompanying this notification.

Proposed amendments to proposed SMP services condition 7D – Wholesale ISDN30 services charge control

12. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for the supply of wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area to set the SMP price control conditions on BT as set out in proposed Condition 7D in Schedule 1 to the FAMR Notification, as amended by Schedule 3 to this notification, pursuant to their powers under section 87(9) of the Act. Consequently, the FAMR Notification should be read accordingly. It is proposed that this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.
13. The effect of, and the reasons for making, the amendments set out above at paragraph 12 are set out in the consultation document accompanying this notification.

Proposed amendments to proposed SMP services condition 7E – Wholesale ISDN2 services charge control

14. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for the supply of wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area to set the SMP price control conditions on BT as set out in proposed Condition 7E in Schedule 1 to the FAMR Notification, as amended by Schedule 4 to this notification, pursuant to their powers

under section 87(9) of the Act. Consequently, the FAMR Notification should be read accordingly. It is proposed that this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.

15. The effect of, and the reasons for making, the amendments set out above at paragraph 14 are set out in the consultation document accompanying this notification.

Proposed SMP services condition 12 – Quality of Service

16. OFCOM hereby gives notice of its proposal, in accordance with section 48A of the Act, in relation to the markets for (i) the supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area; and (ii) wholesale fixed analogue exchange line access in the United Kingdom excluding the Hull Area to set the SMP services condition on BT as set out in proposed Condition 12, which is set out in Schedule 5 to this notification, pursuant to its powers under section 87(5) of the Act. This proposed SMP services condition 12 replaces the proposed SMP services condition 12 in Schedule 1 to the FAMR Notification. It is proposed that this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification.
17. The effect of, and the reasons for making, the amended proposal set out above at paragraph 16, are set out in the consultation document accompanying this notification.

Proposed change to the definition of “Relevant Region” in Part 2 of the proposed SMP services conditions as set out in Schedule 1 to the FAMR Notification

18. For the reasons set out in the consultation document accompanying this notification, OFCOM is proposing to amend the definition of “Relevant Region” in Schedule 1 to the FAMR Notification by:
 - a. replacing the words “means the 26 geographic areas specified in Schedule 3 to this Notification and Northern Ireland;” with the words “means the nine geographic areas specified in Schedule 3 to this Notification and Northern Ireland, or such other regions as Ofcom may direct from time to time”; and

- b. amending Schedule 3 to the FAMR Notification by replacing the entirety of the text in Schedule 3 with the entirety of the text of Schedule 6 to this notification.

Consequently, the FAMR Notification should be read accordingly.

19. The effect of, and the reasons for making, the proposal set out above at paragraph 18 are set out in the consultation document accompanying this notification.

Ofcom's duties and legal tests

20. OFCOM considers that the proposals set out in this notification comply with all applicable legal tests, including the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.
21. In making the proposals referred to in this notification, OFCOM has:
 - a. considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act;
 - b. taken due account of all applicable recommendations issued by the European Commission in accordance with section 4A of the Act; and
 - c. taken utmost account of any relevant opinion, recommendation, guidance advice or regulatory practice adopted by BEREC in accordance with Article 3(3) of Regulation (EC) No 1211/2009.

Making representations

22. Representations may be made to OFCOM about any of the proposals set out in this notification and the accompanying consultation by no later than 13 February 2014.
23. A copy of this notification and the accompanying consultation document have been sent to the Secretary of State in accordance with sections 48C(1) of the Act.

Interpretation

24. For the purposes of interpreting this notification:
 - a) except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them below in paragraph 25, and otherwise any word or expression shall have the same meaning as it has in the Act;

- b) headings and titles shall be disregarded;
- c) expressions cognate with those referred to in this notification shall be construed accordingly; and
- d) the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

25. In this notification:

- a) "**Act**" means the Communications Act 2003 (c.21), as amended;
- b) "**BT**" means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;
- c) "**Hull Area**" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;
- d) "**OFCOM**" means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11); and
- e) "**United Kingdom**" has the meaning given to it in the Interpretation Act 1978 (c. 30).

26. Schedules 1 to 6 form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large initial 'D'.

David Clarkson

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

19 December 2013

Schedule 1: Proposed SMP services condition 7A

Condition 7A – LLU charge control

7A.1 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 conditions 7A.3 and 7A.4, as applicable) in:

(a) the aggregate of charges for ~~SMPF Ancillary Services~~ Tie Cables;

(b) the aggregate of charges for Hard Cease Services;

(c) (b) the aggregate of charges for MPF Ancillary Services New Provide Services;

(d) the aggregate of charges for Other LLU Ancillary Services;

(e) (e) the aggregate of charges for Co-Mingling New Provide and Rental Services;

(f) (d) the charge for MPF Rental, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(a) applies;

(g) (e) the charge for SMPF Rental, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(b) applies;

(h) (f) the charge for MPF Single Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(c) applies;

(i) (g) the charge for SMPF Single Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(d) applies;

~~(h) the charge for MPF New Provide, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(e) applies;~~

(j) (i) the charge for SMPF New Provide, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(ef) applies;

~~(k) (j)~~ the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(~~gf~~) applies; and

~~(l) (k)~~ the charge for SMPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(~~hg~~) applies; and

~~(l) the charge for MPF Expedite;~~

~~(m) the charge for SMPF Expedite;~~

is not more than the Controlling Percentage (as determined in accordance with condition 7A.6).

7A.2 The Dominant Provider shall not charge more than:

(a) for MPF Rental, the amount of £~~[82.78 to 90.14]~~ 82.81 to 89.55 in the First Relevant Year;

(b) for SMPF Rental, the amount of £~~[4.99 to 7.63]~~ 7.92 to 9.39 in the First Relevant Year;

(c) for MPF Single Migration, the amount of £~~[30.55 to 32.65]~~ 28.90 to 31.04 in the First Relevant Year;

(d) for SMPF Single Migration, the amount of £~~[30.55 to 32.65]~~ 28.90 to 31.04 in the First Relevant Year;

~~(e) for MPF New Provide, the amount of £[40.19 to 43.38] in the First Relevant Year;~~

~~(e) (f)~~ for SMPF New Provide, the amount of £~~[29.41 to 31.49]~~ 27.06 to 29.20 in the First Relevant Year;

~~(f) (g)~~ for MPF Bulk Migration, the amount of £~~[25.42 to 27.22]~~ 23.95 to 25.94 in the First Relevant Year;

(g) ~~(h)~~ for SMPF Bulk Migration, the amount of £[~~25.42 to 27.22~~ 23.95 to 25.94] in the First Relevant Year;

(h) ~~(i)~~ for MPF Cease, the amount of £0.00 in each Relevant Year; and

(i) ~~(j)~~ for SMPF Cease, the amount of £0.00 in each Relevant Year.

7A.3 The Percentage Change for the purposes of each of the categories of products and/or services (each of which is known as a “**Basket**”) specified in conditions 7A.1(a) to 7A.1(~~ee~~) shall be calculated, for the purposes of complying with condition 7A.1, by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(\bar{p}_{t,i} - \bar{p}_{t-1,i})}{\bar{p}_{t-1,i}} \right]}{\sum_{i=1}^n R_i}$$

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

C_t is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year t ;

n is the number of individual services in the Basket;

i is a number from 1 to n for each of the n individual services in the Basket;

R_i is the ~~revenue~~ Total Revenue accrued during the Prior Year in respect of the individual service i that forms part of the Basket ~~calculated to exclude any discounts offered by the Dominant Provider~~;

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

~~$\bar{p}_{t,t}$~~ $\bar{p}_{i,t}$ is the ~~weighted average charge~~ Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Relevant Year, t excluding any discounts offered by the Dominant Provider:

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{t,t} = \sum_{j=1}^m (w_{j,t,t} p_{j,t,t})$$

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

m is the number of time periods for which there are distinct charges during the Relevant Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

~~$w_{j,t,t}$~~ $w_{i,j,t}$ is the proportion of the Relevant Year in which each charge, ~~$p_{j,t,t}$~~ $p_{i,j,t}$ is in effect, calculated by the number of days during which the charge is in effect and dividing:

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 366; and
- 3) for the Third Relevant Year, by 365.

~~$p_{j,t,t}$~~ $p_{i,j,t}$ is the charge for the specified period, j , during the Relevant Year t for the individual service, i ;

~~$\bar{p}_{t-1,t}$~~ $\bar{p}_{i,t-1}$ is the ~~weighted average charge made by the Dominant Provider, for the purposes of calculating the Percentage Change for the First Relevant Year, the Initial Charge~~ for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider. For the purposes of calculating the Percentage Change for the Second Relevant Year and the Third

Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{t-1,t} = \sum_{j=1}^m (w_{j,t-1,t} p_{j,t-1,t})$$

$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

m is the number of time periods for which there are distinct charges during the Prior Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

~~$w_{j,t-1,t}$~~ $w_{i,j,t-1}$ is the proportion of the Prior Year in which each charge, ~~$p_{j,t-1,t}$~~ $p_{i,j,t-1}$, is in effect, calculated by the number of days during which the charge is in effect and dividing :

- 1) ~~for the Prior Year when considering the First Relevant Year, by 365;~~
- 2) ~~for the Prior Year when considering the Second Relevant Year, by 365;~~
- 3) ~~for the Prior Year when considering the Third Relevant Year, by 366;~~

~~$p_{j,t-1,t}$~~ $p_{i,j,t-1}$ is the charge for the individual period, j , during the Prior Year, $t-1$, for the individual service, i .

For the avoidance of doubt, for the purpose of calculating the Percentage Change for the Basket specified in :

- (a) condition 7A.1(~~ea~~), the revenues for ~~Co-Mingling Services~~ Tie Cables shall be taken to include all revenue from selling ~~Co-Mingling Services and/or other services~~ Tie Cables irrespective of their use; and

(b) condition 7A.1(e), the revenues for Co-Mingling New Provide and Rental Services shall be taken to include all revenue from selling Co-Mingling New Provide and Rental Services irrespective of their use.

7A.4 The Percentage Change for the purposes of each of the products and/or services specified (each of which is referred to in this condition as a “single charge category”) in conditions 7A.1(d) to 7A.1(m) shall be calculated, for the purposes of complying with condition 7A.4, by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

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

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

\bar{p}_t shall be calculated by employing the formula set out in condition 7A.3 above for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for the specific product and/or service in the single charge category in question; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in condition 7A.3 above for the Prior Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for the specific product and/or service in the single charge category in question.

7A.5 In the case of each of the categories of products and/or services that form part of a Basket specified in conditions 7A.1(a), ~~to 7A.1(b) and 7A.1(c)~~ respectively, the Dominant Provider shall also and, in any event, take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in discrete charges for each and every product and/or service falling within the Basket in question is no more than the Controlling Percentage increased by [5-7.5] percentage points.

For the purposes of this condition 7A.5:

- (a) the Controlling Percentage is the Controlling Percentage (as determined in accordance with condition 7A.6) for the Basket within which the product and/or service falls to which the discrete charges relate; and
- (b) the Percentage Change shall be calculated by employing the formula set out in condition 7A.4 and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling with the Basket in question.

7A.6 ~~(a) Subject to conditions 7A.6(b) to 7A.6(d) below, the~~ Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(m) shall be calculated by employing the following formula:

$$CP_t = \{(100\% + CPI_t + X) \times \text{Prior Year Adjustment Ratio}_t\} - 100\%$$

$$CP_t = CPI_t + X$$

Where:

~~CP_t means~~ CP_t is the Controlling Percentage for Relevant Year t ,

~~CPI_t is~~ CPI_t is CPI for the Relevant Year t ;

~~Prior Year Adjustment Ratio_t is the~~ Prior Year Adjustment Ratio for Relevant Year t as determined in condition 7A.7 below

X means:

- (a) for the category of products and/or services specified in condition 7A.1(a)
[-11 to -6.25 ~~-5% to -12%~~] percentage points;
- (b) for the category of products and/or services specified in condition 7A.1(b)
[-11.75 to -6.75 ~~-5% to -12%~~] percentage points;
- (c) for the category of products and/or services specified in condition 7A.1(c)
[-5 to 2 ~~-8% to -14%~~] percentage points;
- (d) for the category of products and/or services specified in condition 7A.1(d)
[-6 to 0 ~~++4% to -4%~~] percentage points;
- (e) for the category of products and/or services specified in condition 7A.1(e)
[-1 to 4.5 ~~-6% to -21%~~] percentage points;
- (f) for the category of products and/or services specified in condition 7A.1(f)
[-4.25 to 4.5 ~~-1% to -8%~~] percentage points;
- (g) for the category of products and/or services specified in condition 7A.1(g)
[-39.25 to -6 ~~-1% to -8%~~] percentage points;
- (h) for the category of products and/or services specified in condition 7A.1(h)
[-2.5 to 4.25 ~~-7% to -14%~~] percentage points;
- (i) for the category of products and/or services specified in condition 7A.1(i)
[-2.5 to 4.25 ~~-7% to -14%~~] percentage points;
- (j) for the category of products and/or services specified in condition 7A.1(j)
[-6.25 to 0.5 ~~-11% to -18%~~] percentage points;
- (k) for the category of products and/or services specified in condition 7A.1(k)
[-12.75 to -6.5 ~~-11% to -18%~~] percentage points; and

(l) for the category of products and/or services specified in condition 7A.1(l) [-12.75 to -6.50%] percentage points.

~~(m) for the category of products and/or services specified in condition 7A.1(m) [0 %] percentage points.~~

For the avoidance of doubt, the MPF Rental, SMPF Rental, MPF Single Migration, SMPF Single Migration, ~~MPF New Provide, SMPF New Provide~~, MPF Bulk Migration and SMPF Bulk Migration charges are constrained by 7A.2 in the First Relevant Year.

(b) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(l), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (the “Deficiency”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7A.6(d) below.

(c) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(l), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (the “Excess”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7A.6(d) below.

(d) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(l), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

CP_t is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

CP_{t-1} is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year):

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7A.1(a) to 7A.1(l) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7A.3 or 7A.4, as applicable:

X is as set out in condition 7A.6(a) above; and

CPI has the meaning ascribed to it in condition 7A.14(h) below.

(e) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(l), where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

~~7A.7 The Prior Year Adjustment Ratio in relation to any Relevant Year for each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(m) shall be:~~

~~(a) one for the First Relevant Year; and~~

~~(b) calculated by employing the following formula for the Second Relevant Year and Third Relevant Year:~~

$$\text{Prior Year Adjustment Ratio}_t = (100\% + CP_{t-1}) / (100\% + C_{t-1})$$

~~Where:~~

~~CP_{t-1} means the Controlling Percentage for the relevant categories of products and/or services specified in Condition 7A.1(a) to 7A.1(m) for the Prior Year, which shall be equal to:~~

~~1) the Controlling Percentage for the First Relevant Year when considering the Second Relevant Year;~~

~~2) the Controlling Percentage for the Second Relevant Year when considering the Third Relevant year;~~

~~C₁ means the Percentage Change for the relevant categories of products and/or services specified in Condition 7A.1(a) to 7A.1(m) for the Prior Year, which shall be equal to:~~

~~1) the Percentage Change for the First Relevant Year when considering the Second Relevant Year;~~

~~2) the Percentage Change for the Second Relevant Year when considering the Third Relevant year.~~

7A.87 The Dominant Provider shall ensure that during each Relevant Year:

- (a) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Base module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Base module;
- (b) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Network module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Network module;
- (c) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Frame module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Frame module;
- (d) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Internal Wiring module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Internal Wiring module;
- (e) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Internal equip module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Internal equip module;

- (f) the charge made by it for MPF Special Fault Investigation 2 (SF12) - Coop module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SF12) - Coop module; and
- (g) the charge made by it for MPF Special Fault Investigation 2 (SF12) - Frame direct module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SF12) - Frame direct module.

For the avoidance of doubt, nothing in this condition 7A.87 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.87 (a) to (g) above provided the requirements set out in condition 6.1 (basis of charges) ~~and~~ this condition 7A.87 and condition 7A.1 are complied with.

7A.98 The Dominant Provider shall ensure that during each Relevant Year:

- (a) the charge made by it for MPF Service Maintenance Level 3 is the same as the charge made by it for WLR Service Maintenance Level 3;
- (b) the charge made by it for MPF Service Maintenance Level 4 is the same as the charge made by it for WLR Service Maintenance Level 4;
- (c) the charge made by it for SMPF Service Maintenance Level 3 is the same as the charge made by it for WLR Service Maintenance Level 3; and
- (d) the charge made by it for SMPF Service Maintenance Level 4 is the same as the charge made by it for WLR Service Maintenance Level 4.

For the avoidance of doubt, nothing in this condition 7A.98 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.98 (a) to (d) above provided the requirements set out in this condition 7A.98 and condition 7A.1 are complied with.

7A.9 The Dominant Provider shall ensure that during each Relevant Year:

- (a) the charge made by it for MPF Remove Jumper Order Singleton Charge is the same as the charge made by it for SMPF Remove Jumper Order Singleton Charge;
- (b) the charge made by it for MPF Remove Jumper Order Bulk Charge is the same as the charge made by it for SMPF Remove Jumper Order Bulk Charge;
- (c) the charge made by it for MPF Tie Pair Modification is the same as the charge made by it for SMPF Tie Pair Modification;
- (d) the charge made by it for MPF Tie Pair Modification (Multiple Re-termination) is the same as the charge made by it for SMPF Tie Pair Modification (Multiple Re-termination);
- (e) the charge made by it for MPF Standard Line Test is the same as the charge made by it for SMPF Standard Line Test;
- (f) the charge made by it for MPF Cancellation is the same as the charge made by it for SMPF Cancellation; and
- (g) the charge made by it for MPF Amend is the same as the charge made by it for SMPF Amend.

For the avoidance of doubt, nothing in this condition 7A.9 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.9 (a) to (g) above provided the requirements set out in this condition 7A.9 and condition 7A.1 are complied with.

7A.10 Where:

- (a) the Dominant Provider makes a material change (other than to a Charge) to any Charge Controlled Service for which a Charge is charged;
- (b) the Dominant Provider makes a change to the date on which its financial year ends; or
- (c) there is a material change in the basis of the Consumer Prices Index,

conditions 7A.1 to 7A.9 shall have effect subject to such reasonable adjustment to take account of the change as OFCOM may direct to be appropriate in the circumstances. For the purposes of this condition 7A.10, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new product and/or service wholly or substantially in substitution for that existing Charge Controlled Service.

7A.11 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format, 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. The data must include:

- (a) pursuant to conditions 7A.3 and 7A.4, as applicable, the calculated Percentage Change relating to each category of products and services listed in conditions 7A.1(a) through to 7A.1(~~m~~);
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 7A.3 and 7A.4 above, including for each specific service and/or product in a Basket;
- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods such charges during which they were in force;

(d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which Conditions 7A.3 and 7A.4 apply and calculations thereof; and

(e) other data necessary for monitoring compliance with the charge control; and

(f) such data as Ofcom may from time to time direct.

~~whereby all~~All relevant revenues in respect of a specific service in ~~the~~a Basket ~~are~~shall be provided to at least the nearest £1,000.

~~7A.12 If it appears to OFCOM that the Dominant Provider is likely to fail to secure that the Percentage Change does not exceed the Controlling Percentage for the Third Relevant Year, the Dominant Provider shall make such adjustment to any of its charges for the provision of Charge Controlled Service and by such day in the Third Relevant Year (or if appropriate in OFCOM's opinion, by such day that falls after the end of the Third Relevant Year) as OFCOM may direct for the purpose of avoiding such a failure.~~

Conditions 7A.1 to 7A.1411 shall not apply to such extent as OFCOM may direct.

~~7A.14~~13 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this Condition.

~~7A.15~~14 In this Condition:

(a) "Affected Communications Provider" means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in conditions 7A.1(a) to 7A.1(l) of this condition during the Relevant Year;

(b) (a) "Basket" shall be construed in accordance with condition 7A.3;

- (c) ~~(b)~~ **“Charge”** means ~~for the purposes of condition 7A.10,~~ the charge (being in all cases the amounts offered or charged by the Dominant Provider), excluding any discounts offered by the Dominant Provider, to a communications provider for the Charge Controlled Service;
- (d) ~~(c)~~ **“Charge Controlled Service”** means a service or Basket of services listed in 7A.1(a) to 7A.1(m);
- (e) ~~(d)~~ **“Co-Mingling New Provide and Rental Services”** means all of the products and/or services listed from time to time for the purpose of Part 35 of the Annex to this Condition;
- (f) ~~(e)~~ **“Consumer Prices Index”** means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;
- (g) ~~(f)~~ **“Controlling Percentage”** is to be determined in accordance with condition 7A.6;
- (h) ~~(g)~~ **“CPI”** means the amount of the change in the Consumer Prices Index in the period of twelve months ending on 31 October immediately before the beginning of at the Relevant Year, expressed as a percentage (rounded to two decimal places) of that Consumer Prices Index as at the beginning of that first mentioned period;
- (i) ~~(h)~~ **“Dominant Provider”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- (j) **“Excess Revenue”** means the difference between (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services and/or products listed in conditions 7A.1(a) to 7A.1(l), and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from

providing the services and/or products listed in conditions 7A.1(a) to 7A.1(l) if it had complied with condition 7A.1:

(k) “**Hard Cease Services**” means all of the products and/or services listed from time to time for the purpose of Part 2 of the Annex to this Condition:

(l) “**Initial Charge**” means, for the purposes of calculating the Percentage Change in accordance with condition 7A.3, the charge by the Dominant Provider for the individual service, *i*, in the relevant Basket as set out in the column entitled ‘Initial Charge’ in the relevant Part of the Annex to this Condition:

(m) ~~(i)~~ “**Metallic Path Facilities**” means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network;

~~(j)~~ “**MPF Ancillary Services**” means all of the products and/or services listed from time to time for the purpose of Part 2 of the Annex to this Condition;

(n) “**MPF Amend**” shall be construed as having the same meaning as the service described in row 10 of the table in Part 4 of the Annex to this Condition:

(o) ~~(k)~~ “**MPF Bulk Migration**” shall be construed as having the same meaning as ‘MPF Same CP Mass Migration charge - Normal hours’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

(p) “**MPF Cancellation**” shall be construed as having the same meaning as the service described in row 9 of the table in Part 4 of the Annex to this Condition:

(q) ~~(l)~~ **“MPF Cease”** shall be construed as having the same meaning as ‘MPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

~~(m)~~ **“MPF Expedite”** shall be construed as having the same meaning as ‘MPF Expedite’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

~~(n)~~ **“MPF New Provide”** shall be construed as having the same meaning as ‘MPF Connection charge — New Provide Standard’ as provided by the Dominant Provider on its website for definitions and explanations of its products

(r) **“MPF New Provide Services”** means all of the products and/or services listed from time to time for the purpose of Part 3 of the Annex to this Condition;

(s) **“MPF Remove Jumper Order Bulk Charge”** shall be construed as having the same meaning as the service described in row 2 of the table in Part 2 of the Annex to this Condition;

(t) **“MPF Remove Jumper Order Singleton Charge”** shall be construed as having the same meaning as the service described in row 1 of the table in Part 2 of the Annex to this Condition;

(u) ~~(o)~~ **“MPF Rental”** shall be construed as the annual rental of access to Metallic Path Facilities;

(v) ~~(q)~~ **“MPF Service Maintenance Level 3”** shall be construed as having the same meaning as ‘Service Maintenance Level 3 (Annual Rental)’ in respect of the feature ‘LLU MPF’, as provided by the Dominant Provider on its website for definitions and explanations of its products;

(w) ~~(r)~~ **“MPF Service Maintenance Level 4”** shall be construed as having the same meaning as ‘Service Maintenance Level 4 (Annual Rental)’ in respect

of the feature 'LLU MPF', as provided by the Dominant Provider on its website for definitions and explanations of its products;

(x) **"MPF Single Migration"** shall be construed as having the same meaning as 'MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(y) ~~(s)~~ **"MPF Special Fault Investigation 2 (SF12) - Base module"** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Base module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(z) ~~(t)~~ **"MPF Special Fault Investigation 2 (SF12) - Coop module"** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Coop module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(aa) ~~(u)~~ **"MPF Special Fault Investigation 2 (SF12) - Frame direct module"** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Frame direct module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(bb) ~~(v)~~ **"MPF Special Fault Investigation 2 (SF12) - Frame module"** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Frame module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(cc) ~~(w)~~ **"MPF Special Fault Investigation 2 (SF12) - Internal equip module"** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Internal equip module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(dd) ~~(x)~~ **"MPF Special Fault Investigation 2 (SF12) - Internal Wiring module"** shall be construed as having the same meaning as 'MPF Special Fault

Investigation 2 (SF12) - Internal Wiring module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(ee) ~~(y)~~ **“MPF Special Fault Investigation 2 (SF12) - Network module”** shall be construed as having the same meaning as 'MPF Special Fault Investigation 2 (SF12) - Network module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

(ff) **“MPF Standard Line Test”** shall be construed as having the same meaning as the service described in row 11 of the table in Part 4 of the Annex to this Condition;

(gg) **“MPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row 7 of the table in Part 4 of the Annex to this Condition;

(hh) **“MPF Tie Pair Modification (Multiple Re-termination)”** shall be construed as having the same meaning as the service described in row 8 of the table in Part 4 of the Annex to this Condition;

(ii) ~~(z)~~ **“OFCOM”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;

(ij) **“Other LLU Ancillary Services”** means all of the products and/or services listed from time to time for the purpose of Part 4 of the Annex to this Condition;

(kk) ~~(aa)~~ **“Percentage Change”** has the meaning given to it in condition 7A.43 and 7A.5,4 as applicable;

(ll) ~~(bb)~~ **“Prior Year”** means the period of 12 months ending on 31 March immediately preceding the Relevant Year;

~~(cc)~~ “**Prior Year Adjustment Ratio**” shall be construed in accordance with condition 7D.7;

(mm) ~~(vv)~~ “**Prior Year Weighted Average Charge**” is to be determined in accordance with the relevant formula in condition 7A.3;

(nn) “**Relevant Excess Revenue**” means the Excess Revenue earned from charging the Affected Communications Provider;

(oo) ~~(dd)~~ “**Relevant Year**” means each of the following three periods:

(1) the period beginning on 1 April 2014 and ending on 31 March 2015 (the “**First Relevant Year**”);

(2) the period beginning on 1 April 2015 and ending on 31 March 2016 (the “**Second Relevant Year**”); and

(3) the period beginning on 1 April 2016 and ending on 31 March 2017 (the “**Third Relevant Year**”);

(pp) ~~(ww)~~ “**Relevant Year Weighted Average Charge**” is to be determined in accordance with the relevant formula in condition 7A.3;

(qq) ~~(ee)~~ “**Shared Access**” means the non-voice band frequency of Metallic Path Facilities;

(rr) “**SMPF Amend**” shall be construed as having the same meaning as the service described in row 4 of the table in Part 4 of the Annex to this Condition;

~~(ff)~~ “**SMPF Ancillary Services**” means all of the products and/or services listed from time to time for the purpose of Part 1 of the Annex to this Condition;

(ss) ~~(gg)~~ “**SMPF Bulk Migration**” shall be construed as having the same meaning as ‘SMPF Bulk Migrations charge Normal Delivered during a 24

hour period'—as as provided by the Dominant Provider on its website for definitions and explanations of its products;

(tt) “SMPF Cancellation” shall be construed as having the same meaning as the service described in row 3 of the table in Part 4 of the Annex to this Condition;

(uu) ~~(hh)~~ **“SMPF Cease”** shall be construed as having the same meaning as ‘SMPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

~~(ii)~~ **“SMPF Expedite”** shall be construed as having the same meaning as ‘SMPF Expedite’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

(vv) ~~(jj)~~ **“SMPF New Provide”** means the provision of Shared Access on a line that previously did not have Shared Access, including when the line was previously provided with Metallic Path Facilities;

(ww) “SMPF Remove Jumper Order Bulk Charge” shall be construed as having the same meaning as the service described in row 4 of the table in Part 2 of the Annex to this Condition;

(xx) “SMPF Remove Jumper Order Singleton Charge” shall be construed as having the same meaning as the service described in row 3 of the table in Part 2 of the Annex to this Condition;

(yy) ~~(kk)~~ **“SMPF Rental”** shall be construed as rental of access to the non-voice band frequency of Metallic Path Facilities; and

(zz) ~~(ll)~~ **“SMPF Service Maintenance Level 3”** shall be construed as having the same meaning as ‘Service Maintenance Level 3 (Annual Rental)’ in respect of the feature ‘LLU Shared MPF’, as provided by the Dominant Provider on its website for definitions and explanations of its products;

- [\(aaa\)](#) ~~(mm)~~ “**SMPF Service Maintenance Level 4**” shall be construed as having the same meaning as ‘Service Maintenance Level 4 (Annual Rental)’ in respect of the feature ‘LLU Shared MPF’, as provided by the Dominant Provider on its website for definitions and explanations of its products;
- [\(bbb\)](#) ~~(nn)~~ “**SMPF Single Migration**” means the transfer of control of a Shared Access service for a single line from one ~~Communications Provider~~communications provider to another;
- [\(ccc\)](#) ~~(oo)~~ “**SMPF Special Fault Investigation 2 (SFI2) - Base module**” shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Base module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- [\(ddd\)](#) ~~(pp)~~ “**SMPF Special Fault Investigation 2 (SFI2) - Coop module**” shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Coop module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- [\(eee\)](#) ~~(qq)~~ “**SMPF Special Fault Investigation 2 (SFI2) - Frame direct module**” shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Frame direct module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- [\(fff\)](#) ~~(rr)~~ “**SMPF Special Fault Investigation 2 (SFI2) - Frame module**” shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Frame module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- [\(ggg\)](#) ~~(ss)~~ “**SMPF Special Fault Investigation 2 (SFI2) - Internal equip module**” shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Internal equip module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

- (hh) ~~(tt)~~ **“SMPF Special Fault Investigation 2 (SF12) - Internal Wiring module”** shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SF12) - Internal Wiring module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (iii) ~~(uu)~~ **“SMPF Special Fault Investigation 2 (SF12) - Network module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Network module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (jii) **“SMPF Standard Line Test”** shall be construed as having the same meaning as the service described in row 5 of the table in Part 4 of the Annex to this Condition;
- (kkk) **“SMPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row 1 of the table in Part 4 of the Annex to this Condition;
- (lll) **“SMPF Tie Pair Modification (Multiple Re-termination)”** shall be construed as having the same meaning as the service described in row 2 of the table in Part 4 of the Annex to this Condition;
- (mmm) **“Tie Cables”** means all of the products and/or services listed from time to time for the purpose of Part 1 of the Annex to this Condition;
- (nnn) **“Total Revenue”** means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services and/or products subject to this Condition, excluding any discounts offered by the Dominant Provider;
- (ooo) ~~(xx)~~ **“WLR Service Maintenance Level 3”** shall be construed as having the same meaning as ‘Service Maintenance Level 3 (Annual Rental)’ in respect of the feature ‘WLR – Wholesale Premium - per line’, as provided by the Dominant Provider on its website for definitions and explanations of its products; and

(ppp) ~~(yy)~~ **“WLR Service Maintenance Level 4”** shall be construed as having the same meaning as ‘Service Maintenance Level 4 (Annual Rental)’ in respect of the feature ‘WLR – Wholesale Premium - per line’, as provided by the Dominant Provider on its website for definitions and explanations of its products.

Annex to Condition 7A²

Products and/or services subject to charge control pursuant to conditions

7A.1(a), 7A.1(b), 7A.1(c), 7A.1(d) and 7A.1(e)

Part 1

Meaning of Tie Cables

For the purposes of Condition 7A, the expression “**Tie Cables**” shall be construed as including only the following forty eight products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these forty eight products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. Hand-over Distribution Frame charge per 100 pair tie cable	£28.76
2. Handover Distribution Frame Extension to provide additional 1500 tie pair capacity for MCU1	£246.58
3. Additional Handover Distribution Frame to provide additional 4800 tie pair capacity for B-BUSS7	£1,860.33
4. Standalone Handover Distribution Frame (HDF) 9	£2,363.08
5. Standalone Handover Distribution Frame (HDF) 18	£2,475.42
6. Internal Tie Cable (2) Jointing Fixed Charge per External Tie Cable	£143.92
7. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Connection	£295.00
8. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Rental	£23.52

² Please note that, in order to avoid confusion, we have not highlighted or underlined proposed amendments to the annexes to proposed Conditions 7A and 7C.

9.	Internal Tie Cable (2)	£274.58
10.	Internal Tie Cable (2) Rental	£17.04
11.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling	£450.00
12.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling Rental	£85.20
13.	21CN-32 pair standard Internal Tie Cable-HDF connected	£269.89
14.	21CN-32 pair standard Internal Tie Cable-HDF connected Rental	£38.04
15.	21CN-64 pair standard Internal Tie Cable-HDF connected	£344.21
16.	21CN-64 pair standard Internal Tie Cable-HDF connected Rental	£48.48
17.	21CN-32 pair enhanced Internal Tie Cable-HDF connected	£283.19
18.	21CN-32 pair enhanced Internal Tie Cable-HDF connected Rental	£40.56
19.	21CN-64 pair enhanced Internal Tie Cable-HDF connected	£364.54
20.	21CN-64 pair enhanced Internal Tie Cable-HDF connected Rental	£52.44
21.	21CN-100 pair enhanced Internal Tie Cable-HDF connected	£450.00
22.	21CN-100 pair enhanced Internal Tie Cable-HDF connected Rental	£85.20
23.	LLU Internal Tie Cable Cease of 1-10 Cables (per Point of Presence)	£539.94
24.	LLU Internal Tie Cable Cease of 11-20 Cables (per Point of Presence)	£608.00
25.	LLU Internal Tie Cable Cease of 21-30 Cables (per Point of Presence)	£676.05
26.	LLU Internal Tie Cable Cease of 31-40 Cables (per Point of Presence)	£742.31

27.	LLU Internal Tie Cable Cease of 41-50 Cables (per Point of Presence)	£810.35
28.	BT Provided Ext 100 Pair cable @ 100 metres - Connection charge per cable	£977.07
29.	BT Provided Ext 100 Pair cable @ 100 metres - Connection charge per extra 100 pair	£308.22
30.	BT Provided Ext 100 Pair cable @ 100 metres – Connection charge per extra 100 metres	£152.55
31.	BT Provided Ext 100 Pair cable @ 100 metres - Rental per annum per cable	£128.52
32.	BT Provided Ext 100 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£108.84
33.	BT Provided Ext 100 Pair cable @ 100 metres - Rental per annum per extra 100m	£86.52
34.	BT Provided external -500 Pair cable @ 100 metres - Connection charge per cable	£1,598.19
35.	BT Provided external -500 Pair cable @ 100 metres – Connection charge per cable per extra 100m	£152.55
36.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable per extra 100 pairs	£308.22
37.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per cable	£205.92
38.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per extra 100m	£161.28
39.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£108.84
40.	Hand-over Distribution Frame option per 100 pair Frame capacity	£121.73
41.	Operator provided External 100 Pair cable @ 100 metres - Connection charge per cable	£865.99
42.	Operator provided External 100 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£296.49

43. Operator provided External 100 Pair cable @ 100 metres - Rental fixed per annum per cable	£30.12
44. Operator provided External 100 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£15.72
45. Operator Provided External 500 Pair cable @ 100 metres - Connection charge per cable	£1,231.30
46. Operator provided External 500 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£296.49
47. Operator Provided External 500 Pair cable @ 100 metres - Rental fixed per annum per cable	£34.08
48. Operator provided External 500 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£15.72

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Part 1 shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For SMPF and MPF product information, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- For assurance information including care levels, please refer to the Service Products section of the Openreach website:
http://www.openreach.co.uk/orpg/home/products/serviceproducts/service_products.do
- For 21C related products, please refer to LLU secure portal, of the Openreach website for which CPs need to request access. This is done by choosing “LLU secure” from the Local Loop Unbundling menu available at:
<http://www.openreach.co.uk/orpg/home/products/llu/llu.do>

For information held in the price list, please refer to the Plan and Build area within the “Local Loop Unbundling Pricing” section of the price list available at:

<http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do>

Part 2

Meaning of Hard Cease Services

For the purposes of Condition 7A, the expression “**Hard Cease Services**” shall be construed as including only the following four products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these four products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. MPF MDF Remove Jumper Order Singleton Charge	£23.28
2. MPF MDF Remove Jumper Order Bulk Charge	£19.02
3. SMPF MDF Remove Jumper Order Singleton Charge	£23.28
4. SMPF MDF Remove Jumper Order Bulk Charge	£19.02

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Part 2 shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For SMPF and MPF product information, please refer to:
<http://www.openreach.co.uk/orpg/home/products/llu/mpf/mpf.do>
- For assurance information including care levels, please refer to the Service Products section of the Openreach website:
http://www.openreach.co.uk/orpg/home/products/serviceproducts/service_products.do
- For 21C related products, please refer to LLU secure portal, of the Openreach website for which CPs need to request access. This is done by choosing “LLU secure” from the Local Loop Unbundling menu available at:
<http://www.openreach.co.uk/orpg/home/products/llu/llu.do>

- For information held in the price list, please refer to the “LLU Pricing” section of the price list available at:

<http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do>

Part 3

Meaning of MPF New Provide Services

For the purposes of Condition 7A, the expression “**MPF New Provide Services**” shall be construed as including only the following three products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these three products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. MPF Connection charge – New Provide Standard	£45.53
2. MPF Connection Charge Stopped Line Provide	£37.57
3. MPF Working Line Takeover (WLTO)	£37.57

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Part 3 shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For MPF product information, please refer to:
<http://www.openreach.co.uk/orpg/home/products/llu/mpf/mpf.do>
- For assurance information including care levels, please refer to the Service Products section of the Openreach website:
http://www.openreach.co.uk/orpg/home/products/serviceproducts/service_products.do
- For 21C related products, please refer to LLU secure portal, of the Openreach website for which CPs need to request access. This is done by choosing “LLU secure” from the Local Loop Unbundling menu available at:
<http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- For information held in the price list, please refer to the “LLU Pricing” section of the price list available at:
<http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do>

Part 4

Meaning of Other LLU Ancillary Services

For the purposes of Condition 7A, the expression “**Other LLU Ancillary Services**” shall be construed as including only the following eleven products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these eleven products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. SMPF Tie Pair Modification (3 working day lead time Re-termination)	£39.30
2. SMPF Tie Pair Modification (Multiple Re-termination)	£29.56
3. Cancellation of SMPF orders for Provide, Simultaneous provide, Migration, Modification or Amend	£11.25
4. Amend orders. Allowable change to SMPF Order	£11.25
5. SMPF Standard line test	£4.30
6. SMPF Flexi Cease Fault Investigation Charges	£69.30
7. MPF Tie Pair Modification (3 working day lead time Re-termination)	£39.30
8. MPF Tie Pair Modification (Multiple Re-termination)	£29.56
9. Cancellation of MPF orders for Provide, Migration, Modification or Amend	£11.25
10 Amend orders. Allowable change to MPF Order	£11.25
11 MPF Standard line test	£4.30

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Part 4 shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For SMPF and MPF product information, please refer to:
<http://www.openreach.co.uk/orpg/home/products/llu/mpf/mpf.do>
- For assurance information including care levels, please refer to the Service Products section of the Openreach website:
http://www.openreach.co.uk/orpg/home/products/serviceproducts/service_products.do
- For 21C related products, please refer to LLU secure portal, of the Openreach website for which CPs need to request access. This is done by choosing “LLU secure” from the Local Loop Unbundling menu available at:
<http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- For information held in the price list, please refer to the “LLU Pricing” section of the price list available at:
<http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do>

Part 5

Meaning of Co-Mingling New Provide and Rental Services

For the purposes of Condition 7A, the expression “**Co-Mingling New Provide and Rental Services**” shall be construed as including only the following thirty three products and/or services, subject to any such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these thirty three products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. Distant location full survey	£1,208.37
2. Missed joint survey or testing appointment	£22.36
3. Co-location order rejection - no space available	£281.94
4. Co-location full survey	£7,157.77
5. Site visit charge to be allocated to all orders not in conjunction with the installation of a base product	£353.55
6. Co-Mingling order rejection - no space or insufficient space available	£577.33
7. APO Cancellation Charge	£374.44
8. Co-Mingling set up fee (per sq metre)	£390.00
9. Comingling Shared Point of Presence Administration Fee	£283.43
10. Cooling per kw	£1,921.47
11. FCP (Powerbase) AC only base unit 600mm (w) x 600mm (d) to include lighting and cable management	£3,056.32

12. FCP (Powerbase) AC only base unit 800mm (w) x 600mm (d) to include lighting and cable management	£3,606.00
13. FCP (Powerbase) AC only base unit 600mm (w) x 800mm (d) to include lighting and cable management	£3,306.58
14. FCP (Powerbase) AC only base unit 800mm (w) x 800mm (d) to include lighting and cable management	£3,950.74
15. HDF sub rack (per sub rack 3x 100 pair capacity)	£43.89
16. HDF cabinet 800mm (w) x 600mm (d) for FCP	£1,524.06
17. HDF cabinet 800mm (w) x 800mm (d) for FCP	£1,625.70
18. Rack Space Unit (RSU) for FCP to include lighting and cable management	£622.97
19. MCB customisation at initial build for FCP	£33.00
20. Cabinet doors per pair for FCP only (where provided as an upgrade will be subject to a Site Visit charge)	£503.27
21. BT's Normal Working Hours, planned	£53.69
22. BT's Normal Working Hours, unplanned	£80.55
23. BASIS (BT Assisted Site Delivery Service) fixed charge	£431.12
24. Site Access	£408.71
25. Handover	£340.18
26. Provision of sub meter	£953.56
27. Survey for capacity upgrade	£431.20
28. AC Final Distribution Rental per 10kw increment per annum (Charges	£432.60

	will appear in billed units of decawatts (10W)	
29.	Security rental per sq. metre	£28.32
30.	Service Charge per square metre per annum	£70.00
31.	Security partitioning annual rental per site charge	£143.04
32.	Rental of existing capacity per kW per annum (Charges will appear in billed units of decawatts (10W))	£201.48
33.	MDF Licence Fee per Internal Tie Cable per annum	£32.76

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Part 5 shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For SMPF and MPF product information, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- For assurance information including care levels, please refer to the Service Products section of the Openreach website: http://www.openreach.co.uk/orpg/home/products/serviceproducts/service_products.do
- For 21C related products, please refer to LLU secure portal, of the Openreach website for which CPs need to request access. This is done by choosing “LLU secure” from the Local Loop Unbundling menu available at: <http://www.openreach.co.uk/orpg/home/products/llu/llu.do>

For information held in the price list, please refer to the Plan and Build area within the “Local Loop Unbundling Pricing” section of the price list available at:

<http://www.openreach.co.uk/orpg/home/products/pricing/loadPricing.do>

Schedule 2: Proposed SMP services condition 7C

Condition 7C – WLR charge control

7C.1 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 condition 7C.3 and 7C.4, as applicable) in:

(a) the charge for ~~Wholesale Analogue Line~~Core WLR Rental, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(a) applies;

(b) the charge for WLR Transfer, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(b) applies;

~~(c) the charge for WLR New Connection, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(c) applies; and~~

(c) ~~(d)~~ the charge for WLR Conversion, except for:

(i) the First Relevant Year; and/or

(ii) when that service is Simultaneously Provided with SMPF New Provide,

in relation to which the charge ceilings specified in condition 7C.2(~~d~~) apply; and

(d) the aggregate of charges for WLR Connection Services (excluding when any individual service in this Basket is Simultaneously Provided with SMPF New Provide, in relation to which the relevant charge ceiling specified in condition 7C.2(e) or 7C.2(f), as applicable, will apply).

is not more than the Controlling Percentage (as determined in accordance with condition 7C.46).

7C.2 The Dominant Provider shall not charge more than:

(a) for ~~Wholesale Analogue Line~~Core WLR Rental, the amount of £~~[88.11 to 94.75 88.14 to 93.55]~~ in the First Relevant Year;

(b) for WLR Transfer, the amount of £~~[4.69 to 4.97 4.69 to 4.99]~~ in the First Relevant Year;

~~(c) for WLR New Connection, the amount of £[41.12 to 44.41] in the First Relevant Year;~~

(c) ~~(d)~~ for WLR Conversion:

(i) when not Simultaneously Provided with SMPF New Provide, the amount of £~~[30.55 to 32.65 28.90 to 31.04]~~ in the First Relevant Year; or

(ii) when Simultaneously Provided with SMPF New Provide, the Charge for WLR Conversion determined in accordance with condition 7C.1~~(d)~~ (as if it were not Simultaneously Provided with SMPF New Provide) less the Charge for SMPF New Provide determined in accordance with condition 7A.1~~(f)~~ for in each Relevant Year;

(d) for Caller ID, the amount of £[0.35 to 0.50] in each Relevant Year.

(e) for WLR Standard Connection, when Simultaneously Provided with SMPF New Provide, the applicable charge for WLR Standard Connection determined in accordance with condition 7C.1(d) (as if it were not Simultaneously Provided with SMPF New Provide) less:

(i) £[12.24] in the First Relevant Year;

(ii) £[21.75] in the Second Relevant Year; and

(iii) £[29.07] in the Third Relevant Year.

(f) for WLR Start of Stopped MPF Line, when Simultaneously Provided with SMPF New Provide, the applicable charge for WLR Start of Stopped MPF Line

determined in accordance with condition 7C.1(d) (as if it were not Simultaneously Provided with SMPF New Provide) less:

(i) £[12.24] in the First Relevant Year;

(ii) £[21.75] in the Second Relevant Year; and

(iii) £[29.07] in the Third Relevant Year.

7C.3 The Percentage Change for the purposes of each of the products and/or services specified (each of which is referred to in this condition as a “single charge category”) in conditions 7C.1(a) to 7C.1(d) shall be calculated, for the purposes of complying with condition 7C.1, by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

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

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

\bar{p}_t is the ~~weighted average charge~~ Relevant Year Weighted Average Charge made by the Dominant Provider for the specific product and/or service in the single charge category in question during the Relevant Year, excluding any discounts offered by the Dominant Provider:

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_t = \sum_{j=1}^m (w_{j,t} p_{j,t})$$

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

m is the number of time periods for which there are distinct charges during the Relevant Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

$w_{j,t}$ is the proportion of the Relevant Year in which each charge, $p_{i,j,t}$, is in effect, calculated by the number of days during which the charge is in effect and dividing:

1) for the First Relevant Year, by 365;

2) for the Second Relevant Year, by 366; and

3) for the Third Relevant Year, by 365.

$p_{i,j,t}$ is the charge for the specified period, j , during the Relevant Year, t , for the specific product and/or service in the single charge category in question;

\bar{p}_{t-1} is the ~~weighted average charge~~ Prior Year Weighted Average Charge made by the Dominant Provider for the specific product and/or service in the single charge category in question during the Prior Year, $t-1$, excluding any discounts offered by the Dominant Provider;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{t-1} = \sum_{j=1}^m (w_{j,t-1} p_{j,t-1})$$

$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

m is the number of time periods for which there are distinct charges during the Prior Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

~~$w_{j,t-1}$~~ $w_{i,j,t-1}$ is the proportion of the Prior Year in which each charge, ~~$p_{j,t-1}$~~ $p_{i,j,t-1}$, is in effect, calculated by the number of days during which the charge is in effect and dividing ;

1) for ~~the Prior Year when considering~~ the First Relevant Year, by 365;

2) for ~~the Prior Year when considering~~ the Second Relevant Year, by 365;

3) for ~~the Prior Year when considering~~ the Third Relevant Year, by 366;

~~$p_{j,t-1}$~~ $p_{i,j,t-1}$ is the charge for the individual period, j , during the Prior Year, $t-1$, for the specific product and/or service in the single charge category in question.

7C.4 The Percentage Change for the purposes of the category of products and/or services (known as a “Basket”) specified in condition 7C.1(d) shall be calculated, for the purposes of complying with condition 7C.1, by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

C_t is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year t ;

n is the number of individual services in the Basket;

i is a number from 1 to n for each of the n services in the Basket;

R_i is the Total Revenue accrued during the Prior Year in respect of service i ;

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

$\bar{p}_{i,t}$ shall be calculated by employing the formula set out in condition 7C.3 above for the Relevant Year Weighted Average Charge for service, i , excluding any discounts offered by the Dominant Provider and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling with the Basket; and

$\bar{p}_{i,t-1}$ is, for the purposes of calculating the Percentage Change for the First Relevant Year, the Initial Charge for the individual service i that forms part of the Basket during the Prior Year. For the purposes of calculating the Percentage Change for the Second Relevant Year and the Third Relevant Year, $\bar{p}_{i,t-1}$ shall be calculated by employing the formula set out in condition 7C.3 above for the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling with the Basket.

7C.5 In the case of each of the categories of products and/or services that form part of the Basket specified in condition 7C.1(d), the Dominant Provider shall also and, in any event, take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in discrete charges for each and every product and/or service falling within the Basket in question is no more than the Controlling Percentage increased by [5-7.5] percentage points.

For the purposes of this condition 7C.5:

(a) the Controlling Percentage is the Controlling Percentage (as determined in accordance with condition 7C.6) for the Basket within which the product and/or service falls to which the discrete charges relate; and

(b) the Percentage Change shall be calculated by employing the formula set out in condition 7C.3 and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling with the Basket.

7C.46 (a) Subject to conditions 7C.6(b) to 7C.6(d) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in Condition 7C.1 shall be calculated by employing the following formula:

$$CP_t = \{(100\% + CPI_t + X) \times \text{Prior Year Adjustment Ratio}_t\} - 100\%$$

$$CP_t = CPI_t + X$$

Where:

CP_t ~~is means~~ the Controlling Percentage for Relevant Year t ;

CPI_t is *CPI for the Relevant Year t* ;

~~*Prior Year Adjustment Ratio* _{t}~~ is the ~~Prior Year Adjustment Ratio for Relevant Year t as determined in condition 7C.5 below~~

X means:

1. for the category of products and/or services specified in condition 7C.1(a) [-5.5 to 1.75 ~~0% to -6%~~] percentage points;
2. for the category of products and/or services specified in condition 7C.1(b) [36 to 44.5 ~~+36% to +45%~~] percentage points;
3. for the category of products and/or services specified in condition 7C.1(c) [-2.5 to 4.25 ~~-8% to -15%~~] percentage points; and
4. for the category of products and/or services specified in condition 7C.1(d) [-10 to -3.75 ~~1% to 8%~~] percentage points.

For the avoidance of doubt, the charges for each of these products and/or services listed in:

(i) conditions 7C.1(a) to 7C.1(c) are constrained by condition 7C.2 in the First Relevant Year; and

(ii) conditions 7C.1(c) and 7C.1(d), are constrained by condition 7C.2 when Simultaneously Provided with SMPF New Provide.

(b) For each of the categories of products and/or services specified in condition 7C.1(a) to 7C.1(d), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (the “Deficiency”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(d) below.

(c) For each of the categories of products and/or services specified in condition 7C.1(a) to 7C.1(d), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (the “Excess”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7C.6(d) below.

(d) For each of the categories of products and/or services specified in condition 7C.1(a) to 7C.1(d), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

CP_t is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

CP_{t-1} is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in conditions 7C.1(a) to 7C.1(d) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in paragraph conditions 7C.3 and 7C.4;

X is as set out in condition 7C.6(a) above; and

CPI has the meaning ascribed to it in condition 7C.11(i) below.

- e) For each of the categories of products and/or services specified in condition 7C.1(a) to 7C.1(d), where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

~~**7C.5** The Prior Year Adjustment Ratio in relation to any Relevant Year for each of the categories of products and/or services specified in Condition 7C.1 shall be:~~

- ~~(a) one for the First Relevant Year; and~~
- ~~(b) calculated by employing the following formula for the Second Relevant Year and Third Relevant Year:~~

$$\text{Prior Year Adjustment Ratio}_t = (100\% + CP_{t-1}) / (100\% + C_{t-1})$$

~~Where:~~

~~CP_{t-1} means the Controlling Percentage for the relevant categories of products and/or services specified in Condition 7C.1 for the Prior Year, which shall be equal to:~~

- ~~1) the Controlling Percentage for the First Relevant Year when considering the Second Relevant Year;~~
- ~~2) the Controlling Percentage for the Second Relevant Year when considering the Third Relevant year;~~

~~C_{t-1} means the Percentage Change for the relevant categories of products and/or services specified in Condition 7C.1 for the Prior Year, which shall be equal to:~~

- ~~1) the Percentage Change for the First Relevant Year when considering the Second Relevant Year;~~
- ~~2) the Percentage Change for the Second Relevant Year when considering the Third Relevant year.~~

7C.7 Where

- (a) the Dominant Provider makes a material change (other than to a Charge) to any Charge Controlled Service for which a Charge is charged;
- (b) the Dominant Provider makes a change to the date on which its financial year ends; or
- (c) there is a material change in the basis of the Consumer Prices Index;

conditions 7C.1 to ~~7C.56~~ shall have effect subject to such reasonable adjustment to take account of the change as OFCOM may direct to be appropriate in the circumstances. For the purposes of this condition ~~7C.6;7~~, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new product and/or service wholly or substantially in substitution for that existing Charge Controlled Service.

7C.78 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format, 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. The data must include:

- (a) pursuant to conditions 7C.3 and 7C.4, as applicable, the calculated Percentage Change relating to each category of products and services listed in conditions 7C.1(a) through to 7C.1(d);

- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in conditions 7C.3 and 7C.4 above, including for each specific service and/or product in the Basket;
- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods such charges during which they were in force;
- (d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which conditions 7C.3 and 7C.4 apply and calculations thereof; ~~and~~
- (e) other data necessary for monitoring compliance with the charge control; and
(f) such data as Ofcom may from time to time direct.

~~whereby all~~All relevant revenues in respect of a specific service in the Basket ~~are~~shall be provided to at least the nearest £1,000.

~~**7C.8** If it appears to OFCOM that the Dominant Provider is likely to fail to secure that the Percentage Change does not exceed the Controlling Percentage for the Third Relevant Year, the Dominant Provider shall make such adjustment to any of its charges for the provision of Charge Controlled Service and by such day in the Third Relevant Year (or if appropriate in OFCOM's opinion, by such day that falls after the end of the Third Relevant Year) as OFCOM may direct for the purpose of avoiding such a failure.~~

7C.9 Conditions 7C.1 to 7C.8 shall not apply to such extent as OFCOM may direct.

7C.10 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this Condition.

7C.11 In this condition:

(a) “Affected Communications Provider” means each communications provider to whom the Dominant Provider has provided any of the services listed in conditions 7C.1(a) to 7C.1(d) of this condition during the Relevant Year;

(b) “Analogue Core WLR Rental” means, unless OFCOM directs otherwise from time to time for the purpose of the meaning of this expression, Wholesale Analogue Line Rental which, on the date this condition takes effect, includes:

- i. the rental of an analogue exchange line for control and billing purposes;
- ii. maintenance which is part of the service provided by the Dominant Provider in consideration of the charge for an Exchange Line and includes a maintenance service level with a fault repair time of no more than provided for Level 1 service care level for Basic lines, as defined in the Dominant Provider’s standard terms and conditions; and
- iii. one main directory listing per telephone number, comprising of either:
 - A. a residential style listing; or
 - B. a business style listing, where the Dominant Provider provides to the Third Party a WLR3 service, as defined in the Dominant Provider’s standard terms and conditions;

(c) “Basket” shall be construed in accordance with condition 7C.4;

(d) “Caller ID” means ‘Caller Display’, as provided by the Dominant Provider on its website for definitions and explanations of its products;

(e) (a)–“Charge” means for the purposes of condition 7C.6, the charge (being in all cases the amounts offered or charged by the Dominant Provider), excluding any discount offered by the Dominant Provider, to a communications provider for the Charge Controlled Service;

(f) (b)–“Charge Controlled Service” means a product ~~and/or~~ service or Basket of products and/or services listed in conditions 7C.1(a), 7C.1(b), 7C.1(c) and to 7C.1(d);

(g) (c)–“Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a

governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

(h) ~~(d)~~—“**Controlling Percentage**” is to be determined in accordance with condition 7C.46;

(i) ~~(e)~~—“**CPI**” means the amount of the change in the Consumer Prices Index in the period of twelve months ending on 31 October immediately before the beginning of ~~a~~the Relevant Year, expressed as a percentage (rounded to two decimal places) of that Consumer Prices Index as at the beginning of that first mentioned period;

(j) ~~(f)~~—“**Dominant Provider**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

(k) “**Excess Revenue**” means the difference between (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in conditions 7C.1(a) to 7C.1(d), and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in conditions 7C.1(a) to 7C.1(d) if it had complied with condition 7C.1;

(l) ~~(g)~~—“**Exchange Line**” means apparatus comprised in the Dominant Provider’s electronic communications network and installed for the purpose of connecting a telephone exchange run by the Dominant Provider to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by the Dominant Provider for the purpose of providing electronic communications services at the premises at which the Network Termination and Testing Apparatus is located;

(m) “**Initial Charge**” means, for the purposes of calculating the Percentage Change in accordance with condition 7C.3, the charge by the Dominant Provider for the

individual service, i. in the relevant Basket as set out in the column entitled 'Initial Charge' in the Annex to this Condition;

(n) ~~(h)~~—“**Network Termination and Testing Apparatus**” means an item of apparatus comprised in an electronic communications network installed in a fixed position on served premises which enables:

- i. approved apparatus to be readily connected to, and disconnected from, the network;
- ii. the conveyance of signals between such approved apparatus and the network;
- iii. the due functioning of the network to be tested, but the only other functions of which, if any, are:
 - A. to supply energy between such approved apparatus and the network;
 - B. to protect safety or security of the operation of the network; or
 - C. to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);

(o) ~~(e)~~ “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;

(p) ~~(f)~~—“**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);

(q) ~~(g)~~—“**Ordinary Maintenance**” means maintenance which is part of the service provided by the Dominant Provider in consideration of the charge for an Exchange Line and includes normal fault repair, as defined in the Dominant Provider’s standard terms and conditions;

(r) ~~(k)~~—“**Percentage Change**” has the meaning given to it in condition 7C.3 or 7C.4, as applicable;

(s) ~~(l)~~ “**Prior Year**” means the period of 12 months ending on 31 March immediately preceding the Relevant Year;

(t) ~~(m)~~ “**Prior Year Weighted Average Charge**” is to be determined in accordance with the relevant formula in condition 7C.3;

~~(n) “**Prior Year Adjustment Ratio**” shall be construed in accordance with condition 7C.3;~~

(u) **Relevant Excess Revenue** means the Excess Revenue earned from charging the Affected Communications Provider;

(v) ~~(p)~~ “**Relevant Subscriber**” means any person who is party to a contract with a provider of public electronic communications services for the supply of such services

(w) ~~(q)~~ “**Relevant Year**” means each of the following three periods:

- i. the period beginning on 1 April 2014 and ending on 31 March 2015 (the “**First Relevant Year**”);
- ii. the period beginning on 1 April 2015 and ending on 31 March 2016 (the “**Second Relevant Year**”);
- iii. the period beginning on 1 April 2016 and ending on 31 March 2017 (the “**Third Relevant Year**”).

(x) ~~(r)~~ “**Relevant Year Weighted Average Charge**” is to be determined in accordance with the relevant formula in condition 7C.3;

(y) ~~(s)~~ “**Simultaneously Provided**” means in the case of :

- i. WLR Conversion;

ii. WLR Start of Stopped MPF Line; or

iii. WLR Standard Connection,

when ~~that service and/or product~~ is ordered and purchased simultaneously with SMPF New Provide;

(z) ~~(t)~~ **“SMPF New Provide”** means the provision of Shared Access on a line that previously did not have Shared Access, including when the line was previously provided with Metallic Path Facilities;

(aa) **“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network; and

(bb) **“Total Revenue”** means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services and/or products subject to this Condition, excluding any discounts offered by the Dominant Provider;

(cc) ~~(u)~~ **“Wholesale Analogue Line Rental”** means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line;

(dd) **“WLR Connection Services”** means all of the products and/or services listed from time to time for the purpose of Part 1 of the Annex to this Condition;

(ee) ~~(v)~~ **“WLR Conversion”** shall be construed as having the same meaning as ‘Conversion of Local Loop Unbundling (LLU) Metallic Path Facility (MPF) to a single Wholesale Access line’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

(ff) ~~(w)~~ **“WLR New Standard Connection”** means ~~a charge for the connection of a new analogue line to a premises; and~~ the product and/or service listed in the Annex to this Condition as ‘Supply of new Basic line - Per line’, as provided by

the Dominant Provider on its website for definitions and explanations of its products:

(gg) “WLR Start of Stopped MPF Line” means the product and/or service listed in the Annex to this Condition as ‘Supply of new line - Per line - using previously stopped LLU MPF line’, as provided by the Dominant Provider on its website for definitions and explanations of its products; and

(hh) ~~(x)~~ “WLR Transfer” means a charge for the transfer of control of an analogue access line (including, for the avoidance of doubt, ‘Line Transfer (inc Working Line Takeover and Starting of Stopped lines) Basic line - Per transfer’ as provided by the Dominant Provider on its website for definitions and explanations of its products).

Annex to Condition 7C

Products and/or services subject to charge control pursuant to condition 7C.1(d)

Meaning of WLR Connection Services

For the purposes of Condition 7C, the expression “**WLR Connection Services**” shall be construed as including only the following two products and/or services, subject to any such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these two products and/or services for another (in which case this list shall be construed accordingly):

Item	Initial Charge
1. Supply of new Basic line - Per line	£47.11
2. Supply of new line - Per line - using previously stopped LLU MPF line	£40.86

Except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These are as at *[date]* found as follows:

- For WLR product information, please refer to:
<http://www.openreach.co.uk/orpg/home/products/wlr3/wlr3.do>

Schedule 3: Proposed change to proposed SMP services condition 7D

Proposed SMP services condition 7D set out in Schedule 1 to the FAMR Notification shall be amended by:

- (a) replacing conditions 7D.3, 7D.4 and 7D.6 with the corresponding conditions set out in Part 1 below;
- (b) removing condition 7D.7;
- (c) replacing condition 7D.10 with the condition set out in Part 2 below; and
- (d) making the necessary consequential changes to the numbering of the remaining conditions.

Part 1

7D.3 The Percentage Change for the purposes of the products and/or services specified in conditions 7D.2(a), 7D.2(b) and 7D.2(c) respectively (each of which is known as a “Basket”) shall be calculated for the purposes of complying with condition 7D.2 by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[(R_i) \frac{\{p_{t,t} - p_{t-1,t}\}}{p_{t-1,t}} \right]}{\sum_{i=1}^n [R_i]}$$

$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

C_t is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year t ;

n is the number of individual services in the Basket;

i is a number from 1 to n for each of the n individual services in the Basket;

R_i is the ~~revenue~~ Total Revenue accrued during the Prior Year in respect of the individual service i that forms part of the Basket—~~calculated to exclude any discounts offered by the Dominant Provider;~~

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

$p_{t,t}$ ~~$\bar{p}_{i,t}$~~ is the ~~weighted average charge~~ Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Relevant Year, ~~excluding any discounts offered by the Dominant Provider:~~

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$p_{t,t} = \sum_{j=1}^m (w_j p_j)$$

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

m is the number of time periods for which there are distinct charges during the Relevant Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

w_j ~~$w_{i,j,t}$~~ is the proportion of the Relevant Year in which each charge, p_j ~~$p_{i,j,t}$~~ , is in effect, calculated by the number of days during which the charge is in effect and dividing

- (1) for the First Relevant Year, by 365;
- (2) for the Second Relevant Year, by 366; and
- (3) for the Third Relevant Year, by 365.

p_j $p_{i,j,t}$ is the charge for the specified period, j , during the Relevant Year t , for the individual service, i ;

~~$p_{t-1,t}$ $\bar{p}_{i,t-1}$ is the weighted average charge made by the Dominant Provider~~ is, for the purposes of calculating the Percentage Change for the First Relevant Year, the Initial Charge for the individual service i that forms part of the Basket during the Prior Year, For the purposes of calculating the Percentage Change for the Second Relevant Year and the Third Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$p_{t-1,t} = \sum_{j=1}^m (w_j p_j)$$

$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

m is the number of time periods for which there are distinct charges during the Prior Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

~~w_j $w_{i,j,t-1}$ is the proportion of the Prior Year in which each charge, p_j $p_{i,j,t-1}$, is in effect, calculated by the number of days during which the charge is in effect and dividing~~ :

- (1) ~~for the Prior Year when considering the First Relevant Year, by 365;~~
- (2) ~~for the Prior Year when considering the Second Relevant Year, by 365;~~
- (3) ~~for the Prior Year when considering the Third Relevant Year, by 366;~~

$p_j^{P_{i,j,t-1}}$ is the charge for the individual period, j , during the Prior Year, $t-1$, for the individual service, i .

7D.4 a) Subject to conditions 7D.4(b) to 7D.4(d) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in conditions 7D.2(a), (b) and (c) shall be calculated by employing the following formula:

$$CP_t = [(100\% + X) (100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

$$CP_t = CPI_t + X$$

Where:

CP_t is the Controlling Percentage for Relevant Year t ;

CPI_t is CPI for the Relevant Year, t .

X means:

- a. for the category of products and/or services specified in condition 7D.2(a) 0 (zero) percentage points;
- b. for the category of products and/or services specified in condition 7D.2(b) 5 percentage points; and
- c. for the category of products and/or services specified in condition 7D.2(c) 0 (zero) percentage points.

~~CP_{t-1} means the Controlling Percentage for the Prior Year, which shall be equal to:~~

- ~~a. zero when considering the First Relevant Year;~~
- ~~b. the Controlling Percentage for the First Relevant Year when considering the Second Relevant Year;~~
- ~~c. the Controlling Percentage for the Second Relevant Year when considering the Third Relevant year;~~

~~C_{t-1} means the Percentage Change in the aggregate of charges for the services in the Basket for the Prior Financial Year, which shall be equal to:~~

- a. ~~zero when considering the First Relevant Year;~~
- b. ~~the Percentage Change for the First Relevant Year when considering the Second Relevant Year;~~
- c. ~~the Percentage Change for the Second Relevant Year when considering the Third Relevant year.~~

b) For each of the categories of products and/or services specified in condition 7D.2 (a) to (c), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (the “Deficiency”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7D.4(d) below.

c) For each of the categories of products and/or services specified in condition 7D.2(a) to (c), where the Percentage Change in either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (the “Excess”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7D.4(d) below.

d) For each of the categories of products and/or services specified in condition 7D.2(a) to (c), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

CP_t is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

CP_{t-1} is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in case of Deficiency or Excess in the Second Relevant Year);

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7D.2 (a) to (c) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second

Relevant Year), calculated in accordance with the formula for C_t set out in condition 7D.3 above;

X is as set out in condition 7D.4(a) above; and

CPI has the meaning ascribed to it in condition 7D.9(g) below.

(e) For each of the categories of products and/or services specified in condition 7D.2 (a) to (c), where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

7D.6 The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, 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. The data must include:

- a. pursuant to condition 7D.3 the calculated Percentage Change relating to each of the three categories of services specified in conditions 7D.2 (a) to (c);
- b. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in 7D.3 above, including for each specific service, *i*;
- c. all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods such charges during which they were in force;
- d. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services in the Basket and calculations thereof; and
- e. other data necessary for monitoring compliance with the charge control; and
- f. such data as Ofcom may from time to time direct.

~~whereby all~~ All relevant revenues in respect of a specific service in the a Basket ~~are~~ shall be provided to at least the nearest £1,000.

Part 2

7D.910 In this Condition

- a. **“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in conditions 7D.2 (a) to (c) of this Condition during the Relevant Year;
- b. ~~a.~~ **“Basket”** shall be construed in accordance with condition 7D.3;
- c. ~~b.~~ **“Charge”** means ~~for the purposes of condition 7D.5,~~ the charge (being in all cases the amounts offered or charged by the Dominant Provider), excluding any discounts offered by the Dominant Provider, to a communications provider for the Charge Controlled Service;
- ~~c.~~ **“Charge Change”** means a change to any of the charges for the provision of a Charge Controlled Service;
- d. ~~d.~~ **“Charge Controlled Service”** means a service or Basket of services listed in conditions 7D.1 and 7D.2;
- e. **“Consumer Prices Index”** means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;
- f. ~~e.~~ **“Controlling Percentage”** is to be determined in accordance with condition 7D.4;
- g. **“CPI”** means the amount of the change in the Consumer Prices Index in the period of twelve months ending on 31 October immediately before the beginning of the Relevant Year, expressed as a percentage (rounded to two decimal places) of that Consumer Prices Index as at the beginning of that first mentioned period;
- h. **“Excess Revenue”** means the difference between (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in conditions 7D.2(a) to 7D.2(c), and (ii) the revenue the Dominant Provider would have earned in the Relevant Period from providing the services listed in conditions 7D.2(a) to 7D.2(c) if it had complied with condition 7D.2;

- i. **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with condition 7D.3, the charge by the Dominant Provider for the individual service, *i*, in the relevant Basket as at [DATE] as provided by the Dominant Provider on its website for definitions and explanations of its products;
- j. **“Percentage Change”** has the meaning given to it in condition 7D.3;
- k. **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7D.3;
- l. **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
- m. **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7D.3; and
- n. **“Total Revenue”** means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services and/or products subject to this Condition, excluding any discounts offered by the Dominant Provider.

Schedule 4: Proposed change to proposed SMP services condition 7E

Proposed SMP services condition 7E set out in Schedule 1 to the FAMR Notification shall be amended by:

- (a) replacing conditions 7E.1, 7E.3, 7E.4 and 7E.6 with the corresponding conditions set out in Part 1 below;
- (b) removing condition 7E.7;
- (c) replacing condition 7E.10 with the condition set out in Part 2 below; and
- (d) making the necessary consequential changes to the numbering of the remaining conditions.

Part 1

7E.1 In each Relevant Year the Dominant Provider must not charge more than £1020 per ~~channel~~line for the ISDN2 Transfer Services. For the avoidance of doubt, a reference to 'per line' in this condition 7E means to two channels.

7E.3 The Percentage Change for the purposes of the products and/or services specified in condition 7E.2 (which is a "Basket") shall be calculated for the purposes of complying with condition 7E.2 by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[(R_i) \frac{\{p_{i,t} - p_{i,t-1}\}}{p_{i,t-1}} \right]}{\sum_{i=1}^n [R_i]}$$
$$C_t = \frac{\sum_{i=1}^n \left[R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

C_t is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year t ,

n is the number of individual services in the Basket;

i is a number from 1 to n for each of the n individual services in the Basket;

R_i is the ~~revenue~~ Total Revenue accrued during the Prior Year in respect of the individual service i that forms part of the Basket ~~calculated to exclude any discounts offered by the Dominant Provider;~~

t refers to the Relevant Year;

$t-1$ refers to the Prior Year;

$\overline{p_{i,t}}$ is the ~~weighted average charge~~ Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Relevant Year, ~~excluding any discounts offered by the Dominant Provider:~~

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\overline{p_{i,t}} = \sum_{j=1}^m (w_j p_j)$$

$$\overline{p_{i,t}} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

m is the number of time periods for which there are distinct charges during the Relevant Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

w_j $w_{i,j,t}$ is the proportion of the Relevant Year in which each charge, p_j $p_{i,j,t}$, is in effect, calculated by the number of days during which the charge is in effect and dividing

(1) for the First Relevant Year, by 365;

(2) for the Second Relevant Year, by 366; and

(3) for the Third Relevant Year, by 365.

$p_{i,j,t}$ is the charge for the specified period, j , during the Relevant Year, t , for the individual service, i ;

~~$p_{i,t-1}$ is the weighted average charge made by the Dominant Provider, for the purposes of calculating the Percentage Change for the First Relevant Year, the Initial Charge for the individual service i that forms part of the Basket during the Prior Year. For the purposes of calculating the Percentage Change for the Second Relevant Year and the Third Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider.~~

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$p_{i,t} = \sum_{j=1}^m (w_j p_j)$$
$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

m is the number of time periods for which there are distinct charges during the Prior Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

$w_{i,j,t-1}$ is the proportion of the Prior Year in which each charge, $p_{i,j,t-1}$, is in effect, calculated by the number of days during which the charge is in effect and dividing

(1) for the Prior Year when considering the First Relevant Year, by 365;

(2) for the Prior Year when considering the Second Relevant Year, by 365;

(3) ~~for the Prior Year when considering the Third Relevant Year, by 366;~~

$P_{i,j,t-1}$ is the charge for the individual period, j , during the Prior Year, for the individual service, i .

7E.4 a) Subject to conditions 7E.4(b) to 7E.4(d) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in condition 7E.2 shall be calculated by employing the following formula:

$$CP_t = [(100\% + X) (100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

$$CP_t = CPI_t + X$$

Where:

X means 0 (zero) percentage points;

CP_t ~~means~~ is the Controlling Percentage for Relevant Year t ;

CPI_t is CPI for the Relevant Year, t ;

CP_{t-1} ~~means the Controlling Percentage for the Prior Year, which shall be equal to:~~

- ~~a. zero when considering the First Relevant Year;~~
- ~~b. the Controlling Percentage for the First Relevant Year when considering the Second Relevant Year;~~
- ~~c. the Controlling Percentage for the Second Relevant Year when considering the Third Relevant year;~~

C_{t-1} ~~means the Percentage Change in the aggregate of charges for the services in the Basket for the Prior Financial Year, which shall be equal to:~~

- ~~a. zero when considering the First Relevant Year;~~
- ~~b. the Percentage Change for the First Relevant Year when considering the Second Relevant Year;~~

- c. ~~the Percentage Change for the Second Relevant Year when considering the Third Relevant year.~~
- b) For the products and/or services specified in condition 7E.2, where the Percentage Change in either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (the “Deficiency”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7E.4 (d) below.
- c) For the products and/or services specified in condition 7E.2, where the Percentage Change in either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (the “Excess”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7E.4(d) below.
- d) For the products and/or services specified in condition 7E.2, in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

CP_t is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

CP_{t-1} is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7E.2 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7E.3 above;

X is as set out in condition 7E.4(a) above; and

CPI has the meaning ascribed to it in condition 7E.9(g) below.

e) For each of the categories of products and/or services specified in condition 7E.2, where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

7E.6 The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, 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. The data must include:

- a. pursuant to condition 7E.3 the calculated Percentage Change relating to each of the services specified in condition 7E.2;
- b. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in 7E.3~~4~~ above, including for each specific service, *i*;
- c. all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time period during which they were in force;
- d. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services in the Basket and calculations thereof;
- e. such data as Ofcom may from time to time direct; and
- f. ~~e.~~ other data necessary for monitoring compliance with the charge control;

~~whereby all~~ All relevant revenues in respect of a specific service in the Basket ~~are~~ shall be provided to at least the nearest £1,000.

Part 2

7E.910 In this condition:

a. “Affected Communications Provider” means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in condition 7E.2 of this Condition during the Relevant Year;

b. a. “Basket” shall be construed in accordance with condition 7E.43;

c. b. “Charge” means for the purposes of condition 7E.5, the charge (being in all cases the amounts offered or charged by the Dominant Provider) excluding any discounts offered by the Dominant Provider, to a communications provider for the Charge Controlled Service;

e. “Charge Change” means a change to any of the charges for the provision of Charge Controlled Service;

d. “Charge Controlled Service” means a service or Basket of services listed in conditions 7E.1 and 7E.2;

e. e. “Controlling Percentage” is to be determined in accordance with condition 7E.4;

f. “Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

g. “CPI” means the amount of the change in the Consumer Prices Index in the period of twelve months ending on 31 October immediately before the beginning of the Relevant Year, expressed as a percentage (rounded to two decimal places) of that Consumer Prices Index as at the beginning of that first mentioned period;

h. “Excess Revenue” means the difference between (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in condition 7E.2, and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in conditions 7E.2 if it had complied with condition 7E.2;

i. “Initial Charge” means, for the purposes of calculating the Percentage Change in accordance with condition 7E.3, the charge by the Dominant Provider for the individual service, i, in the Basket as at [DATE] as provided by the Dominant Provider on its website for definitions and explanations of its products;

j. f. “Percentage Change” has the meaning given to it in condition 7E.3;

k. g. “Prior Year Weighted Average Charge” is to be determined in accordance with the formula in condition 7E.3; and

l. “Relevant Excess Revenue” means the Excess Revenue earned from charging the Affected Communications Provider;

m. h. “Relevant Year Weighted Average Charge” is to be determined in accordance with the formula in condition 7E.3; and

n. “Total Revenue” means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services and/or products subject to this Condition, excluding any discounts offered by the Dominant Provider.

Schedule 5: Proposed SMP services condition 12

Condition 12 – Minimum standards for quality of service

12.1 Except in so far as Ofcom may from time to time otherwise consent in writing, in relation to the provision of network access to Metallic Path Facilities under conditions 1 and 2 the Dominant Provider must in each Relevant Region—

(a) offer appointments for that provision that are within 12 working days of the corresponding orders being placed on the Equivalence Management Platform by a Third Party:

- (i) in at least 54% of instances in the First Relevant Year;
- (ii) in at least 67% of instances in the Second Relevant Year; and
- (iii) in at least 79% of instances in the Third Relevant Year;

(b) complete that provision on the Committed Date:

- (i) in at least 89% of instances in the First Relevant Year;
- (ii) in at least 89% of instances in the Second Relevant Year; and
- (iii) in at least 89% of instances in the Third Relevant Year; and

(c) complete the repair of Standard Faults that are subject to Level 2 Care by the end of the next working day after such Standard Faults have been placed on the Equivalence Management Platform:

- (i) in at least 67% of instances in the First Relevant Year;
- (ii) in at least 72% of instances in the Second Relevant Year; and
- (iii) in at least 77% of instances in the Third Relevant Year;

12.2 Except in so far as Ofcom may from time to time otherwise consent in writing, in relation to the provision of Wholesale Analogue Line Rental under

conditions 1 and 2 the Dominant Provider must in each Relevant Region—

(a) offer appointments for that provision that are within 12 working days of the corresponding orders being placed on the Equivalence Management Platform by a Third Party:

- (i) in at least 54% of instances in the First Relevant Year;
- (ii) in at least 67% of instances in the Second Relevant Year; and
- (iii) in at least 79% of instances in the Third Relevant Year;

(b) complete that provision on the Committed Date:

- (i) in at least 89% of instances in the First Relevant Year;
- (ii) in at least 89% of instances in the Second Relevant Year; and
- (iii) in at least 89% of instances in the Third Relevant Year;

(c) complete the repair of Standard Faults that are subject to Level 1 Care by the end of the ~~second~~next working day after such Standard Faults have been placed on the Equivalence Management Platform:

- (i) in at least 67% of instances in the First Relevant Year;
- (ii) in at least 72% of instances in the Second Relevant Year; and
- (iii) in at least 77% of instances in the Third Relevant Year.

12.3 The Dominant Provider must 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 by the Dominant Provider with the requirements set out paragraph 12.1 and 12.2 above. The data must include any such data as Ofcom may from time to time direct.

12.4 The Dominant Provider must comply with any such further minimum standards as Ofcom may direct from time to time.

12.5 The Dominant Provider must comply with any direction Ofcom may make

from time to time under this condition.

Schedule 6: Proposed Schedule 3 to the FAMR Notification

[Published separately]

PART II - PROPOSALS FOR REVISIONS TO THE PROPOSED DIRECTIONS RELATING TO KEY PERFORMANCE INDICATORS

NOTIFICATION OF PROPOSALS UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF VIRTUAL UNBUNDLED LOCAL ACCESS, METALLIC PATH FACILITIES AND SHARED ACCESS

Background

1. On 3 July 2013, OFCOM published a consultation document entitled "*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*" (the "**FAMR Consultation**").
2. Part III of Annex 11 to the FAMR Consultation set out a notification under sections 49 and 49A of the Act in which OFCOM proposed to give a direction pursuant to Condition 11 requiring BT to publish KPIs for Virtual Unbundled Local Access services and Local Loop Unbundling Services (the "**KPI Notification**").
3. The text of the proposed direction specifying KPIs for Virtual Unbundled Local Access services and Local Loop Unbundling Services was set out in the Schedule to the KPI Notification (the "**Proposed Direction**").

Proposals in this notification

4. OFCOM is proposing to specify additional KPI requirements on BT in relation to fault repair and provisioning of new lines for Metallic Path Facilities. The proposed new KPIs are set out in Schedule 1 to this notification and are to be added as a new Part 3 to Annex B (*Key Performance Indicators for Metallic Path Facilities*) of the Proposed Direction after Part 2 to Annex B.
5. OFCOM is also proposing to remove the KPI(xiii) entitled "*Timing of fault repairs*" from Part 1 of Annex B (*Key Performance Indicators for Metallic Path Facilities*) of the Proposed Direction and to make the necessary consequential changes to the numbering of the remaining KPIs.

6. Further, OFCOM is proposing to change the wording of the definition of "*Forecasting Region*", as used in the Proposed Direction. The change is set out in Schedule 2 to this notification.³
7. As a consequence of the proposals set out above in paragraphs 4 to 6 of this notification, the Proposed Direction and Annex B thereto should be read accordingly.
8. The effect of, and the reasons for making, the proposals set out above at paragraphs 4 to 6 are set out in the consultation document accompanying this notification and, in particular, Section 3.

OFCOM's duties

9. In making the proposals set out in this notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
10. Ofcom considers that the Proposed Direction referred to in paragraph 2, as amended to reflect the proposals set out in paragraphs 4 to 6 of this notification complies with the requirements of section 49(2) of the Act.

Representations

11. Representations may be made to OFCOM about the proposals set out in this notification and the accompanying consultation document by no later than 13 February 2014.
12. In accordance with section 49C of the Act, a copy of this notification has been sent to the Secretary of State.

Interpretation

13. For the purpose of interpreting this notification:

³ In order to provide transparency as to the differences between the definition of "Forecasting Region" as set out in the FAMR Consultation and the definition proposed in this notification, Schedule 2 to this notification provides a comparison (with the use of underlining and strikethrough) of the two definitions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the definition proposed in the FAMR Notification.

- a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 14 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
- b) headings and titles shall be disregarded;
- c) expressions cognate with those referred to in this notification shall be construed accordingly; and
- d) the Interpretation Act 1978 (c.30) shall apply as if this notification were an Act of Parliament.

14. In this notification—

- a) “**Act**” means the Communications Act 2003 (c.21), as amended;
- b) “**BT**” means British Telecommunications plc, whose registered company number is 180000, and any of its subsidiaries or holding companies, or any subsidiaries of such holding companies, as defined in section 1159 of the Companies Act 2006;
- c) “**Condition 11**” means proposed SMP services condition 11 (*Quality of Service*), as set out in Schedule 1 to Part 1 of Annex 11 of the FAMR Consultation;
- d) “**KPIs**” means key performance indicators;
- e) “**Local Loop Unbundling Services**” mean network access to Metallic Path Facilities or Shared Access;
- f) “**Local Serving Exchange**” means the site of an operational building of BT, where interconnection is made available by BT to a Third Party for Network Termination Points served by that site for the provision of Virtual Unbundled Local Access;
- g) “**Metallic Path Facilities**” means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network;

- h) “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- i) “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- j) “**Point of Connection**” means a point at which BT’s electronic communications network and a Third Party’s electronic communications network are connected;
- k) “**Relevant Subscriber**” means any person who is party to a contract with a provider of public electronic communications services for the supply of such services;
- l) “**Shared Access**” means the non-voice band frequency of Metallic Path Facilities;
- m) “**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network; and
- n) “**Virtual Unbundled Local Access**” means network access comprising of a virtual circuit between a Point of Connection at the Local Serving Exchange and a Network Termination Point, which circuit provides such specified capacity as is agreed between BT and a Third Party for the Third Party’s exclusive use.

15. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large, stylized initial "D" and a period at the end.

David Clarkson

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

19 December 2013

Schedule 1: Proposed addition to the Proposed Direction

Proposed additional KPI requirements for the purposes of Annex B of the Proposed Direction

Part 3: Late fault repair and provisions

1. The Dominant Provider shall publish the information required in KPIs (i) to (vi) below in relation to the provision of network access to Metallic Path Facilities to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of network access to Metallic Path Facilities to itself).
2. In relation to KPIs (i) to (vi), the Dominant Provider should publish KPIs for the UK as a whole.
3. The Dominant Provider shall, in addition, publish the information required by KPIs (i) to (vi) on a publicly accessible website. For the avoidance of doubt, the publicly accessible website should not require password access.
4. The Dominant Provider shall provide to Ofcom KPIs (i) to (vi) as described in paragraphs 1 to 3 above by electronic mail to the designated person.
5. The Dominant Provider shall also provide to Ofcom data relating to specific third parties upon request.
6. The Dominant Provider shall provide to each Third Party upon request, on a confidential basis, the information required in KPIs (i) to (vi) below for that Third Party.
7. Where the Dominant Provider does not provide a particular form of Metallic Path Facilities to itself, it shall instead publish or provide as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to end users.

KPI(i) – Timing of fault repairs

The total number of Faults on the fifteenth day of the Reporting Period, for which the Dominant Provider has not provided a Restored Service within:

- (a) two calendar days;
- (b) six calendar days;
- (c) 11 calendar days; and
- (d) 31 calendar days,

from the date on which the Fault was validated and registered on the Dominant Provider's operational support system.

KPI(ii) – Total fault repairs

The total number of Faults, during the Reporting Period, which have been validated and registered on the Dominant Provider's operational support system.

KPI(iii) – Timing of first available appointment dates

The total number of Appointed Orders during the Reporting Period for which the first available date offered by the Dominant Provider for the appointment is more than:

- (a) 13 calendar days;
- (b) 17 calendar days; and
- (c) 22 calendar days,

from the date on which the appointment was requested.

KPI(iv) – Total appointed orders

The total number of Appointed Orders during the Reporting Period.

KPI(v) – Timing of appointed orders not provisioned on time

The total number of Appointed Orders that become Completed Orders, during the Reporting Period, more than:

- (a) one calendar day;
- (b) five calendar days;
- (c) ten calendar days; and

(d) 30 calendar days,

from the Contract Delivery Date.

KPI(vi) – Total appointed orders that become completed orders

The total number of Appointed Orders that become Completed Orders during the Reporting Period.

Schedule 2: Proposed change to the defined term “Forecasting Region” used for the purposes of the Proposed Direction

“**Forecasting Region**” means the ~~nine~~²⁶ regions specified in Schedule 3 to ~~the~~ Notification under Part 1 of Annex [●] of the statement [*Review of the Fixed Access Market dated [●]*] and Northern Ireland or other such regions ~~agreed by Ofcom in writing~~ as Ofcom may direct from time to time;

NOTIFICATION OF PROPOSALS UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF WHOLESALE LINE RENTAL SERVICES

Background

1. On 3 July 2013, OFCOM published a consultation document entitled "*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*" (the "**FAMR Consultation**").
2. Part III of Annex 11 to the FAMR Consultation set out a notification under sections 49 and 49A of the Act in which OFCOM proposed to give a direction pursuant to Condition 11 requiring BT to publish KPIs for Wholesale Line Rental services (the "**KPI Notification**").
3. The text of the proposed direction specifying KPIs for Wholesale Line Rental services was set out in the Schedule to the KPI Notification (the "**Proposed Direction**").

Proposals in this notification

4. OFCOM is proposing to specify additional KPI requirements on BT in relation to fault repair and provisioning of new lines for Wholesale Line Rental services. The proposed new KPIs are set out in Schedule 1 to this notification and are to be added as a new Part 3 to Annex A (*Key Performance Indicators for Wholesale Line Rental*) of the Proposed Direction after Part 2 to Annex A.
5. OFCOM is also proposing to remove the KPI(xiv) entitled "*Timing of fault repairs*" from Part 1 of Annex A (*Key Performance Indicators for Wholesale Line Rental*) of the Proposed Direction and to make the necessary consequential changes to the numbering of the remaining KPIs.
6. Further, OFCOM is proposing to change the wording of the definition of "*Forecasting Region*", as used in the Proposed Direction. The change is set out in Schedule 2 to this notification.⁴

⁴ In order to provide transparency as to the differences between the definition of "Forecasting Region" as set out in the FAMR Consultation and the definition proposed in this notification, Schedule 2 to this notification provides a comparison (with the use of underlining and strikethrough) of the two

7. As a consequence of the proposals set out above in paragraphs 4 to 6 of this notification, the Proposed Direction and Annex B thereto should be read accordingly.
8. The effect of, and the reasons for making, the proposals set out above at paragraphs 4 to 6 are set out in the consultation document accompanying this notification and, in particular, Section 3.

OFCOM's duties

9. In making the proposals set out in this notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act
10. Ofcom considers that the Proposed Direction referred to in paragraph 2, as amended to reflect the proposals set out in paragraphs 4 to 6 of this notification complies with the requirements of section 49(2) of the Act.

Representations

11. Representations may be made to OFCOM about the proposals set out in the notification and the accompanying consultation document by no later than 13 February 2014.
12. In accordance with section 49C of the Act, a copy of this notification has been sent to the Secretary of State.

Interpretation

13. For the purpose of interpreting this notification—
 - a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 14 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
 - b) headings and titles shall be disregarded;
 - c) expressions cognate with those referred to in this notification shall be construed accordingly; and

definitions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the definition proposed in the FAMR Notification.

d) the Interpretation Act 1978 (c.30) shall apply as if this notification were an Act of Parliament.

14. In this notification—

a) “**Act**” means the Communications Act 2003 (c.21), as amended;

b) “**BT**” means British Telecommunications plc, whose registered company number is 180000, and any of its subsidiaries or holding companies, or any subsidiaries of such holding companies, as defined in section 1159 of the Companies Act 2006;

c) “**Condition 11**” means proposed SMP services condition 11 (*Quality of Service*), as set out in Schedule 1 to Part 1 of Annex 11 of the FAMR Consultation;

d) “**Exchange Line**” means apparatus comprised in BT’s electronic communications network and installed for the purpose of connecting a telephone exchange run by BT to a Network Termination Point comprised in Network Termination and Testing Apparatus installed by BT for the purpose of providing electronic communications services at the premises at which the Network Termination and Testing Apparatus is located;

e) “**KPIs**” means Key Performance Indicators;

f) “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;)

g) “**Network Termination and Testing Apparatus**” means an item of apparatus comprised in an electronic communications network installed in a fixed position on served premises which enables:

a. approved apparatus to be readily connected to, and disconnected from, the network;

b. the conveyance of signals between such approved apparatus and the network;

c. the due functioning of the network to be tested, but the only other functions of which, if any, are:

- i. to supply energy between such approved apparatus and the network;
 - ii. to protect safety or security of the operation of the network; or
 - iii. to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);
- h) “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- i) “**Ordinary Maintenance**” means maintenance which is part of the service provided by BT in consideration of the charge for an Exchange Line and includes normal fault repair, as defined in BT’s standard terms and conditions;
- j) “**Relevant Subscriber**” means any person who is a party to a contract with a provider of public electronic communications services for the supply of such services;
- k) “**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network;
- l) “**Wholesale Analogue Line Rental**” means an electronic communications service provided by BT to a Third Party for the use and Ordinary Maintenance of an analogue Exchange Line; and
- m) “**Wholesale Line Rental**” means Wholesale Analogue Line Rental provided to Third Parties’ end users.

15. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large, stylized initial "D" and a period at the end.

David Clarkson

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

19 December 2013

Schedule 1: Proposed addition to the Proposed Direction

Proposed additional KPI requirements for the purposes of Annex A of the Proposed Direction

Part 3: Late fault repair and provisions

1. The Dominant Provider shall publish the information required in KPIs (i) to (vi) below in relation to the provision of Wholesale Line Rental to all Third Parties (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Wholesale Line Rental to itself).
2. In relation to KPIs (i) to (vi), the Dominant Provider should publish separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Wholesale Line Rental packages.
3. In relation to KPIs (i) to (vi), the Dominant Provider should publish KPIs for the UK as a whole.
4. The Dominant Provider shall, in addition, publish the information required by KPIs (i) to (vi) on a publicly accessible website. For the avoidance of doubt, the publicly accessible website should not require password access.
5. The Dominant Provider shall provide to Ofcom KPIs (i) to (vi) as described in paragraphs 1 to 4 above by electronic mail to the designated person.
6. The Dominant Provider shall also provide to Ofcom data relating to specific third parties upon request.
7. The Dominant Provider shall provide to each Third Party upon request, on a confidential basis, the information required in KPIs (i) to (vi) below for that Third Party.
8. Where the Dominant Provider does not provide Wholesale Line Rental to itself, it shall instead publish or provide as required the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to end users.

KPI(i) – Timing of fault repairs

The total number of Faults, on the fifteenth day of the Reporting Period, for which the Dominant Provider has not provided a Restored Service within,:

(a) for services subject to Service Maintenance Level 1,:

- (i) three calendar days;
- (ii) seven calendar days;
- (iii) 12 calendar days; and
- (iv) 32 calendar days,

(b) for services subject to Service Maintenance Level 2,:

- (i) two calendar days;
- (ii) six calendar days;
- (iii) 11 calendar days; and
- (iv) 31 calendar days,

from the date on which the Fault was validated and registered on the Dominant Provider's operational support system.

KPI(ii) – Total fault repairs

The total number of Faults, during the Reporting Period, which have been validated and registered on the Dominant Provider's operational support system.

KPI(iii) – Timing of first available appointment dates

The total number of Appointed Orders during the Reporting Period for which the first available date offered by the Dominant Provider for the appointment is more than:

- (a) 13 calendar days;
- (b) 17 calendar days; and
- (c) 22 calendar days,

from the date on which the appointment was requested.

KPI(iv) – Total appointed orders

The total number of Appointed Orders during the Reporting Period.

KPI(v) – Timing of appointed orders not provisioned on time

The total number of Appointed Orders that become Completed Orders, during the Reporting Period, more than:

- (a) one calendar day;
- (b) five calendar days;
- (c) ten calendar days; and
- (d) 30 calendar days,

from the Contract Delivery Date.

KPI(vi) – Total appointed orders that become completed orders

The total number of Appointed Orders that become Completed Orders during the Reporting Period.

Schedule 2: Proposed change to the defined term “Forecasting Region” used for the purposes of the Proposed Direction

“**Forecasting Region**” means the ~~nine~~²⁶ regions specified in Schedule 3 to ~~the~~ Notification under Part 1 of Annex [●] of the statement [*Review of the Fixed Access Market dated [●]*] and Northern Ireland or other such regions ~~agreed by Ofcom in writing~~ as Ofcom may direct from time to time;

NOTIFICATION OF PROPOSALS UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF WHOLESALE ISDN2 EXCHANGE LINE SERVICES

Background

1. On 3 July 2013, OFCOM published a consultation document entitled "*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*" (the "**FAMR Consultation**").
2. Part III of Annex 11 to the FAMR Consultation set out a notification under sections 49 and 49A of the Act in which OFCOM proposed to give a direction pursuant to Condition 11 requiring BT to publish KPIs for wholesale ISDN2 exchange line services (the "**KPI Notification**").
3. The text of the proposed direction specifying KPIs for wholesale ISDN2 exchange line services was set out in the Schedule to the KPI Notification (the "**Proposed Direction**").

Proposals in this notification

4. OFCOM is proposing to change the wording of the definition of "*Forecasting Region*", as used in the Proposed Direction. The change is set out in the Schedule to this notification.⁵ Consequently, the Proposed Direction should be read accordingly.
5. The effect of, and the reasons for making, the proposal set out above at paragraph 4 are set out in the consultation document accompanying this notification and, in particular, Section 3.

OFCOM's duties

⁵ In order to provide transparency as to the differences between the definition of "Forecasting Region" as set out in the FAMR Consultation and the definition proposed in this notification, Schedule 2 to this notification provides a comparison (with the use of underlining and strikethrough) of the two definitions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the definition proposed in the FAMR Notification.

6. In making the proposal set out in this notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
7. Ofcom considers that the Proposed Direction referred to in paragraph 2, as amended to reflect the proposal set out in paragraph 4 of this notification complies with the requirements of section 49(2) of the Act.

Representations

8. Representations may be made to OFCOM about the proposals set out in the notification and the accompanying consultation document by no later than 13 February 2014.
9. In accordance with section 49C of the Act, a copy of this notification has been sent to the Secretary of State.

Interpretation

10. For the purpose of interpreting this notification—
 - a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 11 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
 - b) headings and titles shall be disregarded;
 - c) expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d) the Interpretation Act 1978 (c.30) shall apply as if this notification were an Act of Parliament.
11. In this notification—
 - a) “**Act**” means the Communications Act 2003 (c.21), as amended;
 - b) “**BT**” means British Telecommunications plc, whose registered company number is 180000, and any of its subsidiaries or holding companies, or any subsidiaries of such holding companies, as defined in section 1159 of the Companies Act 2006;

- c) “**Condition 11**” means proposed SMP services condition 11 (*Quality of Service*), as set out in Schedule 1 to Part 1 of Annex 11 of the FAMR Consultation;
- d) “**ISDN2 exchange line**” means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Basic Rate Access standard as defined by the European Telecommunications Standards Institute;
- e) “**KPIs**” means key performance indicators; and
- f) “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002.

12. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink, consisting of a stylized 'D' followed by the name 'Clarkson'.

David Clarkson

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

19 December 2013

Schedule: Proposed change to the defined term “Forecasting Region” used for the purposes of the Proposed Direction

“**Forecasting Region**” means the nine~~26~~ regions specified in Schedule 3 to the Notification under Part 1 of Annex [●] of the statement [*Review of the Fixed Access Market dated [●]*] and Northern Ireland or other such regions ~~agreed by Ofcom in writing~~ as Ofcom may direct from time to time;

NOTIFICATION OF PROPOSALS UNDER SECTIONS 49 AND 49A OF THE COMMUNICATIONS ACT 2003 AND CONDITION 11 QUALITY OF SERVICE PROPOSED TO BE IMPOSED ON BT IN RESPECT OF WHOLESALE ISDN30 EXCHANGE LINE SERVICES

Background

1. On 3 July 2013, OFCOM published a consultation document entitled "*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*" (the "**FAMR Consultation**").
2. Part III of Annex 11 to the FAMR Consultation set out a notification under sections 49 and 49A of the Act in which OFCOM proposed to give a direction pursuant to Condition 11 requiring BT to publish KPIs for wholesale ISDN30 exchange line services (the "**KPI Notification**").
3. The text of the proposed direction specifying KPIs for wholesale ISDN30 exchange line services was set out in the Schedule to the KPI Notification (the "**Proposed Direction**").

Proposals in this notification

4. OFCOM is proposing to change the wording of the definition of "*Forecasting Region*", as used in the Proposed Direction. The change is set out in the Schedule to this notification.⁶ Consequently, the Proposed Direction should be read accordingly.
5. The effect of, and the reasons for making, the proposal set out above at paragraph 4 are set out in the consultation document accompanying this notification and, in particular, Section 3.

OFCOM's duties

⁶ In order to provide transparency as to the differences between the definition of "Forecasting Region" as set out in the FAMR Consultation and the definition proposed in this notification, Schedule 2 to this notification provides a comparison (with the use of underlining and strikethrough) of the two definitions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the definition proposed in the FAMR Notification.

6. In making the proposal set out in this notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
7. Ofcom considers that the Proposed Direction referred to in paragraph 2, as amended to reflect the proposal set out in paragraph 4 of this notification complies with the requirements of section 49(2) of the Act.

Representations

8. Representations may be made to OFCOM about the proposals set out in this notification and the accompanying consultation document by no later than 13 February 2014.
9. In accordance with section 49C of the Act, a copy of this notification has been sent to the Secretary of State.

Interpretation

10. For the purpose of interpreting this notification—
 - a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 11 below, and otherwise any word or expression shall have the same meaning as it has in the Act;
 - b) headings and titles shall be disregarded;
 - c) expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d) the Interpretation Act 1978 (c.30) shall apply as if this notification were an Act of Parliament.
11. In this notification—
 - a) “**Act**” means the Communications Act 2003 (c.21), as amended;
 - b) “**BT**” means British Telecommunications plc, whose registered company number is 180000, and any of its subsidiaries or holding companies, or any subsidiaries of such holding companies, as defined in section 1159 of the Companies Act 2006;

- c) “**Condition 11**” means proposed SMP services condition 11 (*Quality of Service*), as set out in Schedule 1 to Part 1 of Annex 11 of the FAMR Consultation;
- d) “**ISDN30 exchange line**” means a digital multiline telephone service conforming to the Integrated Services Digital Network (ISDN) Basic Rate Access standard as defined by the European Telecommunications Standards Institute;
- e) “**KPIs**” means key performance indicators; and
- f) “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002.

12. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large, stylized initial 'D'.

David Clarkson

Competition Policy Director

**A person duly authorised in accordance with paragraph 18 of the Schedule to the
Office of Communications Act 2002**

19 December 2013

Schedule: Proposed change to the defined term “Forecasting Region” used for the purposes of the Proposed Direction

“**Forecasting Region**” means the nine~~26~~ regions specified in Schedule 3 to the Notification under Part 1 of Annex [●] of the statement [*Review of the Fixed Access Market dated [●]*] and Northern Ireland or other such regions ~~agreed by Ofcom in writing~~ as Ofcom may direct from time to time;