

# Legal Instrument

## PART I - NOTIFICATION UNDER SECTIONS 48(1) AND 79(4) OF THE COMMUNICATIONS ACT 2003

### Notification of the identification of markets, the making of market power determinations and the setting of SMP services conditions in relation to BT and KCOM under section 45 of the Communications Act 2003

#### Background

1. On 15 September 2009, OFCOM published a statement entitled "*Review of the fixed narrowband services wholesale markets - Statement on the markets, market power determinations and remedies including further consultation*" (the "**2009 Narrowband Wholesale Statement**").<sup>1</sup> Amongst other fixed narrowband services wholesale markets, the 2009 Narrowband Wholesale Statement identified markets for wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area and in the Hull Area, made determinations that BT and KCOM had significant market power in those respective markets, and determined that appropriate SMP conditions should be imposed on each of BT and KCOM. The relevant SMP conditions, together with provisions modifying and revoking certain SMP conditions previously imposed, were contained in a notification dated 15 September 2009 (the "**2009 Narrowband Wholesale Notification**").
2. Also on 15 September 2009, OFCOM published a statement entitled "*Fixed Narrowband Retail Services Markets - Identification of markets and determination of market power*" (the "**2009 Narrowband Retail Statement**").<sup>2</sup> Amongst other fixed narrowband services retail markets, the 2009 Narrowband Retail Statement identified markets for retail ISDN2 exchange line services in the United Kingdom excluding the Hull Area and in the Hull Area and for retail fixed analogue exchange line services in both those areas. The 2009 Narrowband Retail Statement made determinations that BT and KCOM had SMP in the markets for retail ISDN2 exchange line services in the United Kingdom excluding the Hull Area and in the Hull Area, respectively, and that KCOM had SMP in the market for retail wholesale fixed analogue exchange line services in the Hull Area. It also determined that appropriate SMP conditions should

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr\\_statement\\_consultation/summary/main.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr_statement_consultation/summary/main.pdf)

<sup>2</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/retail\\_markets/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/retail_markets/statement/statement.pdf)

be imposed on KCOM in those markets in the Hull Area (with BT in those markets outside the Hull Area being subject only to relevant wholesale SMP conditions that were imposed under the 2009 Narrowband Wholesale Notification). The relevant SMP conditions, together with provisions modifying and revoking certain SMP conditions previously imposed, were contained in a notification dated 15 September 2009 (the “**2009 Narrowband Retail Notification**”).

3. On 20 August 2010, OFCOM published a statement entitled “*Review of retail and wholesale ISDN30 markets - Statement on the markets, market power determinations and remedies*” (the “**2010 ISDN30 Statement**”).<sup>3</sup> The 2010 ISDN30 Statement identified markets for wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area and in the Hull Area, made determinations that BT and KCOM had SMP in those respective markets, and determined that appropriate SMP conditions should be imposed on each of BT and KCOM. The 2010 ISDN30 Statement also identified markets for retail ISDN30 exchange line services in the United Kingdom except the Hull Area and in the Hull Area, made the determination that KCOM had SMP in the latter market, and determined that appropriate SMP conditions should be imposed on KCOM. The relevant SMP conditions, together with provisions revoking certain SMP conditions previously imposed, were contained in a notification dated 20 August 2010 (the “**2010 ISDN30 Notification**”).
4. On 7 October 2010, OFCOM published a statement entitled “*Review of the wholesale local access market - Statement on market definition, market power determinations and remedies*” (the “**2010 WLA Statement**”).<sup>4</sup> The 2010 WLA Statement identified markets for wholesale local access services for the United Kingdom excluding the Hull Area and in the Hull Area, made determinations that BT and KCOM had SMP in those respective markets, and determined that appropriate SMP conditions should be imposed on each of BT and KCOM. The relevant SMP conditions, together with provisions modifying and revoking certain SMP conditions previously imposed, were contained in a notification dated 7 October 2010 (the “**2010 WLA Notification**”).
5. On 20 December 2010, OFCOM published a statement entitled “*Review of the wholesale fixed analogue exchange lines markets - Statement on market definition, market power determinations and remedies*” (the “**2010 WFAEL Statement**”).<sup>5</sup> The

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/isdn30/statement/statement.pdf>

<sup>4</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf)

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/review-wholesale-fixed-exchange/statement/statement.pdf>

2010 WFAEL Statement identified markets for wholesale fixed analogue exchange line services for the United Kingdom excluding the Hull Area and in the Hull Area, made determinations that BT and KCOM had SMP in those respective markets, and determined that appropriate SMP conditions should be imposed on each of BT and KCOM. The relevant SMP conditions, together with provisions modifying and revoking certain SMP conditions previously imposed, were contained in a notification dated 20 December 2010 (the “**2010 WFAEL Notification**”).

6. On 7 March 2012, OFCOM published a statement entitled “*Charge control review for LLU and WLR services*” (the “**2012 LLU and WLR Charge Control Statement**”).<sup>6</sup> The 2012 LLU and WLR Charge Control Statement determined that there had been no material change in either of the wholesale local access services market for the United Kingdom excluding the Hull Area or the wholesale fixed analogue exchange lines services market for the United Kingdom excluding the Hull Area since the 2010 WLA Notification and the 2010 WFAEL Notification, respectively, and that appropriate SMP conditions setting charge controls should be imposed on BT. The relevant SMP conditions, together with provisions modifying certain SMP conditions already imposed on BT, were contained in a notification dated 7 March 2012.
7. On 12 April 2012, OFCOM published a statement entitled “*Wholesale ISDN30 price control*” (the “**2012 ISDN30 Charge Control Statement**”). The 2012 ISDN30 Charge Control Statement determined that there had been no material change in the market for wholesale ISDN30 exchange line services in the United Kingdom except the Hull Area since the 2010 ISDN30 Notification and that appropriate SMP conditions should be imposed on BT. The relevant SMP conditions, together with provisions revoking certain SMP conditions already imposed on BT, were contained in a notification dated 12 April 2012.
8. In 2012, OFCOM commenced a further review of the relevant markets relating to wholesale local access, wholesale and retail fixed analogue exchange lines and wholesale and retail ISDN2 and ISDN30 exchange lines, which review has been called the Fixed Access Market Reviews. On 9 November 2012, OFCOM began its consultation process with stakeholders by publishing a document entitled ‘*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange*

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc-2011/statement/statementMarch12.pdf>

*lines, ISDN2 and ISDN30 - Call for Inputs'* (the “**Call for Inputs**”)<sup>7</sup>. OFCOM invited responses to the Call for Inputs by 20 December 2012.

9. On 3 July 2013, and following OFCOM's consideration of responses received to the Call for Inputs and its analysis of the relevant markets (including extensive information gathering), OFCOM published a further 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 “**July 2013 FAMR Consultation**”)<sup>8</sup>. Part I of Annex 11 to the July 2013 FAMR Consultation set out the notification under sections 48A and 80A of the Act in which OFCOM set out for domestic consultation its proposals to (i) identify certain markets, (ii) make market power determinations, and (iii) set SMP services conditions to be applied to BT and KCOM respectively (the “**July 2013 FAMR Notification**”). OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
10. As part of the July 2013 FAMR Consultation, OFCOM proposed to apply regulatory accounting SMP conditions as set out in the regulatory statement “*The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification - Accounting separation and cost accounting: Final Statement and notification*” (the “**2004 Regulatory Accounting Statement**”) to certain markets which OFCOM proposed to identify and in relation to which OFCOM proposed BT has significant market power. In particular, OFCOM proposed to apply to BT the SMP conditions OA1 to OA28, OA32 and OA33 as set out in Schedule 2 to Annex 2 to the 2004 Regulatory Accounting Statement.
11. OFCOM also explained in the July 2013 FAMR Consultation that its proposals for charge controls on BT in the wholesale local access and wholesale fixed analogue exchange line markets in the United Kingdom excluding the Hull Area would be set out in a separate notification
12. On 11 July 2013, OFCOM published another consultation document entitled “*Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*” (the “**July 2013 LLU WLR Consultation**”)<sup>9</sup>. Annex 17 of the July 2013 LLU WLR

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<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-markets/summary/condoc.pdf>

<sup>8</sup> <http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/>

<sup>9</sup> On 20 August 2013, OFCOM published a correction to the LLU and WLR Charge Control Consultation, entitled ‘*Correction: Fixed access market reviews: Approach to setting LLU and WLR charge controls*’. The corrected document can be found at: [http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU\\_WLR\\_CC\\_2014.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf)

Consultation set out the notification under section 48A of the Act in which OFCOM set out for domestic consultation its proposals to set charge controls in respect of the markets referred to at paragraph 11 above. These proposals were made by reference to the proposed market power determinations in the July 2013 FAMR Notification and, as such, were to be treated as supplementary to the July 2013 FAMR Notification. OFCOM invited responses to the July 2013 LLU WLR Consultation by 25 September 2013.

13. On 19 December 2013, and following consideration of certain responses to the July 2013 FAMR Consultation and the July 2013 LLU WLR Consultation, OFCOM published a further consultation document entitled "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" (the "**December 2013 LLU WLR Consultation**")<sup>10</sup>. Part 1 of Annex 15 of the December 2013 LLU WLR Consultation set out the notification under section 48A of the Act in which OFCOM set out for domestic consultation its revised proposals. OFCOM invited responses to the December 2013 LLU WLR Consultation by 13 February 2014.
14. On 20 December 2013, OFCOM published a consultation document entitled "*Regulatory Financial Reporting - A Review*" (the "**2013 RFR Consultation**")<sup>11</sup>. In that consultation, OFCOM proposed to amend the proposals set out in the July 2013 FAMR Consultation in relation to the regulatory accounting obligations of BT. In particular, OFCOM no longer proposed to apply to BT the regulatory accounting conditions set out in the 2004 Regulatory Accounting Statement. OFCOM proposed no changes to the regulatory accounting SMP conditions which it had proposed should apply to KCOM in the July 2013 FAMR Consultation. OFCOM invited responses to the 2013 RFR Consultation by 14 February 2014.
15. On 16 January 2014, and following consideration of other responses to the July 2013 FAMR Consultation, OFCOM published a further consultation document entitled "*Fixed access market reviews: Further consultation on notification periods, compliance with requirements on the VULA margin, and approach to pricing for TRCs and SFIs*" (the "**January 2014 Consultation**")<sup>12</sup>. Annex 7 of the January 2014 Consultation set out the notification under section 48A of the Act in which OFCOM

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<sup>10</sup> <http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-llu-wlr-charge-controls/>

<sup>11</sup> <http://stakeholders.ofcom.org.uk/consultations/bt-transparency/>

<sup>12</sup> <http://stakeholders.ofcom.org.uk/consultations/famr-2014/>

set out for domestic consultation further revised proposals. OFCOM invited responses to the January 2014 Consultation by 17 February 2014.

16. Copies of each of the July 2013 FAMR Consultation, July 2013 LLU WLR Consultation, December 2013 LLU WLR Consultation and the January 2014 Consultation (collectively, the “**FAMR Consultation Documents**”) and the 2013 RFR Consultation were also sent to the Secretary of State in accordance with sections 48(C)(1) and 81(1) of the Act.
17. OFCOM received several responses to its proposals set out in the FAMR Consultation Documents and the 2013 RFR Consultation, and it has considered every such representation. The Secretary of State has not notified OFCOM of any international obligation on the United Kingdom for the purposes of sections 48A(6)(b) or 80A(9)(b) of the Act.
18. On 20 May 2014, following consideration of the responses to the 2013 RFR Consultation and the making of such modifications to its proposals as it considered appropriate, OFCOM published a policy statement entitled “*Regulatory Financial Reporting: Final Statement*”<sup>13</sup> which set out (among other things) OFCOM's conclusions on the regulatory financial reporting policy that it considered should be applied to BT.
19. The proposals set out in the FAMR Consultation Documents contained proposals of EU significance for the purposes of the Act. Therefore, after making such modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the Statement accompanying this notification setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with sections 48B(2) and 80B(2) of the Act.
20. OFCOM received comments from the European Commission on its proposals on 19 June 2014 and, having considered these comments, has made such modifications to this notification and the Statement accompanying this notification as it considers appropriate.

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<sup>13</sup> <http://stakeholders.ofcom.org.uk/consultations/regulatory-financial-reporting/statement/>

## Determinations for the United Kingdom excluding the Hull Area

### Market identifications and market power determinations

21. OFCOM has identified the following markets listed in Column 1 of **Table A** below for the purpose of making a determination (if any) that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market.

**Table A: Market identifications and market determinations in the United Kingdom excluding the Hull Area**

<b>Column 1: Market identification</b>	<b>Column 2: Market power determination (if any)</b>
<b>(a)</b> 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	BT
<b>(b)</b> Wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area	BT
<b>(c)</b> Wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area	BT
<b>(d)</b> Wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area	BT
<b>(e)</b> Retail ISDN2 exchange line services in the United Kingdom excluding the Hull Area.	[--]

22. For the avoidance of doubt, OFCOM has determined that the market listed at **(e)** in **Table A** above is effectively competitive and, therefore, that no person has significant market power in that market.
23. The effect of, and OFCOM's reasons for identifying the markets and making the market power determinations referred to in paragraphs 21 and 22 above are set out in the Statement accompanying this notification.

## **Determinations to set and apply, modify and revoke SMP service conditions**

24. OFCOM is setting, in relation to each of the services markets in which OFCOM is making the market power determinations as listed at **(a), (b), (c) and (d)** in **Table A** above, the SMP conditions as set out in **Schedule 1** to this notification to be applied to BT to the extent specified in that Schedule, which SMP conditions shall, unless otherwise stated in that Schedule, take effect from the date of publication of this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.
25. OFCOM is also modifying the July 2004 (BT) Notification by substituting in the Column entitled 'Date' in Part 1 (entitled 'Wholesale Markets') of Schedule 1 "26 June 2014" for the dates specified in relation to paragraphs 1 and 18 and for the words 'As above' in paragraphs 4 and 5. This modification shall take effect from the date of publication of this notification.
26. OFCOM is (to the extent still extant) revoking the SMP conditions applied to BT as set out in the 2009 Narrowband Wholesale Notification, the 2010 ISDN30 Notification, the 2010 WLA Notification and the 2010 WFAEL Notification on the date of the date of publication of this notification. The SMP conditions OA1 to OA28, OA32 and OA33 as set out in Schedule 2 to the July 2004 (BT) Notification (as amended by paragraph 24 above) shall be revoked at the end of the 31 July 2014 insofar as they apply to the markets set out at paragraph 21 above. Section 16 of the Interpretation Act 1978 shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.
27. The effect of, and OFCOM's reasons for making, the determinations in relation to the SMP conditions referred to in paragraphs 24 to 26 above are set out in the Statement accompanying this notification.

## **Determinations for the Hull Area**

### **Market identifications and market power determinations**

28. OFCOM is identifying the following markets listed in Column 1 of **Table B** below for the purpose of making a determination (if any) that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market.

**Table B: Market identifications and market determinations in the Hull Area**

<b>Column 1: Market identification</b>	<b>Column 2: Market power determination (if any)</b>
<b>(a)</b> The supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location in the Hull Area	KCOM
<b>(b)</b> Wholesale fixed analogue exchange line services in the Hull Area	KCOM
<b>(c)</b> Wholesale ISDN30 exchange line services in the Hull Area	KCOM
<b>(d)</b> Wholesale ISDN2 exchange line services in the Hull Area	KCOM

29. The effect of, and OFCOM's reasons for identifying the markets and making the market power determinations referred to in paragraph 28 above are set out in the Statement accompanying this notification.

**Determinations to set and apply, modify and revoke SMP service conditions**

30. OFCOM is setting, in relation to each of the services markets in which OFCOM is making the market power determinations as listed at **(a), (b), (c) and (d) in Table B** above, the SMP conditions as set out in **Schedule 2** to this notification to be applied to KCOM to the extent specified in that Schedule, which SMP conditions shall, unless otherwise stated in that Schedule, take effect from the date of publication of this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.
31. OFCOM is also setting, in relation to each of the services markets in which OFCOM is making the market power determinations as listed at **(b), (c) and (d) in Table B** above, the SMP conditions set out in Schedule 2 to the July 2004 (KCOM) Notification, but excluding subparagraphs (a) to (c) and (f) of SMP condition OB23, conditions OB28 – 30 and condition OB33. These are to be read in light of the modifications to that notification set out in paragraph 32 below. Those SMP conditions shall, unless otherwise is stated in that Schedule, take effect from the date

of publication of this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

32. OFCOM is also modifying the July 2004 (KCOM) Notification by:
  - a. substituting in the Column entitled 'Date' in Part 1 (entitled 'Wholesale Markets') of Schedule 1 "26 June 2014" for the date specified in relation to paragraph 1 and for the words "As above" in paragraphs 4 and 5;
  - b. in paragraph 4(a)(i) of the July 2004 (KCOM) Notification, removing the reference to the wholesale markets numbered "1" and "4"; and
  - c. in paragraph 4(a)(iii) of the July 2004 (KCOM) Notification, adding "1, 4, 5 and" after "numbered,".
33. OFCOM is (to the extent still extant) revoking the SMP conditions to be applied to KCOM as set out in the 2009 Narrowband Wholesale Notification, the 2009 Narrowband Retail Notification, the 2010 ISDN30 Notification, the 2010 WLA Notification and the 2010 WFAEL Notification on the date of publication of this notification. Section 16 of the Interpretation Act 1978 shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.
34. The effect of, and OFCOM's reasons for making, the determinations in relation to the SMP conditions referred to in paragraphs 30 to 33 above are set out in the Statement accompanying this notification.

#### **OFCOM's duties and legal tests**

35. In identifying and analysing the markets referred to in this notification, and in considering whether to make the corresponding determinations set out in this notification, OFCOM has, in accordance with section 79 of the Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of a European Union instrument, and which relate to market identification and analysis or the determination of what constitutes significant market power, including, taking due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive in accordance with section 4A of the Act. In doing so, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, OFCOM has also taken utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

36. OFCOM considers that the SMP conditions above comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition, and further that the modifications and revocations of the SMP conditions referred to above comply with the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.
37. In making all of the determinations referred to in this notification, OFCOM has 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.

### **Interpretation**

38. For the purpose of interpreting this notification:
- a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 38 below, and otherwise any word or expression has 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.
39. In this notification:
- a. **“2004 Regulatory Accounting Statement”** means the statement described in paragraph 10 above;
  - b. **“2009 Narrowband Retail Notification”** means the notification described in paragraph 2 above, as subsequently amended by OFCOM;
  - c. **“2009 Narrowband Retail Statement”** means the statement described in paragraph 2 above;
  - d. **“2009 Narrowband Wholesale Notification”** means the notification described in paragraph 1 above, as subsequently amended by OFCOM;
  - e. **“2009 Narrowband Wholesale Statement”** means the statement described in paragraph 1 above;

- f. **“2010 ISDN30 Notification”** means the notification described in paragraph 3 above, as subsequently amended by OFCOM;
- g. **“2010 ISDN30 Statement”** means the statement described in paragraph 3 above;
- h. **“2010 WFAEL Notification”** means the notification described in paragraph 5 above, as subsequently amended by OFCOM;
- i. **“2010 WFAEL Statement”** means the statement described in paragraph 5 above;
- j. **“2010 WLA Notification”** means the notification described in paragraph 4 above, as subsequently amended by OFCOM;
- k. **“2010 WLA Statement”** means the statement described in paragraph 4 above;
- l. **“2012 LLU and WLR Charge Control Statement”** means the statement described in paragraph 6 above;
- m. **“2012 ISDN30 Charge Control Statement”** means the statement described in paragraph 7 above;
- n. **“2013 RFR Consultation”** means the consultation described in paragraph 14 above;
- o. **“Act”** means the Communications Act 2003 (c. 21), as amended;
- p. **“BT”** 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;
- q. **“Call for Inputs”** means the consultation described in paragraph 8 above;
- r. **“December 2013 LLU WLR Consultation”** means the consultation described in paragraph 13 above;
- s. **“FAMR Consultation Documents”** means the consultations described in paragraph 16 above;

- t. **“Framework Directive”** means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended;
- u. **“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, (now known as “KCOM”);
- v. **“January 2014 Consultation”** means the consultation described in paragraph 15 above;
- w. **“July 2004 (BT) Notification”** means the notification OFCOM published on 22 July 2004 in the 2004 Regulatory Accounting Statement imposing various regulatory financial reporting obligations on BT, as subsequently amended by OFCOM;
- x. **“July 2004 (KCOM) Notification”** means the notification OFCOM published on 22 July 2004 in the 2004 Regulatory Accounting Statement imposing various regulatory financial reporting obligations on KCOM, as subsequently amended by OFCOM;
- y. **“July 2013 FAMR Consultation”** means the consultation described in paragraph 9 above;
- z. **“July 2013 FAMR Notification”** means the notification described in paragraph 9 above;
- aa. **“July 2013 LLU WLR Consultation”** means the consultation described in paragraph 12 above;
- bb. **“KCOM”** means KCOM Group plc, whose registered company number is 2150618, 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;
- cc. **“OFCOM”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11); and

dd. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c. 30).

40. The Schedules to this notification 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" 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**

**26 June 2014**

## Schedule 1: SMP conditions (BT)

### Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 1, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of Table 1 below to the extent specified in Column 2 of Table 1. Save as otherwise specified in any condition, each condition will enter into force on the date of publication of this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

**Table 1: Relevant markets for the purposes of this Schedule**

<b><i>Column 1: Relevant market</i></b>	<b><i>Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1</i></b>
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	Conditions 1 (except 1.7), 2 (except 2.1B), 3, 4, 5, 6, 7A and 7B, 8 (except 8.2F, 8.2G and 8.2H), 9.1A, 9.2A, 9.3A, 9.4A, 9.5A, 9.6A, 9.7A, 9.8, 10, 11, 12 (except 12.1B, 12.2B and 12.3B), 13A and 13B
Wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area	Conditions 1 (except 1.6), 2 (except 2.1A), 3, 4, 5, 7C, 8 (except 8.2A, 8.2B, 8.2C, 8.2D, 8.2E, 8.2G, 8.2H and 8.2I), 9.1B, 9.2B, 9.3B, 9.4B, 9.5B, 9.6B, 9.7B, 9.8, 10, 11, 12 (except 12.1A, 12.2A and 12.3A), 13A and 13B
Wholesale ISDN30 exchange line services in the United	Conditions 1 (except 1.6),

Kingdom excluding the Hull Area	2 (except 2.1A), 3, 4, 5, 7D, 8 (except 8.2A, 8.2B, 8.2C, 8.2D, 8.2E, 8.2F, 8.2H and 8.2I), 9.1B, 9.2B, 9.3B, 9.4C, 9.5B, 9.6B, 9.7B, 9.8, 10, 11, 13A and 13B
Wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area	Conditions 1 (except 1.6), 2 (except 2.1A), 3, 4, 5, 7E, 8 (except 8.2A, 8.2B, 8.2C, 8.2D, 8.2E, 8.2F, 8.2G, and 8.2I), 9.1B, 9.2B, 9.3B, 9.4C, 9.5B, 9.6B, 9.7B, 9.8, 10, 11, 13A and 13B

The conditions referred to in Column 2 of Table 1 are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	Specific forms of network access
Condition 3	Requests for new forms of network access
Condition 4	No undue discrimination
Condition 5	Equivalence of Inputs basis
Condition 6	Basis of charges
Condition 7	Charge controls
Condition 8	Publication of a Reference Offer
Condition 9	Notification of charges and terms and conditions
Condition 10	Notification of technical information

Condition 11

Quality of service

Condition 12

Minimum standards for quality of service

Condition 13

Regulatory Financial Reporting

## Part 2: Interpretation

1. In addition to the definitions set out above in this notification and in each condition below (where relevant), in this Schedule 1—
  - a) “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with condition 1 and, in relevant cases, condition 2;
  - b) “**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;
  - c) “**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 one decimal place) of that Consumer Prices Index as at the beginning of that first mentioned period;
  - d) “**Dominant Provider**” means BT;
  - e) “**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;
  - f) “**Fault**” means a degradation or problem with network access that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system;

- g) **“First Relevant Year”** means the period beginning on 1 July 2014 and ending on 31 March 2015;
- h) **“ISDN”** means the integrated services digital network which is an electronic communications network that provides for digital end-to-end connectivity to support a wide range of public electronic communications services, including voice and non-voice services, to which end-users have access by a limited set of standard multipurpose customer interfaces;
- i) **“Level 1 Care”** means the level of care provided by the Dominant Provider which provides the standard level of response to a Fault on an Exchange Line, provided as part of the basic line rental;
- j) **“LLU Co-Location”** means the provision of space permitting a Third Party to occupy part of an MDF Site reasonably sufficient to permit the use of Local Loop Unbundling Services, and in particular to permit the connection of the Dominant Provider’s electronic communications network with the electronic communications network of a Third Party at that location;
- k) **“LLU Site Access”** means access (including the right of entry) to the Dominant Provider’s MDF Sites in order to install and operate an electronic communications network to provide electronic communications services over Local Loop Unbundling Services;
- l) **“Local Access Node”** means either:
- i. an MDF Site;
  - ii. an ODF Site;
  - iii. an operational building designated by the Dominant Provider for use as an ODF Site in future; or

- iv. an operational building of the Dominant Provider which is reasonably equivalent to one of the above in terms of the distance between the operational building and the Network Termination Points and in terms of the number of Network Termination Points served;
- m) **“Local Loop Unbundling Services”** means network access to Metallic Path Facilities or Shared Access;
- n) **“Local Serving Exchange”** means the site of an operational building of the Dominant Provider, where interconnection is made available by the Dominant Provider to a Third Party for Network Termination Points served by that site for the provision of Virtual Unbundled Local Access;
- o) **“MDF Site”** means the site of an operational building of the Dominant Provider that houses a main distribution frame;
- p) **“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;
- q) **“MPF Connection Charge”** 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 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;
- s) **“MPF Rental”** shall be construed as the annual rental of access to Metallic Path Facilities;

- t) **“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;
- u) **“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;
- v) **“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);

- w) **“Network Termination Point”** means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- x) **“Non-Working Day”** means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- y) **“ODF Site”** means the site of an operational building of the Dominant Provider housing an optical distribution frame for optical fibre access networks;
- z) **“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;
- aa) **“Physical Infrastructure”** includes any conduit, tunnel, subway, pipe, structure, pole or other thing in, on, by or from which an electronic communications network is or may be installed, supported, carried or suspended over Physical Infrastructure Access;
- bb) **“Physical Infrastructure Access”** means network access comprising predominantly of the provision of space, anchorage, attachment facilities and/or such other facilities as may be reasonably necessary to permit a Third Party to occupy parts of the Dominant Provider’s Physical Infrastructure located between Network Termination Points and Local Access Nodes serving those Network Termination Points, sufficient to facilitate the establishment, installation, operation and maintenance of the electronic communications network of a Third Party at that location;
- cc) **“Point of Connection”** means a point at which the Dominant Provider’s electronic communications network and a Third Party’s

electronic communications network are connected;

- dd) **“Prior Year”** means:
- (i) in relation to the Second Relevant Year, the period of nine months ending on 31 March immediately preceding that Relevant Year; and
  - (ii) in relation to the First Relevant Year and the Third Relevant Year, the period of 12 months ending on 31 March immediately preceding the Relevant Year;
- ee) **“Reference Offer”** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;
- ff) **“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;
- gg) **“Relevant Year”** means each of the following three periods:
- (1) the First Relevant Year;
  - (2) the Second Relevant Year; and
  - (3) the Third Relevant Year;
- hh) **“Second Relevant Year”** means the period of 12 months beginning on 1 April 2015 and ending on 31 March 2016;
- ii) **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- jj) **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;

- kk) **“Shared Access”** means the non-voice band frequency of Metallic Path Facilities;
- 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;
- 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;
- nn) **“Sub-Loop Unbundling Services”** means access to Metallic Path Facilities or Shared Access at an intermediate point prior to the main distribution frame;
- oo) **“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network;
- pp) **“Third Relevant Year”** means the period of 12 months beginning on 1 April 2016 and ending on 31 March 2017;
- qq) **“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 the Dominant Provider and the Third Party for the Third Party’s exclusive use;
- rr) **“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;

- ss) **“Wholesale ISDN2 Line Rental”** means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an ISDN2 Exchange Line;
- tt) **“Wholesale ISDN30 Line Rental”** means an electronic communications service provided by the Dominant Provider to a Third Party for the use and Ordinary Maintenance of an ISDN30 Exchange Line;
- uu) **“Wholesale Line Rental”** means network access comprising of any and all of the following provided by the Dominant Provider:
- (a) Wholesale Analogue Line Rental;
  - (b) Wholesale ISDN30 Line Rental; and
  - (c) Wholesale ISDN2 Line Rental;
- vv) **“Wholesale Line Rental Charge”** means the annual charge levied by the Dominant Provider for Wholesale Analogue Line Rental including packages containing a line rental charge and any included levels of service sold as part of a single marketed product;
- ww) **“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;
- xx) **“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;

yy) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable); and

zz) references to the expression electronic communications network for the purposes of the expressions LLU Co-Location, LLU Co-Mingling, LLU Site Access, SLU Ancillary Services, PIA Co-Location, PIA Co-Mingling, PIA Site Access, VULA Co-Location, VULA Co-Mingling and VULA Site Access, as they apply in condition 2 of Part 3 shall be limited to those matters set out at section 32(1)(b)(i)-(iii) of the Act.

2. For the purpose of interpreting this Schedule, except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Schedule 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 10 May 2014 found as follows:

- For SMPF and MPF product information, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- For WLR product information, please refer to: <http://www.openreach.co.uk/orpg/home/products/wlr3/wlr3.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](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 3: SMP conditions**

#### **Condition 1 – Network access on reasonable request**

- 1.1** The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2** Except where condition 1.3 applies, the provision of network access by the Dominant Provider in accordance with this condition must:
- (a) take place as soon as reasonably practicable after receiving the request from a Third Party (and, in any event, in accordance with condition 12); and
- (b) be on:
- (i) fair and reasonable terms, conditions and charges; and
  - (ii) such terms, conditions and charges as OFCOM may from time to time direct.
- 1.3** Where any of conditions 6 or 7 apply (with the exception of condition 7A.9), the provision of network access by the Dominant Provider in accordance with this condition must:
- (a) take place as soon as reasonably practicable after receiving the request from a Third Party (and, in any event, in accordance with condition 12); and
- (b) be on:
- (i) fair and reasonable terms and conditions (excluding charges); and
  - (ii) such terms and conditions (excluding charges) as OFCOM may from time to time direct.

For the avoidance of doubt, condition 1.2 above shall apply to the provision of network access by the Dominant Provider in the specific form of MPF Service Maintenance Level 3, MPF Service Maintenance

Level 4, SMPF Service Maintenance Level 3, SMPF Service Maintenance Level 4, WLR Service Maintenance Level 3 and/or WLR Service Maintenance Level 4.

- 1.4** The provision of network access by the Dominant Provider in accordance with this condition must also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as OFCOM may from time to time direct.
- 1.5** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.
- 1.6** (WLA) The direction dated 20 March 2008 concerning service level agreements, as published on the same day at Annex 2 of the statement entitled "*Service level guarantees: incentivising performance*,"<sup>14</sup> given by OFCOM under condition FA1.2, shall have force until such time as it is modified or withdrawn, as if it has been given under condition 1.2 or 1.3 (as applicable) from the date that this condition enters into force and that direction must be read accordingly.
- 1.7** (WFAEL, ISDN30 and ISDN2) The direction dated 20 March 2008 concerning service level agreements, as published on the same day at Annex 1 of the statement entitled "*Service level guarantees: incentivising performance*", given by OFCOM under condition AA1(a).2, shall have force until such time as it is modified or withdrawn, as if it has been given under condition 1.2 or 1.3 (as applicable) from the date that this condition enters into force and that direction must be read accordingly.

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<sup>14</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/slg/statement/statement.pdf>

## Condition 2 – Specific forms of network access

**2.1A (WLA)** Without prejudice to the generality of condition 1, the provision of network access under that condition must include, where the Third Party, in writing, reasonably requests, the following specific forms of network access–

(a) Local Loop Unbundling Services including such LLU Ancillary Services as may be reasonably necessary for the use of Local Loop Unbundling Services;

(b) Virtual Unbundled Local Access including such VULA Ancillary Services as may be reasonably necessary for the use of Virtual Unbundled Local Access;

(c) Sub-Loop Unbundling Services including such SLU Ancillary Services as may be reasonably necessary for the use of Sub-Loop Unbundling Services; and

(d) Physical Infrastructure Access for the use by the requesting Third Party for the purposes of deployment of broadband access networks serving multiple premises, including such PIA Ancillary Services as may be reasonably necessary for such use of Physical Infrastructure Access.

**2.1B (WFAEL, ISDN30 and ISDN2)** Without prejudice to the generality of condition 1, the provision of network access under that condition must include, where the Third Party, in writing, reasonably requests, Wholesale Line Rental including such WLR Ancillary Services as may be reasonably necessary for the use of Wholesale Line Rental.

**2.2** In this condition 2:

(a) “**LLU Ancillary Services**” mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of Local Loop Unbundling Services via that network and/or service or have the potential to do so, which include at a minimum (but without limitation) the following:

- (i) power;
- (ii) LLU Co-Location;
- (iii) LLU Co-Mingling;
- (iv) LLU Site Access;
- (v) LLU Internal Tie Circuits; and
- (vi) LLU External Tie Circuits;

(b) “**LLU Co-Mingling**” means the provision of LLU Co-Location having the following characteristics:

- (i) the Third Party’s electronic communications network is situated in an area of the MDF Site which:
  - A. is a single undivided space;
  - B. after proper performance by the Dominant Provider of its obligation to provide Local Loop Unbundling Services pursuant to conditions 1 and 2, would permit the normal operation of the Third Party’s electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF Site for such use); and
  - C. if so requested by the Third Party, is not unreasonably distant from the Dominant Provider’s electronic communications network within the MDF Site;
- (ii) no permanent physical partition is erected in the space between the Third Party’s electronic communications network and the Dominant Provider’s electronic

communications network; and

- (iii) the Third Party's electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider's behalf;
- (c) **"LLU Internal Tie Circuit"** means a link, the whole of which is contained within an MDF Site, that connects Local Loop Unbundling Services to the electronic communications network of a Third Party;
- (d) **"LLU External Tie Circuit"** means a link that connects Local Loop Unbundling Services to the electronic communications network of a Third Party at a location outside the MDF Site;
- (e) **"PIA Ancillary Services"** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of Physical Infrastructure Access services via that network and/or service or have the potential to do so, which include at a minimum (but without limitation) the following:
- i. power;
  - ii. PIA Co-Location;
  - iii. PIA Co-Mingling; and
  - iv. PIA Site Access;
- (f) **"PIA Co-Location"** means the provision of space permitting a Third Party to occupy part of an MDF Site reasonably sufficient to permit the use of Physical Infrastructure Access;
- (g) **"PIA Co-Mingling"** means the provision of PIA Co-Location having the following characteristics:
- i. the Third Party's electronic communications network is situated in an area of the MDF Site which:

- A. is a single undivided space;
  - B. after proper performance by the Dominant Provider of its obligation to provide Physical Infrastructure Access pursuant to conditions 1 and 2, would permit the normal operation of the Third Party's electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF Site for such use); and
  - C. if so requested by the Third Party, is not unreasonably distant from the Dominant Provider's electronic communications network within the MDF site;
- ii. no permanent physical partition is erected in the space between the Third Party's electronic communications network and the Dominant Provider's electronic communications network; and
  - iii. the Third Party's electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider's behalf;
- (h) **"PIA Site Access"** means access (including the right of entry) to the Dominant Provider's MDF Sites in order for a Third Party to install and operate an electronic communications network to provide electronic communications services over Physical Infrastructure Access;
- (i) **"SLU Ancillary Services"** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of Sub-Loop Unbundling Services via that network and/or service or have the potential to do so, which include at a minimum (but without limitation) SLU Tie Circuit;

- (j) **“SLU Tie Circuit”** means a link that connects Sub-Loop Unbundling Services to the electronic communications network of a Third Party;
- (k) **“VULA Ancillary Services”** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of Virtual Unbundled Local Access via that network and/or service or have the potential to do so, which include at a minimum (but without limitation) the following:
- i. power;
  - ii. VULA Co-Location;
  - iii. VULA Co-Mingling; and
  - iv. VULA Site Access;
- (l) **“VULA Co-Location”** means the provision of space permitting a Third Party to occupy part of a Local Serving Exchange reasonably sufficient to permit the use of Virtual Unbundled Local Access, and in particular to permit the connection of the Dominant Provider’s electronic communications network with the electronic communications network of a Third Party at that location;
- (m) **“VULA Co-Mingling”** means the provision of VULA Co-Location having the following characteristics:
- i. the Third Party’s electronic communications network is situated in an area of the Local Serving Exchange which:
    - A. is a single undivided space;
    - B. after proper performance by the Dominant Provider of its obligation to provide Virtual Unbundled Local Access pursuant to conditions 1 and 2, would permit the normal operation of the Third Party’s electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably

prevent or hinder the occupation of the Local Serving Exchange for such use); and

- C. if so requested by the Third Party, is not unreasonably distant from the Dominant Provider's electronic communications network within the Local Serving Exchange;
  - ii. no permanent physical partition is erected in the space between the Third Party's electronic communications network and the Dominant Provider's electronic communications network; and
  - iii. the Third Party's electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider's behalf;
- (n) **"VULA Site Access"** means access (including the right of entry) to the Dominant Provider's Local Serving Exchange in order to install and operate an electronic communications network to provide electronic communications services over Virtual Unbundled Local Access; and
- (o) **"WLR Ancillary Services"** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of Wholesale Line Rental via that network and/or service or have the potential to do so.

### **Condition 3 – Requests for new forms of network access**

- 3.1** The Dominant Provider must, for the purposes of transparency, publish guidelines, in relation to requests for new forms of network access made to it. Such guidelines must set out:
- (a) the form in which such a request should be made;
  - (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access;
  - (c) the timescales in which such requests will be handled by the Dominant Provider; and
  - (d) any provisions directed by OFCOM.
- 3.2** The guidelines must meet the following principles:
- (a) the process for consideration of requests shall be documented end-to-end;
  - (b) the timescales for each stage of the process shall be reasonable;
  - (c) the criteria by which requests will be assessed shall be clearly identified;
  - (d) the reasons for rejecting any request shall be clear and transparent; and
  - (e) any changes to the guidelines shall be agreed between the Dominant Provider and other communications providers in an appropriate manner.
- 3.3** The Dominant Provider must, upon reasonable request from a Third Party considering making a request for a new form of network access, provide that Third Party with such information as may be reasonably required to enable that Third Party to make a request for a new form of network access. Such information must be provided within a reasonable period.
- 3.4** On receipt of a written request for a new form of network access, the

Dominant Provider must deal with the request in accordance with the guidelines described in condition 3.1 above. A modification of a request for a new form of network access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, must be considered as a new request.

- 3.5** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition requiring amendments to the guidelines.

#### **Condition 4 – No undue discrimination**

- 4.1** The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with conditions 1 and 2, as applicable.
  
- 4.2** In this condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

## **Condition 5 – Equivalence of Inputs basis**

- 5.1** Subject to condition 5.2, the Dominant Provider must provide network access in accordance with conditions 1 and 2 (as applicable) on an Equivalence of Inputs basis.
- 5.2** The obligation in condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply to—
- (a) the provision of Sub-Loop Unbundling Services in accordance with conditions 1 and 2;
  - (b) the provision of Physical Infrastructure Access in accordance with conditions 1 and 2;
  - (c) network access which the Dominant Provider was not providing on an Equivalence of Inputs basis as at the date that this condition enters into force; and
  - (d) such provision of network access as OFCOM may from time to time otherwise consent in writing.
- 5.3** Without prejudice to the generality of condition 5.1, the Dominant Provider must not provide (or seek to provide) network access for its own services (including for those of its retail divisions, subsidiaries or partners), unless at the same time the Dominant Provider provides and/or offers to provide such network access to Third Parties (other than its retail divisions, subsidiaries or partners) on an Equivalence of Inputs basis.
- 5.4** For the avoidance of doubt, the obligations set out in this condition 5 apply in addition to the obligations set out in condition 4.
- 5.5** In this condition 5:
- (a) **“Equivalence of Inputs basis”** means that the Dominant Provider must provide, in respect of a particular product or service,

the same product or service to all Third Parties and itself on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Third Parties and itself of the same Relevant Commercial Information about such products, services, systems and processes as the Dominant Provider provides to its own divisions, subsidiaries or partners subject only to: (a) trivial differences; (b) differences relating to: (i) credit vetting procedures, (ii) payment procedures, (iii) matters of national and crime-related security (which for the avoidance of doubt includes for purposes related to the Regulation of Investigatory Powers Act 2000), physical security, security required to protect the operational integrity of the network, (iv) provisions relating to the termination of a contract, or (v) contractual provisions relating to requirements for a safe working environment; (c) differences relating to the provision of Relevant Commercial Information by the Dominant Provider to its own divisions, subsidiaries or partners where this is necessary for purposes other than relating to the provision of network access to those own divisions, subsidiaries or partners; and (d) such other differences as OFCOM may from time to time consent to in writing;. For the avoidance of any doubt, unless seeking OFCOM's consent, the Dominant Provider may not rely on any other reasons in seeking to objectively justify the provision in a different manner. In particular, it includes the use by the Dominant Provider of such systems and processes in the same way as Third Parties and with the same degree of reliability and performance as experienced by Third Parties; and

(b) “**Relevant Commercial Information**” means information of a commercially confidential nature relating to products and/or services to which this condition 5 applies, and which relates to any or all of the following in relation thereto—

- i. product development;
- ii. pricing;

- iii. marketing strategy and intelligence;
- iv. product launch dates;
- v. cost;
- vi. projected sales volumes; or
- vii. network coverage and capabilities;

save for any such information in relation to which OFCOM consents in writing is to be treated as falling outside this definition.

## **Condition 6 – Basis of charges**

**6.1** Unless OFCOM directs otherwise from time to time, the Dominant Provider must  
**(WLA – LLU)** – secure, and must be able to demonstrate to the satisfaction of OFCOM, that the Electricity Charge when averaged over each Relevant Year is reasonably derived from the costs of provision based on the wholesale electricity charges paid by the Dominant Provider plus an appropriate mark-up to reflect the Dominant Provider's costs related to its wholesale purchase of electricity and the setting of the Electricity Charge.

**6.2** Except where condition 6.3 applies, the Dominant Provider must secure, and  
**(WLA – SLU)** – must be able to demonstrate to the satisfaction of OFCOM, that each and every charge offered or payable when averaged over each Relevant Year for Sub-Loop Unbundling Services provided under conditions 1 and 2 is reasonably derived from the costs of provision calculated on a reasonable forward looking fully allocated cost basis, including an appropriate return on capital employed.

**6.3** The Dominant Provider must secure, and must be able to demonstrate to the  
**(WLA – SLU)** – satisfaction of OFCOM, that each and every charge offered or payable when averaged over each Relevant Year:

(a) for SLU MPF Rental provided under conditions 1 and 2 is reasonably derived from the costs of provision calculated by reference to the charge for MPF Rental (determined in accordance with condition 7A) for the corresponding Relevant Year adjusted to reflect the difference in the forward looking long run incremental costs of SLU MPF Rental;

(b) for SLU MPF Connection provided under conditions 1 and 2 is reasonably derived from the costs of provision calculated by reference to the charge for MPF Connection Charge (determined in accordance with condition 7A) for the corresponding Relevant Year adjusted to reflect the difference in the forward looking long run incremental costs of SLU MPF Connection; and

(c) for SLU SMPF Connection provided under conditions 1 and 2 is reasonably derived from the costs of provision calculated by reference to the charge for SMPF New Provide (determined in accordance with condition 7A) for the corresponding Relevant Year adjusted to reflect the difference in the forward

looking long run incremental costs of SLU SMPF Connection.

**6.4 (WLA PIA)** – Unless OFCOM directs otherwise from time to time, the Dominant Provider must secure, and must be able to demonstrate to the satisfaction of OFCOM, that each and every charge offered or payable when averaged over each Relevant Year for Physical Infrastructure Access provided under conditions 1 and 2 is reasonably derived from the costs of provision based on a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

**6.5** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.

**6.6** In this condition 6:

- (a) “**Electricity Charge**” means the charge from time to time on a usage per kWh basis for electricity purchased by Third Parties to provide power for equipment used in connection with Local Loop Unbundling Services;
- (b) “**SLU MPF Connection**” shall be construed as having the same meaning as “Sub Loop MPF Connection charge - New Provide – Standard” as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (c) “**SLU SMPF Connection**” shall be construed as having the same meaning as “Sub Loop - Shared MPF Connection (including SMPF Transfer)” as provided by the Dominant Provider on its website for definitions and explanations of its products; and
- (d) “**SLU MPF Rental**” shall be construed as having the same meaning as “Sub Loop MPF Rental” as provided by the Dominant Provider on its website for definitions and explanations of its products.

## **Condition 7 – Charge controls**

### **Condition 7A – LLU charge control**

**7A.1** The Dominant Provider shall take all reasonable steps to secure that, (WLA at the end of each Relevant Year, the Percentage Change (determined -LLU) in accordance with condition 7A.4 and 7A.5, as applicable) in:

- (a) the aggregate of charges for Tie Cables;
- (b) the aggregate of charges for Hard Cease Services;
- (c) the aggregate of charges for MPF New Provide Services;
- (d) the aggregate of charges for Other LLU Ancillary Services;
- (e) the aggregate of charges for Co-Mingling New Provide and Rental Services;
- (f) 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) 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) 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) 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;
- (j) the charge for SMPF New Provide, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(e) applies;
- (k) the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(f) applies;

- (l) the charge for SMPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(g) applies;
- (m) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(i) applies;
- (n) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(ii) applies;
- (o) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(iii) applies;
- (p) the charge for an Additional Hour when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(i) applies;
- (q) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(ii) applies;
- (r) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(iii) applies;
- (s) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Non-Working Day, except for the

First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(j)(i) applies;

- (t) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(j)(ii) applies;
- (u) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(k)(i) applies;
- (v) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(k)(ii) applies;
- (w) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(l) applies;  
and
- (x) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(m) applies,

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

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

- (a) for MPF Rental, the amount of £86.11 in the First Relevant Year;
- (b) for SMPF Rental, the amount of £5.54 in the First Relevant Year;
- (c) for MPF Single Migration, the amount of £30.83 in the First Relevant Year;

- (d) for SMPF Single Migration, the amount of £30.83 in the First Relevant Year;
- (e) for SMPF New Provide, the amount of £30.83 in the First Relevant Year;
- (f) for MPF Bulk Migration, the amount of £25.96 in the First Relevant Year;
- (g) for SMPF Bulk Migration, the amount of £25.96 in the First Relevant Year;
- (h) for a Standard Chargeable Visit, in the First Relevant Year, the amount of:
  - (i) £95.73 when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £138.86 when that service is provided on a Non-Working Day; and
  - (iii) £117.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (i) for an Additional Hour, in the First Relevant Year, the amount of:
  - (i) £43.13 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £86.26 per hour when that service is provided on a Non-Working Day; and
  - (iii) £64.70 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (j) for Supplementary Charges (Per Visit), in the First Relevant Year, the amount of:
  - (i) £52.60 when that service is provided on a Non-Working Day; and
  - (ii) £26.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (k) for Supplementary Charges (Per Hour), in the First Relevant Year, the amount of:

- (i) £52.60 per hour when that service is provided on a Non-Working Day; and
- (ii) £26.30 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (l) for Internal and External Shifts, the amount of £105.20 in the First Relevant Year;
- (m) for Additional Line Shifted, the amount of £52.60 in the First Relevant Year;
- (n) for MPF Cease, the amount of £0.00 in each Relevant Year; and
- (o) for SMPF Cease, the amount of £0.00 in each Relevant Year.

**7A.3 a)** The Dominant Provider shall take all reasonable steps to ensure that the charge for each Special Fault Investigation Service in a Relevant Year does not exceed the amount calculated in accordance with the following formula:

$$\text{Engineer Time} \times \text{Hourly Charge}$$

Where:

*Engineer Time* means in relation to a Special Fault Investigation Service:

- i. the amount of time determined by the Dominant Provider as at 1 July 2014 as being required by an engineer in order to complete the corresponding Special Fault Investigation Service; or
- ii. such other amount of time as OFCOM may from time to time direct.

*Hourly Charge* means:

- i. for the purposes of the First Relevant Year, no more than £52.60;
- ii. for the purposes of the Second Relevant Year, no more than £52.71;  
and
- iii. for the purposes of the Third Relevant Year, no more than £52.82.

b) The Dominant Provider shall take all reasonable steps to ensure that the charge for each Special Fault Investigation – Base Module and Special Fault Investigation – Frame Direct Module in a Relevant Year does not exceed the amount calculated in accordance with the following formula:

$$(\text{Engineer Time} \times \text{Hourly Charge}) + \text{Visit Charge}$$

Where:

*Engineer Time* means in relation to a Special Fault Investigation – Base Module or Special Fault Investigation – Frame Direct Module (as applicable):

- i. the amount of time determined by the Dominant Provider as at 1 July 2014 as being required by an engineer in order to complete the corresponding Special Fault Investigation – Base Module or Special Fault Investigation – Frame Direct Module; or
- ii. such other amount of time as OFCOM may from time to time direct.

*Hourly Charge* means:

- i. for the purposes of the First Relevant Year, no more than £52.60;
- ii. for the purposes of the Second Relevant Year, no more than £52.71;  
and
- iii. for the purposes of the Third Relevant Year, no more than £52.82.

*Visit Charge* means:

- i. for the purposes of the First Relevant Year, no more than £52.60;
- ii. for the purposes of the Second Relevant Year, no more than £52.71;  
and
- iii. for the purposes of the Third Relevant Year, no more than £52.82.

**7A.3A** The amount of time determined by the Dominant Provider under condition 7A.3 as being required by an engineer in order to complete the corresponding Special Fault Investigation Service, Special Fault Investigation – Base Module or Special Fault Investigation – Frame Direct Module (as the case may be) must be fair and reasonable.

**7A.4** 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(e) shall be calculated, for the purposes of complying with condition 7A.1, by employing the following formula:

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

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 Total Revenue accrued during the Prior Year in respect of the individual service  $i$  that forms part of the Basket;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_{i,t}$  is the 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:

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

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;

$w_{i,j,t}$  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 274;
- 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,  $i$ ;

$\bar{p}_{i,t-1}$  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, 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:

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

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 First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 274;
- 3) for the Third Relevant Year, by 366;

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

**7A.5** 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(f) to 7A.1(x) shall be calculated, for the purposes of complying with condition 7A.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;

$\bar{p}_t$  shall be calculated by employing the formula set out in condition 7A.4 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.4 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.6** 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(e) 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 7.5 percentage points.

For the purposes of this condition 7A.6:

- (a) the Controlling Percentage is the Controlling Percentage (as determined in accordance with condition 7A.7) 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.5 and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling within the Basket in question.

**7A.7** (a) Subject to conditions 7A.7(c) to 7A.7(e) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in conditions 7A.1(a) to 7A.1(l) shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ,

$CPI_t$  is CPI for the Relevant Year,  $t$ ,

$X$  means:

- for the category of products and/or services specified in condition 7A.1(a)  
-11.8 percentage points;
- for the category of products and/or services specified in condition 7A.1(b)  
0.4 percentage points;
- for the category of products and/or services specified in condition 7A.1(c)  
-2.8 percentage points;
- for the category of products and/or services specified in condition 7A.1(d)  
-5 percentage points;
- for the category of products and/or services specified in condition 7A.1(e)  
-3.4 percentage points;
- for the category of products and/or services specified in condition 7A.1(f)  
0.3 percentage points;
- for the category of products and/or services specified in condition 7A.1(g)  
-33.4 percentage points;
- for the category of products and/or services specified in condition 7A.1(h)  
-1.5 percentage points;
- for the category of products and/or services specified in condition 7A.1(i)  
-1.5 percentage points;
- for the category of products and/or services specified in condition 7A.1(j)  
-1.5 percentage points;
- for the category of products and/or services specified in condition 7A.1(k)  
-10.7 percentage points; and

- for the category of products and/or services specified in condition 7A.1(l) -10.7 percentage points.

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

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

$$CP_t = X$$

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ,

$X$  means:

- for the category of products and/or services specified in condition 7A.1(m) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(n) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(o) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(p) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(q) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(r) 0.2 percentage points;

- for the category of products and/or services specified in condition 7A.1(s) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(t) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(u) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(v) 0.2 percentage points;
- for the category of products and/or services specified in condition 7A.1(w) 0.2 percentage points; and
- for the category of products and/or services specified in condition 7A.1(x) 0.2 percentage points.

For the avoidance of doubt, the charges for each of the products and/or services set out in conditions 7A.1(m) to 7A.1(x) are constrained by condition 7A.2 in the First Relevant Year.

(c) For each of the categories of products and/or services specified in:

- i. conditions 7A.1(a) to 7A.1(l), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7A.7(e) below; and
- ii. conditions 7A.1(m) to 7A.1(x), in the case of Deficiency either at the end of the First Relevant Year or the Second Relevant Year, then the Controlling

Percentage for the following Relevant Year shall be determined in accordance with condition 7A.7(f) below.

(d) For each of the categories of products and/or services specified in:

- i. conditions 7A.1(a) to 7A.1(l), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7A.7(e) below; and
- ii. conditions 7A.1(m) to 7A.1(x), in the case of Excess either at the end of the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7A.7(f) below.

(e) 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.4 or 7A.5, as applicable;

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

*CPI* has the meaning ascribed to it in Part 2 of Schedule 1 of this notification.

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

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

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(m) to 7A.1(x) 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.4 or 7A.5, as applicable;

X is as set out in condition 7A.7(b) above.

- (g) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(x), 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.8** 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 (SFI2) - Coop module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Coop module; and
- (g) the charge made by it for MPF Special Fault Investigation 2 (SFI2) - Frame direct module is the same as the charge made by it for SMPF Special Fault Investigation 2 (SFI2) - Frame direct module.

For the avoidance of doubt, nothing in this condition 7A.8 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.8 (a) to (g) above provided the requirements set out in this condition 7A.8 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 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.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 (d) above provided the requirements set out in this condition 7A.9 are complied with.

**7A.10** 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.10 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.10 (a) to (g) above provided the requirements set out in this condition 7A.10 and condition 7A.1 are complied with.

**7A.11** 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.10 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.11, 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 or a change as to the billing practice for the Charge Controlled Service.

**7A.12** 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 this condition 7A. The data must include:

- (a) pursuant to conditions 7A.4 and 7A.5, as applicable, the calculated Percentage Change relating to each category of products and services listed in conditions 7A.1(a) through to 7A.1(x);
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in conditions 7A.4 and 7A.5 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 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.4 and 7A.5 apply and calculations thereof;
- (e) other data necessary for monitoring compliance with the charge control; and
- (f) such data as OFCOM may from time to time direct.

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

**7A.13** Conditions 7A.1 to 7A.12 shall not apply to such extent as OFCOM may direct.

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

**7A.15** In this condition 7A:

- (b) **“Additional Hour”** means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;
- (c) **“Additional Line Shifted”** means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;
- (d) **“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(x) during the Relevant Year;
- (e) **“Basket”** shall be construed in accordance with condition 7A.4;
- (f) **“Charge”** means 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;
- (g) **“Charge Controlled Service”** means:
  - i. a service or Basket of services listed in condition 7A.1(a) to 7A.1(x);
  - ii. any Special Fault Investigation Service;
  - iii. any Special Fault Investigation – Base Module; and
  - iv. any Special Fault Investigation – Frame Direct Module.

- (h) **“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 5 of the Annex to this condition 7A;
- (i) **“Controlling Percentage”** is to be determined in accordance with condition 7A.7;
- (j) **“Excess Revenue”** means the difference between (a) 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(x), and (b) 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(x) 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 7A;
- (l) **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with condition 7A.4, 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 7A;
- (m) **“Internal and External Shifts”** means the provision of the service ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;
- (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 7A;
- (o) **“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 7A;
- (q) **“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;
- (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 7A;
- (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 7A;
- (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 7A;
- (u) **“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;
- (v) **“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;
- (w) **“MPF Special Fault Investigation 2 (SF12) - Frame direct module”** shall be construed as having the same meaning as ‘MPF Special Fault

Investigation 2 (SFI2) - Frame direct module' as provided by the Dominant Provider on its website for definitions and explanations of its products;

- (x) **“MPF Special Fault Investigation 2 (SFI2) - Frame module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SFI2) - Frame module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (y) **“MPF Special Fault Investigation 2 (SFI2) - Internal equip module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SFI2) - Internal equip module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (z) **“MPF Special Fault Investigation 2 (SFI2) - Internal Wiring module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SFI2) - Internal Wiring module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (aa) **“MPF Special Fault Investigation 2 (SFI2) - Network module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SFI2) - Network module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (bb) **“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 7A;
- (cc) **“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 7A;
- (dd) **“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 7A;

- (ee) **“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 7A;
- (ff) **“Percentage Change”** has the meaning given to it in condition 7A.4 and 7A.5, as applicable;
- (gg) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7A.4;
- (hh) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
- (ii) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7A.4;
- (jj) **“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 7A;
- (kk) **“SMPF Bulk Migration”** shall be construed as having the same meaning as ‘SMPF Bulk Migrations charge Normal Delivered during a 24 hour period’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (ll) **“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 7A;
- (mm) **“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;

- (nn) **“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 access to Metallic Path Facilities;
- (oo) **“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 7A;
- (pp) **“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 7A;
- (qq) **“SMPF Rental”** shall be construed as the annual rental of access to the non-voice band frequency of Metallic Path Facilities;
- (rr) **“SMPF Single Migration”** means the transfer of control of a Shared Access service for a single line from one communications provider to another;
- (ss) **“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;
- (tt) **“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;
- (uu) **“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;

- (vv) **“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;
- (ww) **“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;
- (xx) **“SMPF Special Fault Investigation 2 (SFI2) - Internal Wiring module”** shall be construed as having the same meaning as ‘SMPF Special Fault Investigation 2 (SFI2) - Internal Wiring module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (yy) **“SMPF Special Fault Investigation 2 (SFI2) - Network module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SFI2) - Network module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (zz) **“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 7A;
- (aaa) **“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 7A;
- (bbb) **“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 7A;
- (ccc) **“Special Fault Investigation – Base Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SFI2) - Base module and/or SMPF Special Fault Investigation 2 (SFI2) - Base module (as

applicable) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(ddd) **“Special Fault Investigation – Frame Direct Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SF12) – Frame direct module and/or SMPF Special Fault Investigation 2 (SF12) - Frame direct module (as applicable) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(eee) **“Special Fault Investigation Service”** means any of the following services (as applicable) where such service is reasonably necessary for the use of Local Loop Unbundling Services:

- i. SMPF Special Fault Investigation 2 (SF12) - Coop module;
- ii. SMPF Special Fault Investigation 2 (SF12) - Frame module;
- iii. SMPF Special Fault Investigation 2 (SF12) - Internal equip module;
- iv. SMPF Special Fault Investigation 2 (SF12) - Internal Wiring module;  
and
- v. SMPF Special Fault Investigation 2 (SF12) - Network module;
- vi. MPF Special Fault Investigation 2 (SF12) - Coop module;
- vii. MPF Special Fault Investigation 2 (SF12) - Frame module;
- viii. MPF Special Fault Investigation 2 (SF12) - Internal equip module;
- ix. MPF Special Fault Investigation 2 (SF12) - Internal Wiring module; and
- x. MPF Special Fault Investigation 2 (SF12) - Network module;

(fff) **“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its

website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

- (ggg) “**Supplementary Charges (Per Hour)**” means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;
  
- (hhh) “**Supplementary Charges (Per Visit)**” means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;
  
- (iii) “**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 7A; and
  
- (jjj) “**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 7A, excluding any discounts offered by the Dominant Provider.

## Annex to Condition 7A

### 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	£175.34
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
9. Internal Tie Cable (2)	£274.58

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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

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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

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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

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## 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

### 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
MPF Connection charge	£45.43
MPF Connection Charge Stopped Line Provide	£37.57
MPF Working Line Takeover (WLTO)	£37.57

## 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

## 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

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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

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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

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## Condition 7B – GEA migration charge control

**7B.1** For each VULA Migration until this condition is revoked or  
(WLA – OFCOM otherwise directs the Dominant Provider must not charge  
VULA the Third Party to whom the control of a Virtual Unbundled Local  
(GEA) Access service is transferred more than £11.  
migration)

**7B.2** The Dominant Provider must comply with the requirement in condition 7B.1 from 31 July 2014.

**7B.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 the compliance of the Dominant Provider with the requirement in condition 7B.1. The data must include such data as OFCOM may from time to time direct.

**7B.4** Where the Dominant Provider makes a material change to VULA Migration (other than to the charge for VULA Migration), conditions 7B.1 to 7B.3 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 7B.4, a material change to VULA Migration includes (but is not limited to) the introduction of a new product and/or service wholly or substantially in substitution for the existing VULA Migration.

**7B.5** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.

**7B.6** In this condition 7B, “**VULA Migration**” means the transfer of control of a Virtual Unbundled Local Access service between Third Parties purchasing Virtual Unbundled Local Access from the Dominant Provider.

## **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: (WFAEL – WLR)

- (a) the annual charge for Analogue 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 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(c) apply;
- (d) the charge for Standard Chargeable Visit when that service is provided within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(e)(i) applies;
- (e) the charge for Standard Chargeable Visit when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(e)(ii) applies;
- (f) the charge for Standard Chargeable Visit when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(e)(iii) applies;

- (g) the charge for an Additional Hour when that service is provided within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(i) applies;
- (h) the charge for an Additional Hour when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(ii) applies;
- (i) the charge for an Additional Hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(iii) applies;
- (j) the charge for Supplementary Charges (Per Visit) when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7CA.2(g)(i) applies;
- (k) the charge for Supplementary Charges (Per Visit) when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7CA.2(g)(ii) applies;
- (l) the charge for Supplementary Charges (Per Hour) when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(h)(i) applies;
- (m) the charge for Supplementary Charges (Per Hour) when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(h)(ii) applies;
- (n) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(i) applies;

- (o) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(j) applies; and
- (p) 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(k) or 7C.2(l), as applicable, will apply),

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

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

- (a) for Analogue Core WLR Rental, the amount of £91.05 in the First Relevant Year;
- (b) for WLR Transfer, the amount of £4.63 in the First Relevant Year;
- (c) for WLR Conversion:
  - (i) when not Simultaneously Provided with SMPF New Provide, the amount of £30.83 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(c) (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(j) for the corresponding Relevant Year;
- (d) for Caller Display, the amount of £0.45 in each Relevant Year.
- (e) for a Standard Chargeable Visit, in the First Relevant Year, the amount of;
  - (i) £95.73 when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £138.86 when that service is provided on a Non-Working Day; and

(iii) £117.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(f) for Additional Hours, in the First Relevant Year, the amount of:

(i) £43.13 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;

(ii) £86.26 per hour when that service is provided on a Non-Working Day;  
and

(iii) £64.70 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(g) for Supplementary Charges (Per Visit), in the First Relevant Year, the amount of:

(i) £52.60 when that service is provided on a Non-Working Day; and

(ii) £26.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(h) for Supplementary Charges (Per Hour), in the First Relevant Year, the amount of:

(i) £52.60 per hour when that service is provided on a Non-Working Day;  
and

(ii) £26.30 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(i) for Internal and External Shifts, the amount of £105.20 in the First Relevant Year;

- (j) for Additional Line Shifted, the amount of £52.60 in the First Relevant Year;
- (k) 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(p) (as if it were not Simultaneously Provided with SMPF New Provide) less:

- (i) £12.83 in the First Relevant Year (the “Discount”); and
- (ii) the Discount, as indexed by applying the following formula in the Second Relevant Year and the Third Relevant Year:

$$D_t = D_{t-1} (1 + CPI_t + X)$$

Where:

$D_t$  is the indexed Discount for Relevant Year,  $t$ ,

$D_{t-1}$  is:

- i. in the Second Relevant Year, the Discount; and
- ii. in the Third Relevant Year,  $D_t$  for the Second Relevant Year;

$CPI_t$  is CPI for Relevant Year,  $t$ , and

$X$  means:

- i. 75 percentage points in the Second Relevant Year; and
- ii. 31.3 percentage points in the Third Relevant Year.

- (l) 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(p) (as if it were not Simultaneously Provided with SMPF New Provide) less:
- (i) the Discount in the First Relevant Year; and

(ii) the Discount, as indexed by applying the formula set out in condition 7C.2(k)(ii) above, in the Second Relevant Year and 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(o) 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 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:

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

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;

$w_{i,j,t}$  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:

- (a) for the First Relevant Year, by 274;
- (b) for the Second Relevant Year, by 366; and
- (c) 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 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, excluding any discounts offered by the Dominant Provider;

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

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

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:

- (a) for the First Relevant Year, by 365;
- (b) for the Second Relevant Year, by 274;
- (c) for the Third Relevant Year, by 366

$p_{i,j,t-1}$  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(p) 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(p), 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 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.6** (a) Subject to conditions 7C.6(c) to 7C.6(e) 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(a) to 7C.1(c) and 7C.1(p) shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year *t*,

$CPI_t$  is CPI for the Relevant Year, *t*,

X means:

1. for the category of products and/or services specified in condition 7C.1(a) -3.0 percentage points;
2. for the category of products and/or services specified in condition 7C.1(b) 34.4 percentage points;
3. for the category of products and/or services specified in condition 7C.1(c) -1.5 percentage points; and
4. for the category of products and/or services specified in condition 7C.1(p) -8.3 percentage points.

For the avoidance of doubt, the charges for each of the 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(p), are constrained by condition 7C.2 when Simultaneously Provided with SMPF New Provide.

(b) Subject to conditions 7C.6(c), 7C.6(d) and 7C.6(f) 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(d) to 7C.1(o) shall be calculated by employing the following formula:

$$CP_t = X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ,

X means:

1. for the category of products and/or services specified in condition 7C.1(d) 0.2 percentage points;
2. for the category of products and/or services specified in condition 7C.1(e) 0.2 percentage points;
3. for the category of products and/or services specified in condition 7C.1(f) 0.2 percentage points;
4. for the category of products and/or services specified in condition 7C.1(g) 0.2 percentage points;
5. for the category of products and/or services specified in condition 7C.1(h) 0.2 percentage points;
6. for the category of products and/or services specified in condition 7C.1(i) 0.2 percentage points;
7. for the category of products and/or services specified in condition 7C.1(j) 0.2 percentage points;
8. for the category of products and/or services specified in condition 7C.1(k) 0.2 percentage points;
9. for the category of products and/or services specified in condition 7C.1(l) 0.2 percentage points;
10. for the category of products and/or services specified in condition 7C.1(m) 0.2 percentage points;
11. for the category of products and/or services specified in condition 7C.1(n) 0.2 percentage points; and
12. for the category of products and/or services specified in condition 7C.1(o) 0.2 percentage points.

For the avoidance of doubt, the charges for each of the products and/or services listed in conditions 7C.1(d) to 7C.1(o) are constrained by condition 7C.2 in the First Relevant Year.

(c) For each of the categories of products and/or services specified in:

- i. conditions 7C.1(a), 7C.1(b), 7C.1(c) and 7C.1(p), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(e) below; and
- ii. conditions 7C.1(d) to 7C.1(o), in the case of Deficiency either at the end of the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(f) below.

(d) For each of the categories of products and/or services specified in:

- i. conditions 7C.1(a), 7C.1(b), 7C.1(c) and 7C.1(p), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(e) below; and
- ii. conditions 7C.1(d) to 7C.1(o), in the case of Excess at the end of either the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(f) below.

(e) For each of the categories of products and/or services specified in condition 7C.1(a), 7C.1(b), 7C.1(c) and 7C.1(p), 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), 7C.1(b), 7C.1(c) and 7C.1(p) 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 Part 2 of Schedule 1 of this notification.

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

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

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(d) to 7A.1(o) 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 7C.3 or 7C.4, as applicable;

$X$  is as set out in condition 7C.6(b) above.

- g) For each of the categories of products and/or services specified in condition 7C.1(a) to 7C.1(p), 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.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.6 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.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 or a change as to the billing practice for the Charge Controlled Service.

**7C.8** 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 this condition 7C. 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(p);

- (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 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;
- (e) other data necessary for monitoring compliance with the charge control; and
- (f) such data as OFCOM may from time to time direct.

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

**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.

**7C.11** In this condition:

- (a) **“Additional Hour”** means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;
- (b) **“Additional Line Shifted”** means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its

products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;

- (c) **“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(p) of this condition during the Relevant Year;
- (d) **“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 Care; 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;
- (e) **“Basket”** shall be construed in accordance with condition 7C.4;
- (f) **“Caller Display”** means the wholesale provision of the ‘Caller Display’ service, as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (g) **“Charge”** means 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;
- (h) **“Charge Controlled Service”** means a product, service or Basket of products and/or services listed in conditions 7C.1(a) to 7C.1(p);

- (i) **“Controlling Percentage”** is to be determined in accordance with condition 7C.6;
- (j) **“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(p), 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(p) if it had complied with condition 7C.1;
- (k) **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with condition 7C.4, 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 7C;
- (l) **“Internal and External Shifts”** means the provision of the service ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;
- (m) **“Percentage Change”** has the meaning given to it in condition 7C.3 or 7C.4, as applicable;
- (n) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7C.3;
- (o) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
- (p) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7C.3;
- (q) **“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 or product is ordered simultaneously with SMPF New Provide but excluding instances in which the relevant service or product is not provided simultaneously as a consequence of a request made by the requesting Third Party;

- (r) **“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as, as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;
- (s) **“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;
- (t) **“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use Wholesale Analogue Line Rental;
- (u) **“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 7C, excluding any discounts offered by the Dominant Provider;
- (v) **“WLR Connection Services”** means all of the products and/or services listed from time to time for the purpose of the Annex to this condition 7C;

- (w) **“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;
- (x) **“WLR Standard Connection”** shall be construed as having the same meaning as the service described in row 1 of the table in the Annex to this condition 7C;
- (y) **“WLR Start of Stopped MPF Line”** shall be construed as having the same meaning as the service described in row 2 of the table in the Annex to this condition 7C; and
- (z) **“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(p)

#### 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	£47.08
2. Supply of new line - Per line - using previously stopped LLU MPF line	£40.86

## **Condition 7D – Wholesale ISDN30 services charge control**

**7D.1** In each Relevant Year the Dominant Provider must not charge more than:  
(ISDN30)

- (a) £81.57 for the ISDN30 Transfer Services;
- (b) £81.57 for the ISDN30 Direct Dialling In Planning Service;
- (c) £0.81 for the ISDN30 Direct Dialling In Connection Service; and
- (d) £1.04 for the ISDN30 Direct Dialling In Rental Service.

**7D.2** The Dominant Provider must take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with condition 7D.4 and 7D.5, as applicable) in:

- (a) the aggregate of charges for:
  - i. ISDN30 Rental Services;
  - ii. ISDN30 Connection Services; and
  - iii. ISDN30 Enhanced Care Services;
- (b) the aggregate of charges for ISDN30 Connection Services;
- (c) the aggregate of charges for ISDN30 Enhanced Care Services;
- (d) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(a)(i) applies;
- (e) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(a)(ii) applies;
- (f) for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the

charge ceiling specified in condition 7D.3(a)(iii) applies;

(g) the charge for an Additional Hour when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(b)(i) applies;

(h) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(b)(ii) applies;

(i) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(b)(iii) applies;

(j) the charge for Supplementary Charges (Per Visit) when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(c)(i) applies;

(k) the charge for Supplementary Charges (Per Visit) when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(c)(ii) applies;

(l) the charge for Supplementary Charges (Per Hour) when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(d)(i) applies;

(m) the charge for Supplementary Charges (Per Hour) when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(d)(ii) applies;

(n) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(e) applies; and

(o) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(f) applies, is not more than the Controlling Percentage (determined in accordance with condition 7D.6).

**7D.3** In the First Relevant Year, the Dominant Provider shall not charge more than:

- (a) for a Standard Chargeable Visit, the amount of:
  - (i) £95.73 when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £138.86 when that service is provided on a Non-Working Day; and
  - (iii) £117.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
- (b) for an Additional Hour, the amount of:
  - (i) £43.13 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £86.26 per hour when that service is provided on a Non-Working Day; and
  - (iii) £64.70 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
- (c) for Supplementary Charges (Per Visit), the amount of:
  - (i) £52.60 when that service is provided on a Non-Working Day; and
  - (ii) £26.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
- (d) for Supplementary Charges (Per Hour), the amount of:
  - (i) £52.60 per hour when that service is provided on a Non-Working Day; and

(ii) £26.30 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

- (e) for Internal and External Shifts, the amount of £105.20 in the First Relevant Year;
- (f) for Additional Line Shifted, the amount of £52.60 in the First Relevant Year.

**7D.4** 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:

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

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 Total Revenue accrued during the Prior Year in respect of the individual service  $i$  that forms part of the Basket;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_{i,t}$  is the 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:

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

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;

$w_{i,j,t}$  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 274;

(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,  $i$ ;

$\bar{p}_{i,t-1}$  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,  $\bar{p}_{i,t-1}$  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:

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

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 First Relevant Year, by 365;

(2) for the Second Relevant Year, by 274;

(3) the Third Relevant Year, by 366;

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

**7D.5** The Percentage Change for the purposes of each of the products and/or services specified in conditions 7D.2(d) to 7D.2(o) (each of which is referred to in this condition as a “single charge category”) shall be calculated, for the purposes of complying with condition 7D.2, 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 7D.4 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 7D.4 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.

- 7D.6** a) Subject to conditions 7D.6(b) to 7D.6(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) to (o) shall be calculated by employing the following formula:

$$CP_t = X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$X$  means:

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

- iii. for the category of products and/or services specified in condition 7D.2(c) 0 (zero) percentage points;
- iv. for the category of products and/or services specified in condition 7D.2(d) 0.2 percentage points;
- v. for the category of products and/or services specified in condition 7D.2(e) 0.2 percentage points;
- vi. for the category of products and/or services specified in condition 7D.2(f) 0.2 percentage points;
- vii. for the category of products and/or services specified in condition 7D.2(g) 0.2 percentage points;
- viii. for the category of products and/or services specified in condition 7D.2(h) 0.2 percentage points;
- ix. for the category of products and/or services specified in condition 7D.2(i) 0.2 percentage points;
- x. for the category of products and/or services specified in condition 7D.2(j) 0.2 percentage points;
- xi. for the category of products and/or services specified in condition 7D.2(k) 0.2 percentage points;
- xii. for the category of products and/or services specified in condition 7D.2(l) 0.2 percentage points;
- xiii. for the category of products and/or services specified in condition 7D.2(m) 0.2 percentage points;
- xiv. for the category of products and/or services specified in condition 7D.2(n) 0.2 percentage points;

- xv. for the category of products and/or services specified in condition 7D.2(o) 0.2 percentage points.

For the avoidance of doubt, the charges for each of the products and/or services set out in conditions 7D.2(d) to 7D.2(o) are constrained by condition 7D.3 in the First Relevant Year.

- b) For each of the categories of products and/or services specified in conditions 7D.2(a) to (o), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7D.6(d) below.
- c) For each of the categories of products and/or services specified in condition 7D.2(a) to (o), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7D.6(d) below.
- d) For each of the categories of products and/or services specified in condition 7D.2(a) to (o), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

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

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 (o) 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.4 or 7D.5 above, as applicable; and

X is as set out in condition 7D.6(a) above.

- e) For each of the categories of products and/or services specified in condition 7D.2 (a) to (o), 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.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; or
- b. the Dominant Provider makes a change to the date on which its financial year ends,

conditions 7D.1 to 7D.6 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 7D.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 an existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

**7D.8** 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 this condition 7D. The data must include:

- a. pursuant to condition 7D.4 and 7D.5, as applicable, the calculated

Percentage Change relating to each category of services specified in conditions 7D.2 (a) to (o);

- b. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in 7D.4 and 7D.5 above, including for each specific service, *i* 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 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 7D.4 and/or 7D.5 apply, as applicable, and calculations thereof;
- e. other data necessary for monitoring compliance with the charge control; and
- f. such data as OFCOM may from time to time direct.

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

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

**7D.10** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition 7D.

**7D.11** In this condition 7D:

- a. “**Additional Hour**” means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

- b. **“Additional Line Shifted”** means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;
- c. **“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 (o) of this condition 7D during the Relevant Year;
- d. **“Basket”** shall be construed in accordance with condition 7D.4;
- e. **“Charge”** means 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;
- f. **“Charge Controlled Service”** means a service or Basket of services listed in conditions 7D.1 and/or 7D.2;
- g. **“Controlling Percentage”** is to be determined in accordance with condition 7D.6;
- h. **“DDI”** means Direct Dialling In;
- i. **“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(o), and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in conditions 7D.2(a) to 7D.2(o) if it had complied with condition 7D.2;
- j. **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with condition 7D.4, the charge by the Dominant Provider for the individual service, *i*, in the relevant Basket as at 31 March 2014 as provided by the Dominant Provider on its website for definitions and explanations of its products;

- k. **"Internal and External Shifts"** means, the provision of the service 'Internal and External Shifts' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;
  
- l. **"ISDN30 Connection Services"** means the connection of a new ISDN30 line to a premises comprised of:
  - 1. the new installation charge charged per end user on a single installation basis; and
  
  - 2. the installation per channel charge;
  
- m. **"ISDN30 Direct Dialling In Connection Service"** means the connection of a DDI number at a DDI installation;
  
- n. **"ISDN30 Direct Dialling In Planning Service"** means the service for a DDI installation or change to numbers at a DDI installation;
  
- o. **"ISDN30 Direct Dialling In Rental Service"** means the annual rental service per number at a DDI installation;
  
- p. **"ISDN30 Direct Dialling In Services"** means the ISDN30 Direct Dialling In Planning Service, ISDN30 Direct Dialling In Connection Service and the ISDN30 Direct Dialling In Rental Service, giving recipients of the services the capability to allow incoming calls to be routed directly rather than routing via a central switchboard number;
  
- q. **"ISDN30 Enhanced Care Services"** means the products described as "Service Maintenance Level 3" and "Service Maintenance Level 4" in Openreach's price list correct at the date of this statement, or any such product that, from time to time, wholly or partially replaces those products;

- r. **"ISDN30 Exchange Line"** means an Exchange Line used to provide ISDN30 Services;
- s. **"ISDN30 Rental Services"** means the rental of an ISDN30 access channel for control and billing purposes;
- t. **"ISDN30 Services"** means the following services provided by the Dominant Provider in the market for wholesale ISDN30 exchange line services:
  - i. ISDN30 Rental Services;
  - ii. ISDN30 Transfer Services
  - iii. ISDN30 Enhanced Care Services;
  - iv. ISDN30 Connection Services; and
  - v. ISDN30 Direct Dialling In Services;
- u. **"ISDN30 Transfer Services"** means the services for the transfer of control of an ISDN30 line levied per 30 channel access bearer and does not include charges for pre-validation of transfer order for wholesale ISDN30 installation types;
- v. **"Percentage Change"** has the meaning given to it in condition 7D.4 and 7D.5, as applicable;
- w. **"Prior Year Weighted Average Charge"** is to be determined in accordance with the relevant formula in condition 7D.4;
- x. **"Relevant Excess Revenue"** means the Excess Revenue earned from charging the Affected Communications Provider;
- y. **"Relevant Year Weighted Average Charge"** is to be determined in accordance with the relevant formula in condition 7D.4;
- z. **"Standard Chargeable Visit"** means the provision of the service 'Standard Chargeable Visit (Visit plus up to 1 hours work)' (which shall

be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

aa. **“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

bb. **“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services; and

cc. **“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 7D, excluding any discounts offered by the Dominant Provider.

## **Condition 7E – Wholesale ISDN2 services charge control**

- 7E.1** In each Relevant Year the Dominant Provider must not charge more than £9 per line for any of the ISDN2 Transfer Services. For the avoidance of doubt, a reference to 'per line' in this condition 7E means to two channels.
- 7E.2** The Dominant Provider must take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with condition 7E.4 and 7E.5, as applicable) in:
- (a) the aggregate of charges for ISDN2 Rental Services and ISDN2 Connection Services;
  - (b) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(a)(i) applies;
  - (c) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(a)(ii) applies;
  - (d) for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(a)(iii) applies;
  - (e) the charge for an Additional Hour when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(b)(i) applies;
  - (f) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(b)(ii) applies;

- (g) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(b)(iii) applies;
- (h) the charge for Supplementary Charges (Per Visit) when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(c)(i) applies;
- (i) the charge for Supplementary Charges (Per Visit) when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(c)(ii) applies;
- (j) the charge for Supplementary Charges (Per Hour) when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(d)(i) applies;
- (k) the charge for Supplementary Charges (Per Hour) when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(d)(ii) applies;
- (l) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(e) applies; and
- (m) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(f) applies,

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

**7E.3** In the First Relevant Year, the Dominant Provider shall not charge more than:

- (a) for a Standard Chargeable Visit, the amount of:
  - (i) £95.73 when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £138.86 when that service is provided on a Non-Working Day; and
  - (iii) £117.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
  
- (b) for an Additional Hour, the amount of:
  - (i) £43.13 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
  - (ii) £86.26 per hour when that service is provided on a Non-Working Day; and
  - (iii) £64.70 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
  
- (c) for Supplementary Charges (Per Visit), the amount of:
  - (i) £52.60 when that service is provided on a Non-Working Day; and
  - (ii) £26.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
  
- (d) for Supplementary Charges (Per Hour), the amount of:
  - (i) £52.60 per hour when that service is provided on a Non-Working Day; and
  - (ii) £26.30 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.
  
- (e) for Internal and External Shifts, the amount of £105.20 in the First Relevant Year;
  
- (f) for Additional Line Shifted, the amount of £52.60 in the First Relevant Year.

**7E.4** The Percentage Change for the purposes of the products and/or services specified in condition 7E.2(a) (which is a “Basket”) shall be calculated for the purposes of complying with condition 7E.2 by employing the following formula:

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

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 Total Revenue accrued during the Prior Year in respect of the individual service  $i$  that forms part of the Basket;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_{i,t}$  is the 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:

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

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;

$w_{i,j,t}$  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 274;
- (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,  $i$ ;

$\bar{p}_{i,t-1}$  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,  $\bar{p}_{i,t-1}$  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:

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

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 First Relevant Year, by 365;

(2) for the Second Relevant Year, by 274;

(3) for 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.5** 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 7E.2(b) to 7E.2(m) shall be calculated, for the purposes of complying with condition 7E.2, 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 7E.4 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 7E.4 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.

**7E.6 a)** Subject to conditions 7E.6(b) to 7E.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 7E.2(a) to (m), shall be calculated by employing the following formula:

$$CP_t = X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$X$  means:

- i. for the category of products and/or services specified in condition 7E.2(a) zero percentage points;
- ii. for the category of products and/or services specified in condition 7E.2(b) 0.2 percentage points;
- iii. for the category of products and/or services specified in condition 7E.2(c) 0.2 percentage points;
- iv. for the category of products and/or services specified in condition 7E.2(d) 0.2 percentage points;
- v. for the category of products and/or services specified in condition 7E.2(e) 0.2 percentage points;
- vi. for the category of products and/or services specified in condition

- 7E.2(f) 0.2 percentage points;
- vii. for the category of products and/or services specified in condition 7E.2(g) 0.2 percentage points;
- viii. for the category of products and/or services specified in condition 7E.2(h) 0.2 percentage points;
- ix. for the category of products and/or services specified in condition 7E.2(i) 0.2 percentage points;
- x. for the category of products and/or services specified in condition 7E.2(j) 0.2 percentage points;
- xi. for the category of products and/or services specified in condition 7E.2(k) 0.2 percentage points;
- xii. for the category of products and/or services specified in condition 7E.2(l) 0.2 percentage points; and
- xiii. for the category of products and/or services specified in condition 7E.2(m) 0.2 percentage points.

For the avoidance of doubt, the charges for each of the products and/or services set out in conditions 7E.2(b) to 7E.2(m) are constrained by condition 7E.3 in the First Relevant Year.

- b) For the products and/or services specified in condition 7E.2(a) to (m), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7E.6 (d) below.
- c) For the products and/or services specified in condition 7E.2(a) to (m), where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall also be

determined in accordance with condition 7E.6(d) below.

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

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

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 7E.2 (a) to (m) 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.4 or 7E.5 above, as applicable; and

$X$  is as set out in condition 7E.6(a) above.

- 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.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; or

b. the Dominant Provider makes a change to the date on which its financial year ends,

conditions 7E.1 to 7E.6 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 7E.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 an existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

**7E.8** 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 this condition 7E. The data must include:

a. pursuant to conditions 7E.4 and 7E.5, as applicable, the calculated Percentage Change relating to each category of services specified in conditions 7E.2(a) through to 7E.2(m);

b. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in 7E.4 and 7E.5 above, including for each specific service, *i* 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 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 for which conditions 7E.4 and/or 7E.5 apply and calculations thereof;

e. such data as OFCOM may from time to time direct; and

f. other data necessary for monitoring compliance with the charge control.

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

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

**7E.10** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition 7E.

**7E.11** In this condition 7E:

- a) “**Additional Hour**” means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;
- b) “**Additional Line Shifted**” means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;
- c) “**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(a) to 7E.2(m) of this condition 7E during the Relevant Year;
- d) “**Basket**” shall be construed in accordance with condition 7E.4;
- e) “**Charge**” means 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;
- f) “**Charge Controlled Service**” means a service or Basket of services listed in conditions 7E.1 and 7E.2;
- g) “**Controlling Percentage**” is to be determined in accordance with condition 7E.6;

- 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 7E.2(a) to 7E.2(m), 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(a) to 7E.2(m) 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.4, the charge by the Dominant Provider for the individual service, *i*, in the Basket as at 31 March 2014 as provided by the Dominant Provider on its website for definitions and explanations of its products;
- j) **“Internal and External Shifts”** means, the provision of the service ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;
- k) **“ISDN2 Connection Services”** means the charges for the connection of a new ISDN2 line to a premises;
- l) **“ISDN2 Exchange Line”** means an Exchange Line used to provide ISDN2 Services;
- m) **“ISDN2 Rental Services”** means the rental of an ISDN2 access channel for control and billing purposes;
- n) **“ISDN2 Services”** means the following services provided by the Dominant Provider in the market for wholesale ISDN2 exchange line services:
  - a. ISDN2 Rental Services; and
  - b. ISDN2 Connection Services;
- o) **“ISDN2 Transfer Services”** means any of the following ISDN2 transfer

services:

- a. transfer of BT ISDN2e Standard to Digital Standard (BT to gaining communications provider);
  - b. transfer of BT ISDN2e System to Digital System (BT to gaining communications provider) (For transfer pricing purposes, system installations are classed as one line);
  - c. transfer of BT ISDN2e System to Digital System (BT to gaining communications provider) (For transfer pricing purposes, system installations are classed as one line);
  - d. transfer of Digital Standard to Digital Standard (communications provider 1 to gaining communications provider 2);
  - e. transfer of Digital Standard to Digital Standard (communications provider 1 to gaining communications provider 2);
  - f. transfer of Digital System to Digital System (communications provider 1 to gaining communications provider 2) (For transfer pricing purposes, system installations are classed as one line); and
  - g. transfer of Digital System to Digital System (communications provider 1 to gaining communications provider 2) (For transfer pricing purposes, system installations are classed as one line);
- p) **"Percentage Change"** has the meaning given to it in condition 7E.4 and 7E.5, as applicable;
- q) **"Prior Year Weighted Average Charge"** is to be determined in accordance with the formula in condition 7E.4;
- r) **"Relevant Excess Revenue"** means the Excess Revenue earned from charging the Affected Communications Provider;
- s) **"Relevant Year Weighted Average Charge"** is to be determined in accordance with the formula in condition 7E.4;

- t) **“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;
  
- u) **“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;
  
- v) **“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services; and
  
- w) **“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 7E, excluding any discounts offered by the Dominant Provider.

## **Condition 8 – Publication of a Reference Offer**

- 8.1** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish a Reference Offer in relation to the provision of network access pursuant to condition 1 and act in the manner set out below.
- 8.2** Subject to condition 8.8, the Dominant Provider must ensure that a Reference Offer in relation to the provision of network access pursuant to condition 1 includes, where applicable, at least the following—
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
  - (b) the locations at which network access will be provided;
  - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
  - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
  - (e) any ordering and provisioning procedures;
  - (f) relevant charges, terms of payment and billing procedures;
  - (g) details of interoperability tests;
  - (h) details of traffic and network management;
  - (i) details of maintenance and quality as follows—
    - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, and for provision of support services (such as fault handling and repair);
    - (ii) service level commitments, namely the quality standards that each party

must meet when performing its contractual obligations;

(iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;

(iv) a definition and limitation of liability and indemnity; and

(v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

(j) details of measures to ensure compliance with requirements for network integrity;

(k) details of any relevant intellectual property rights;

(l) a dispute resolution procedure to be used between the parties;

(m) details of duration and renegotiation of agreements;

(n) provisions regarding confidentiality of the agreements;

(o) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts); and

(p) the standard terms and conditions for the provision of network access.

**8.2A** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WLA** - Offer in relation to the provision of Local Loop Unbundling Services pursuant to  
**LLU)** conditions 1 and 2 also includes at least the following:

(a) the location of MDF Sites;

(b) the area within which network access to Metallic Path Facilities could be made available from each of the MDF Sites listed under (a) above;

(c) the availability of LLU Co-Location (including the options for such co-location) at each of the MDF Sites listed under (a) above;

(d) equipment characteristics, including any restrictions on equipment for the purposes of LLU Co-Location at each of the MDF Sites listed under (a) above;

(e) conditions for LLU Site Access at each of the MDF Sites listed under (a) above, including conditions for access for staff of those Third Parties to whom the Dominant Provider provides Local Loop Unbundling Services;

(f) conditions for the inspection of MDF Sites at which LLU Co-Location is available or at which LLU Co-Location has been refused on grounds of lack of capacity;

(g) safety standards;

(h) the relevant charges (or charging formulae) for each feature, function and facility involved in the provision of Local Loop Unbundling Services; and

(i) anything which may reasonably be regarded as being likely to materially affect the availability of the relevant Local Loop Unbundling Services.

**8.2B** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WLA -** Offer in relation to the provision of Physical Infrastructure Access pursuant to  
**PIA)** conditions 1 and 2 also includes at least the following:

(a) the location of Physical Infrastructure or the method by which Third Parties may obtain information about the location of Physical Infrastructure;

(b) technical specifications for Physical Infrastructure Access including:

(i) technical specifications for permitted cables and associated equipment; and

(ii) cable installation, attachment and recovery methods;

(c) the methodology for calculating availability of spare capacity in Physical Infrastructure;

(d) procedures for the provision of information to Third Parties about spare capacity, including arrangements for visual surveys of Physical Infrastructure to determine spare capacity;

(e) conditions for reserving capacity that shall apply equally to the Dominant Provider and Third Parties;

- (f) conditions for the installation and recovery of cables and associated equipment;
- (g) arrangements for relieving congested Physical Infrastructure, including the repair of existing faulty infrastructure and the construction of new Physical Infrastructure;
- (h) a procedure for the Dominant Provider to announce plans reasonably in advance for new construction of Physical Infrastructure such that Third Parties may request the Dominant Provider to install additional capacity for those Third Parties;
- (i) conditions for Third Parties to gain access to the Physical Infrastructure including if appropriate training, certification and authorisation requirements for personnel permitted to access and work in/on Physical Infrastructure;
- (j) the arrangements for maintenance of cables and associated equipment installed by Third Parties and of the Physical Infrastructure, including provision for the temporary occupation of additional infrastructure capacity for the installation of replacement cables;
- (k) conditions for the inspection of the Physical Infrastructure at which access is available or at which access has been refused on grounds of lack of capacity;
- (l) anything which may reasonably be regarded as being likely to materially affect the availability of the relevant Physical Infrastructure Access.

**8.2C** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WLA)** Offer made in relation to the provision of network access to Metallic Path Facilities pursuant to conditions 1 and 2 includes–

- (a) Service Level Commitments in respect of at least the following aspects of that service:
  - (i) availability of an appointment for the provision of the service;
  - (ii) attending appointments for the provision of the service;
  - (iii) completion of the provision of the service;

- (iv) completion of the transfer of the service;
- (v) line working at completion of provisioning process;
- (vi) disconnections made in error;
- (vii) fault repair times; and
- (viii) attending fault repair appointments; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2C(a)(i) to (a)(viii) above.

**8.2D** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WLA)** Offer made in relation to the provision of network access to Shared Access pursuant to conditions 1 and 2 includes—

(a) Service Level Commitments in respect of at least the following aspects of that service:

- (i) completion of the provision of the service;
- (ii) completion of the transfer of the service;
- (iii) line working at completion of provisioning process;
- (iv) disconnections made in error; and
- (v) fault repair times; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2D(a)(i) to (a)(v) above.

**8.2E** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WLA)** Offer made in relation to the provision of Virtual Unbundled Local Access pursuant to conditions 1 and 2 includes—

(a) Service Level Commitments in respect of at least the following aspects of that service:

- (i) availability of an appointment for the provision of the service;
- (ii) attending appointments for the provision of the service;
- (iii) completion of the provision of the service;
- (iv) disconnections made in error; and
- (v) fault repair times; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2E(a)(i) to (a)(v) above.

**8.2F** Subject to condition 8.8, the Dominant Provider must ensure that a Reference  
**(WFAEL** Offer made in relation to the provision of Wholesale Analogue Line Rental  
) pursuant to conditions 1 and 2 includes—

(a) Service Level Commitments in respect of at least the following aspects of that service:

- (i) availability of an appointment for the provision of the service;
- (ii) attending appointments for the provision of the service;
- (iii) completion of the provision of the service;
- (iv) completion of the transfer of the service;
- (v) disconnections made in error;
- (vi) fault repair times; and
- (vii) attending fault repair appointments; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2F(a)(i) to (a)(vii) above.

**8.2G (ISDN30)** Subject to condition 8.8, the Dominant Provider must ensure that a Reference Offer made in relation to the provision of Wholesale ISDN30 Line Rental pursuant to conditions 1 and 2 includes—

(a) Service Level Commitments in respect of at least the following aspects of that service:

- (i) attending appointments for the provision of the service;
- (ii) completion of the provision of the service;
- (iii) completion of the transfer of the service;
- (iv) disconnections made in error;
- (v) fault repair times; and
- (vi) attending fault repair appointments; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2G(a)(i) to (a)(vi) above.

**8.2H (ISDN2)** Subject to condition 8.8, the Dominant Provider must ensure that a Reference Offer made in relation to the provision of Wholesale ISDN2 Line Rental pursuant to conditions 1 and 2 includes—

(a) Service Level Commitments in respect of at least the following aspects of that service:

- (i) availability of an appointment for the provision of the service;
- (ii) attending appointments for the provision of the service;
- (iii) completion of the provision of the service;
- (iv) completion of the transfer of the service;

- (v) disconnections made in error;
- (vi) fault repair times; and
- (vii) attending fault repair appointments; and

(b) Service Level Guarantees in respect of the Service Level Commitments specified in condition 8.2H(a)(i) to (a)(vii) above.

**8.2I** The requirement in condition 8.2E(a)(i) will enter into force on 1 January 2015.  
**(WLA)**

**8.3** To the extent that the Dominant Provider provides to itself network access that:

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any Third Party, the Dominant Provider must ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in condition 8.2(a) to (p).

**8.4** The Dominant Provider must, on the date that this condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this condition enters into force.

**8.5** The Dominant Provider must update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this condition enters into force.

**8.6** Publication referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by the Dominant Provider.

- 8.7** The Dominant Provider must send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 8.8** The Dominant Provider must make such modifications to the Reference Offer as OFCOM may direct from time to time.
- 8.9** The Dominant Provider must provide network access at the charges, terms and conditions in the relevant Reference Offer and must not depart therefrom either directly or indirectly.
- 8.10** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.

## **Condition 9 – Notification of charges and terms and conditions**

**9.1A (WLA)** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this condition.

**9.1B (WFAEL, ISDN30 and ISDN2)** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish charges and act in the manner set out in this condition.

**9.2A (WLA)** Where it proposes a WLA Access Change, the Dominant Provider must send to every person with whom it has entered into an Access Agreement pursuant to condition 1 or conditions 1 and 2 (as the case may be), a WLA Access Change Notice.

**9.2B (WFAEL, ISDN30 and ISDN2)** Where it proposes an Access Charge Change, the Dominant Provider must send to every person with whom it has entered into an Access Agreement pursuant to condition 1 or conditions 1 and 2 (as the case may be), an Access Charge Change Notice.

**9.3A (WLA)** The obligation in condition 9.2A shall not apply where the WLA Access Change is directed or determined by OFCOM or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act.

**9.3B (WFAEL, ISDN30 and ISDN2)** The obligation in condition 9.2B shall not apply where the Access Charge Change is directed or determined by OFCOM or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act.

**9.4A (WLA)** A WLA Access Change Notice must—

(a) in the case of a WLA Access Change involving new network access, be sent not less than 28 days before any such amendment comes into effect;

(b) in the case of a WLA Access Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, a Special Offer), be sent not less than 28 days before any such amendment comes into effect;

(c) in the case of a WLA Access Change relating to the end of a temporary price reduction in accordance with the terms of a Special Offer, be sent not less than 28 days before any such amendment comes into effect; and

(d) in the case of any other WLA Access Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect.

**9.4B (WFAEL)** An Access Charge Change Notice must—

(a) in the case of an Access Charge Change relating to the Wholesale Line Rental Charge and subject to conditions (b) and (c) below, be sent not less than 90 days before any such amendment comes into effect;

(b) in the case of an Access Charge Change relating solely to a reduction in the price of the Wholesale Line Rental Charge, (including, for the avoidance of doubt, a Special Offer), be sent not less than 28 days before any such amendment comes into effect;

(c) in the case of an Access Charge Change relating to the end of a temporary price reduction to the Wholesale Line Rental Charge in accordance with the terms of a Special Offer, be sent not less than 28 days before any such amendment comes into effect; and

(d) in the case of any other Access Charge Change, not less than 28 days before any such amendment comes into effect.

**9.4C (ISDN30 and ISDN2)** An Access Charge Change Notice must in the case of an Access Charge Change involving either new or existing network access, be sent not less than 28 days before any such amendment comes into effect.

**9.5A (WLA)** The Dominant Provider must ensure that a WLA Access Change Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;

(c) the current and proposed new charge and/or current and proposed new terms and conditions (as the case may be); and

(d) the date on which, or the period for which, the WLA Access Change will take effect (the "**effective date**").

**9.5B (WFAEL, ISDN30 and ISDN2)** The Dominant Provider must ensure that an Access Charge Change Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;

(c) the current and proposed new charge; and

(d) the date on which, or the period for which, the Access Charge Change will take effect (the "**effective date**").

**9.6A (WLA)** The Dominant Provider must not apply any WLA Access Change identified in a WLA Access Change Notice before the effective date.

**9.6B (WFAEL, ISDN30 and ISDN2)** The Dominant Provider must not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.

**9.7A (WLA)** To the extent that the Dominant Provider provides to itself network access that—

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party,

in a manner that differs from that detailed in a WLA Access Change Notice in relation to network access provided to any Third Party, the Dominant Provider must ensure that it sends to OFCOM a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in conditions 9.5A(a) to (d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with network access, it must ensure it sends to OFCOM a notice equivalent to a WLA Access Change Notice.

**9.7B (WFAEL, ISDN30 and ISDN2)** To the extent that the Dominant Provider provides to itself network access that—

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party,

in a manner that differs from that detailed in an Access Charge

Change Notice in relation to network access provided to any Third Party, the Dominant Provider must ensure that it sends to OFCOM a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in conditions 9.5B(a) to (d) and, where the Dominant Provider amends the charges for network access which it provides to itself, it must ensure it sends to OFCOM a notice equivalent to an Access Charge Change Notice.

**9.8**

In this condition 9:

- (a) “**Access Charge Change Notice**” means a notice given by the Dominant Provider of an Access Charge Change;
- (b) “**Access Charge Change**” means any amendment to the Dominant Provider’s charges for the provision of network access or for new network access;
- (c) “**Special Offer**” means a temporary price reduction for a particular product or service, applicable to all customers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is no higher than the price immediately before the start of that period;
- (d) “**WLA Access Change**” means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access; and
- (e) “**WLA Access Change Notice**” means a notice given by the Dominant Provider of a WLA Access Change.

## Condition 10 – Notification of technical information

**10.1** Except in so far as OFCOM may from time to time otherwise consent in writing, where the Dominant Provider provides network access pursuant to condition 1 or conditions 1 and 2 (as the case may be) and proposes new or amended terms and conditions relating to the following—

(a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);

(b) the locations at which network access will be provided; or

(c) technical standards (including any usage restrictions and other security issues),

the Dominant Provider must publish a written notice (the “**Notice**”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect.

**10.2** The obligation in condition 10.1 shall not apply—

(a) where the new or amended charges or terms and conditions are directed or determined by OFCOM or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or are required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act; or

(b) in relation to new or amended technical specifications determined by NICC Standards Limited, whose registered company number is 6613589.

**10.3** The Dominant Provider must ensure that the Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider’s Reference Offer of

the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access or any amendments to the relevant terms and conditions will take effect (the “**effective date**”).

**10.4** The Dominant Provider must not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

**10.5** Publication referred to in condition 10.1 must be effected by the Dominant Provider—

(a) placing a copy of the Notice on any relevant publicly accessible website operated or controlled by the Dominant Provider;

(b) sending a copy of the Notice to OFCOM; and

(c) sending a copy of the Notice to any person at that person’s written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Agreement pursuant to condition 1 or conditions 1 and 2 (as the case may be). The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

## **Condition 11 – Quality of service**

- 11.1** The Dominant Provider must publish all such information as to the quality of service in relation to network access provided by the Dominant Provider pursuant to conditions 1 and 2 (as applicable) in such manner and form, and including such content, as OFCOM may from time to time direct.

## Condition 12 – Minimum standards for quality of service

**12.1A (WLA)** 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 following shall be the MPF Minimum Standards:

That the Dominant Provider—

(a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party:

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

(b) complete that provision on the Committed Date:

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

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

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

**12.1B** Except in so far as OFCOM may from time to time otherwise consent , in  
**(WFAEL)** relation to the provision of Wholesale Analogue Line Rental under conditions  
1 and 2, the following shall be the WLR Minimum Standards:

That the Dominant Provider —

(a) offer an appointment where required for that provision that is within 12 Working Days of the corresponding Order being placed on the Equivalence Management Platform by a Third Party:

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

(b) complete that provision on the Committed Date:

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

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

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

**12.2A** In each Relevant Year:

**(WLA)**

(a) in eight of the ten Relevant Regions the Dominant Provider must comply

with each of the MPF Minimum Standards; and

(b) in the remaining two Relevant Regions the Dominant Provider must comply with each of the MPF Minimum Standards except that in calculating the number of instances (as applicable for 12.1A(a), (b) or (c)) in which the Dominant Provider did not meet the relevant obligations (as applicable for 12.1A(a), (b) or (c)) instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.

**12.2B** In each Relevant Year:

**(WFAEL)**

(a) in eight of the ten Relevant Regions the Dominant Provider must comply with each of the WLR Minimum Standards; and

(b) in the remaining two Relevant Regions the Dominant Provider must comply with each of the WLR Minimum Standards except that in calculating the number of instances (as applicable for 12.1B(a), (b) or (c)) in which the Dominant Provider did not meet the relevant obligations (as applicable for 12.1B(a), (b) or (c)) instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.

**12.3A** 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 at paragraphs 12.1A and 12.2A above. The data must include any such data as OFCOM may from time to time direct.

**(WLA)**

**12.3B** 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 at paragraphs 12.1B and 12.2B above. The data must include any such data as OFCOM may from time to time direct.

**(WFAEL)**

**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.

**12.6** In this condition 12:

- a) “**Committed Date**” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- b) “**Completed Order**” means an Order that has been provisioned and for which all other related work has been carried out;
- c) “**Equivalence Management Platform**” means the Dominant Provider’s operation support system designed to handle the majority of transactions for equivalence of inputs and network access;
- d) “**High Level MBORC Declaration**” means any declaration by the Dominant Provider in respect of a Relevant Region (or a part thereof) that an MBORC has occurred in relation to either network access to Metallic Path Facilities or Wholesale Line Rental (as applicable) but only in respect of ‘major’ MBORC declarations;
- e) “**Level 2 Care**” means the level of care provided by the Dominant Provider which provides an enhanced level of response to a Fault on an Exchange Line, guaranteeing a response within a specified time but excluding "Service Maintenance Level 3" and "Service Maintenance Level 4" in Openreach's price list correct at the date of this statement, or any such product that, from time to time, wholly or partially replaces those products;
- f) “**Level 2 Working Day**” means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- g) “**MBORC**” (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of

which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

- h) “**MPF Minimum Standards**” shall have the meaning given to it in condition 12.1A;
- i) “**Order**” means a request for network access submitted to the Dominant Provider by a Third Party;
- j) “**Relevant Region**” means the ten geographic areas specified in Schedule 3 to this Notification or such other regions as OFCOM may direct from time to time; and
- k) “**WLR Minimum Standards**” shall have the meaning given to it in condition 12.1B.

## **Condition 13A – Regulatory Financial Reporting**

**(in force from 1 August 2014)**

### **General requirements**

- 13A.1** The Dominant Provider must maintain a separation for accounting purposes between such different matters relating to network access to the relevant network or the availability of the relevant facilities, as required by conditions 13A.3 to 13A.35 including as OFCOM may from time to time direct under those conditions 13A.3 to 13A.35.
- 13A.2** The Dominant Provider must comply with such rules made by OFCOM about the use of cost accounting systems as required by conditions 13A.3 to 13A.35 and must comply with such requirements about the description to be made available to the public of the cost accounting system as required by conditions 13A.3 to 13A.35 in each case including as OFCOM may from time to time direct under conditions 13A.3 to 13A.35.
- 13A.3** Except in so far as OFCOM may consent otherwise in writing, the Dominant Provider shall act in the manner set out in these conditions.
- 13A.4** OFCOM may from time to time make such directions as they consider appropriate in relation to the Dominant Provider's obligations under these conditions.
- 13A.5** The Dominant Provider shall comply with any direction OFCOM may make from time to time under these conditions.
- 13A.6** Where the Dominant Provider is required to comply with:
- (i) these conditions;
  - (ii) the Regulatory Accounting Guidelines; and
  - (iii) the Regulatory Accounting Principles,
- and it appears to the Dominant Provider that any of these requirements conflict with each other in a particular case, the Dominant Provider must resolve such conflict by giving priority to them in the order in

which they are set out above.

- 13A.7** For the purpose of these conditions, publication shall be effected by:
- (i) placing a copy of the relevant information on any relevant publicly available website operated or controlled by the Dominant Provider; and
  - (ii) sending a copy of the relevant information to any person at that person's written request.

### **Requirements relating to the preparation, audit, delivery and publication of the Regulatory Financial Statements**

- 13A.8** The Dominant Provider shall in respect of the Market, Technical Areas, Products, Network Components and Network Services (as applicable), for each Financial Year:
- (i) prepare such Regulatory Financial Statements as directed by OFCOM from time to time in accordance with these conditions, the Regulatory Accounting Guidelines, the Regulatory Accounting Principles and the Accounting Methodology Documents (the relevant Accounting Methodology Documents to be identified in the Regulatory Financial Statements by reference to their date);
  - (ii) prepare a reconciliation report as set out in condition 13A.23;
  - (iii) secure the expression of an audit opinion upon the Regulatory Financial Statements as notified by OFCOM from time to time and on the reconciliation report as set out in condition 13A.24;
  - (iv) secure the approval of the Regulatory Financial Statements by the board of directors of the Dominant Provider and secure the signature of the Regulatory Financial Statements by a director of the Dominant Provider for and on behalf of the board of directors;
  - (v) deliver to OFCOM copies of the Regulatory Financial Statements, the reconciliation report and any corresponding audit opinion, each and all of which shall be in the form in which they are ultimately to be published, at least two weeks before they are required to be published;

- (vi) publish the Regulatory Financial Statements, the reconciliation report and any corresponding audit opinion, within four months after the end of the Financial Year to which they relate;
- (vii) ensure that any Regulatory Financial Statement and corresponding audit opinion that it delivers to OFCOM and/or publishes are fit for such purpose (or purposes), if any, as notified by OFCOM in writing; and
- (viii) publish with the Regulatory Financial Statements any written statement made by OFCOM and provided to the Dominant Provider commenting on the figures in, the notes to or the presentation of any or all of the Regulatory Financial Statements, the reconciliation report and/or the Accounting Methodology Documents.

**13A.9** The Dominant Provider shall make such amendments to the form and content of the Regulatory Financial Statements as are necessary to give effect fully to the requirements of these conditions. The Dominant Provider shall provide to OFCOM particulars of any such amendment, the reasons for it and its effect, when it delivers the Regulatory Financial Statements to OFCOM.

**13A.10** The Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of these conditions on a regulatory asset value adjusted current cost basis as directed by OFCOM from time to time and shall be capable of doing so in relation to any period. Such Regulatory Financial Statements, explanations or other information shall be, in the opinion of OFCOM, meaningfully reconcilable to the Statutory Financial Statements.

**13A.11** Each Regulatory Financial Statement shall include Prior Year Comparatives which shall be prepared on a basis consistent with Current Year Figures. The Dominant Provider may depart from this requirement in preparing the Regulatory Financial Statements for a Financial Year if there are reasons for doing so provided that the particulars of the departure, the reasons for it and its effect are stated in a note in the Regulatory Financial Statements in accordance with the

Statutory Accounting Standards.

### **Requirements relating to audit of the Regulatory Financial Statements**

**13A.12** The Regulatory Auditor that the Dominant Provider from time to time appoints shall at all times be satisfactory to OFCOM having regard to such matters as OFCOM consider appropriate. The Dominant Provider shall notify OFCOM in writing of the Regulatory Auditor appointed to secure compliance with these conditions before the Regulatory Auditor carries out any work for that purpose. The Dominant Provider shall notify OFCOM of any proposed change of Regulatory Auditor 28 days before effect is given to that change.

**13A.13** In the event that the Regulatory Auditor is in the opinion of OFCOM unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Regulatory Auditor that is at all times satisfactory to OFCOM having regard to such matters as OFCOM consider appropriate. The Dominant Provider shall ensure that the Alternative Regulatory Auditor:

- (i) carries out such on-going duties as are required to secure compliance with these conditions;
- (ii) carries out work or further work, in addition to that performed by the Statutory Auditor and/or by the former Regulatory Auditor, in relation to such matters connected to compliance with these conditions as are of concern to OFCOM and notified to the Dominant Provider in writing; and/or
- (iii) re-performs work previously performed by the Statutory Auditor and/or by the former Regulatory Auditor in relation to such matters connected to compliance with this condition as are of concern to OFCOM and notified to the Dominant Provider in writing.

**13A.14** The Dominant Provider shall extend to the Alternative Regulatory Auditor such assistance and co-operation as would be extended to the Statutory Auditor and/or to the Regulatory Auditor and, to the extent similar assistance and co-operation may be required from the Statutory Auditor and/or from the former Regulatory Auditor, the Dominant

Provider shall use its best endeavours to secure such assistance and co-operation.

**13A.15** The Dominant Provider's letter of engagement appointing the Regulatory Auditor or Alternative Regulatory Auditor shall include such provisions acknowledging the acceptance by the Regulatory Auditor or Alternative Regulatory Auditor of duties and responsibilities to OFCOM in respect of its audit work, audit report and audit opinion as are consistent with the ICAEW Guidance.

**13A.16** The Dominant Provider shall use its best endeavours to obtain from the Regulatory Auditor or Alternative Regulatory Auditor any further explanation and clarification of any audit opinion required under these conditions and any other information in respect of the matters which are the subject of that audit opinion as OFCOM shall require.

**13A.17** The Dominant Provider shall obtain such assurance statement in the form of the Agreed Upon Procedures in relation to the Dominant Provider's obligations under these conditions as directed by OFCOM.

#### **Requirements relating to the Accounting Methodology Documents**

**13A.18** The Dominant Provider must prepare, maintain and keep up-to-date the Accounting Methodology Documents in accordance with these conditions, with the Regulatory Accounting Guidelines, and with the Regulatory Accounting Principles.

**13A.19** The Dominant Provider must include in the Accounting Methodology Documents documentation setting out a description of each of the Attribution Methods, the Transfer Charge System Methodology, the Accounting Policies and the Long Run Incremental Cost Methodology, to the extent not covered in the Regulatory Accounting Guidelines.

**13A.20** The Dominant Provider must deliver an up-to-date version of the Accounting Methodology Documents to OFCOM when it delivers the Regulatory Financial Statements to OFCOM in accordance with condition 13A.8 and publish such up-to-date version on or before the day of publication of the Regulatory Financial Statements which have been prepared in accordance with such version.

## **Requirements relating to changes to the Regulatory Accounting Methodology and the correction of Material Errors**

- 13A.21** The Dominant Provider must publish and deliver to OFCOM a list of each and every change to the Regulatory Accounting Methodology, by 31 March of the Financial Year in which the change to the Regulatory Accounting Methodology is to be made (the “**Change Control Notification**”). The Change Control Notification must be accompanied by a description of each of the changes, the reason for making each of the changes (including by reference to their compliance with the Regulatory Accounting Guidelines and the Regulatory Accounting Principles), and the impact of each of the changes on the figures at the level of the Markets and Technical Areas (as applicable) by setting out the figures which were presented in the previous Financial Year alongside the figures that would have been presented had such changes been made in the previous Financial Year.
- 13A.22** Where in OFCOM's opinion any change referred to in condition 13A.21 does not comply with these conditions, the Regulatory Accounting Principles or the Regulatory Accounting Guidelines, the Dominant Provider shall not make such change, if so directed by OFCOM.
- 13A.23** The Dominant Provider must prepare a reconciliation report as referred to in condition 13A.8 and as directed by OFCOM from time to time, which sets out changes to the Regulatory Accounting Methodology and the impact of such changes on the Regulatory Financial Statements, and Material Errors corrected in the Regulatory Financial Statements and the impact of such Material Errors on the Regulatory Financial Statements.
- 13A.24** The Dominant Provider must obtain an audit opinion on the reconciliation report as directed by OFCOM from time to time.

## **Requirements relating to the Regulatory Accounting System**

- 13A.25** The Dominant Provider's Regulatory Accounting System must be able to produce the Regulatory Financial Statements as directed by OFCOM under condition 13A.8 in accordance with these conditions, the

Regulatory Accounting Guidelines, the Regulatory Accounting Principles and the Accounting Methodology Documents.

**13A.26**

Where the Dominant Provider replaces the whole or part of its Regulatory Accounting System, or substantially modifies such Regulatory Accounting System, the Dominant Provider must:

- (i) notify OFCOM in a timely manner of the replacement or modification, and, where so requested by OFCOM, inform OFCOM of progress towards completion and such other information as OFCOM may reasonably request;
- (ii) ensure, to the best of its ability, that the replacement or modification does not cause the figures contained in the Regulatory Financial Statements to be different from the figures that would have been contained in the Regulatory Financial Statements had such Regulatory Financial Statements been prepared using the old or unmodified Regulatory Accounting System;
- (iii) in relation to the final Financial Year for which the Regulatory Financial Statements are prepared using the old or unmodified Regulatory Accounting System, prepare a systems reconciliation report, which must:
  - a. set out the difference between the Current Year Figures presented in the Regulatory Financial Statements and the Current Year Figures had such Regulatory Financial Statements been prepared on the basis of the new or modified Regulatory Accounting System, expressed as a percentage change; and
  - b. explain each and every Material Difference between the Current Year Figures presented in the Regulatory Financial Statements and the Current Year Figures had such Regulatory Financial Statements been prepared on the basis of the new or modified Regulatory Accounting System;
- (iv) publish and deliver the systems reconciliation report to OFCOM by 31 December of the Financial Year for which the figures will be

prepared using the new or modified Regulatory Accounting System for the first time;

- (v) obtain an assurance statement in the form of Agreed Upon Procedures on the systems reconciliation report, which must report:
  - a. whether the figures in the systems reconciliation report referred to in condition 13A.26(iii)(a) have been properly extracted from the old or unmodified Regulatory Accounting System and the new or modified Regulatory Accounting System respectively;
  - b. whether each and every difference in the systems reconciliation report referred to in condition 13A.26(iii)(a) has been correctly calculated; and
  - c. whether the explanation of each and every Material Difference in the systems reconciliation report referred to in condition 13A.26(iii)(b) is an accurate representation of the cause of each such Material Difference.
- (vi) deliver the assurance statement in the form of the Agreed Upon Procedures to OFCOM when it delivers the systems reconciliation report to OFCOM in accordance with condition 13A.26(iv).
- (vii) where the systems reconciliation report referred to in condition 13A.26(iii) indicates that the replacement or modification causes the Current Year Figures contained in the Regulatory Financial Statements to be significantly different, either individually or in aggregate, from the Current Year Figures that would have been contained in the Regulatory Financial Statements had such Regulatory Financial Statements been prepared using the new or modified Regulatory Accounting System, prepare, if so directed by OFCOM, the Regulatory Financial Statements on a basis consistent with the old or unmodified Regulatory Accounting System.

## **Requirements relating to deficiencies in the Regulatory Financial Statements and the Accounting Methodology Documents**

**13A.27** Where OFCOM have reasonable grounds to believe that any or all of the Regulatory Financial Statements and/or Accounting Methodology Documents are deficient, the Dominant Provider shall, where directed by OFCOM:

- (i) amend the Accounting Methodology Documents in order to remedy the deficiencies identified by OFCOM;
- (ii) restate the Regulatory Financial Statements identified by OFCOM as requiring restatement in accordance with the Accounting Methodology Documents which have, where necessary, been amended pursuant to condition 13A.27(i);
- (iii) prepare a reconciliation report as set out in condition 13A.23, whereby any reference to the Regulatory Financial Statements should be understood as a reference to the restated Regulatory Financial Statements;
- (iv) secure in accordance with any relevant notification of OFCOM under this condition the expression of an audit opinion on the restated Regulatory Financial Statements;
- (v) deliver to OFCOM the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion; and
- (vi) publish the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion.

## **Requirements relating to the maintenance of sufficient accounting records**

**13A.28** The Dominant Provider shall maintain accounting records for a period of six years from the date on which each Regulatory Financial Statement is delivered to OFCOM.

**13A.29** The Dominant Provider shall maintain the accounting records in accordance with these conditions, the Regulatory Accounting Guidelines, the Regulatory Accounting Principles and the Accounting

Methodology Documents.

**13A.30** The Dominant Provider shall maintain accounting records in a form which, on a historical cost basis and on a current cost basis:

- (i) separately identifies each of the Markets, Technical Areas, Products, Network Components and Network Services;
- (ii) separately attributes the costs, revenues, assets and liabilities of each of the Markets, Technical Areas, Products, Network Components and Network Services; and
- (iii) shows and explains the transactions underlying each of the Markets, Technical Areas, Products, Network Components and Network Services.

**13A.31** The Dominant Provider shall maintain the accounting records so that they are sufficient:

- (i) to provide an adequate explanation of each Regulatory Financial Statement;
- (ii) to show that charges are non-discriminatory; and
- (iii) to provide a complete justification of the Dominant Provider's charges for Network Access.

#### **Requirement to facilitate on-demand reporting**

**13A.32** The Dominant Provider shall ensure that its Regulatory Accounting System and accounting records are sufficient to enable the Dominant Provider, at all times, to be capable of preparing in relation to any specified calendar month or months a financial statement in accordance with the Accounting Methodology Documents.

#### **Requirements relating to the preparation and maintenance of a Wholesale Catalogue**

**13A.33** The Dominant Provider must prepare, maintain and keep up-to-date a Wholesale Catalogue. Such Wholesale Catalogue should separately identify and describe:

- (i) External Wholesale Services;
- (ii) Internal Wholesale Services;
- (iii) Wholesale Services supplied both externally and internally; and
- (iv) Network Services and the extent to which these activities are used in the course of supplying Wholesale Services.

**13A.34** The Dominant Provider must deliver an up-to-date version of the Wholesale Catalogue to OFCOM when it delivers the Regulatory Financial Statements to OFCOM in accordance with condition 13A.8 and publish such up-to-date version on or before the day of publication of the Regulatory Financial Statements which have been prepared by reference to such version.

#### **Requirements relating to the demonstration of non-discrimination**

**13A.35** The Dominant Provider shall ensure it is able to demonstrate that at any point in time:

- (i) where a Network Service or combination of Network Services is used by the Dominant Provider in providing Internal Wholesale Services, the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in respect of the use of the Network Service or combination of Network Services is equivalent to the amount applied and incorporated for the use of the Network Services or combination of Network Services in the charge payable for an equivalent External Wholesale Service;
- (ii) the same amount as applied and incorporated in the Transfer Charge for the Internal Wholesale Service in condition 13A.35(i) in respect of the use of the Network Service or combination of Network Services is applied to the Network Service or combination of Network Services whenever it is or they are used by the Dominant Provider in providing that same Internal Wholesale Service; and
- (iii) the same amount as applied and incorporated in the Transfer Charge for the equivalent External Wholesale Service in condition

13A.35(i) in respect of the use of the Network Service or combination of Network Services is applied to the Network Service or combination of Network Services whenever it is or they are used by the Dominant Provider in providing that same External Wholesale Service;

- (iv) the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in condition 13A.32(i) in respect of the use of the Network Service or combination of Network Services shall be the cost of those Network Services unless the Network Service concerned is provided from a Market which is different from the Market which comprises the Internal Wholesale Service.

**13A.36** This condition 13A shall enter into force on 1 August 2014 and remain in force until the publication of a notification under section 48(1) of the Act revoking such conditions. For the avoidance of doubt, conditions 13A.1 to 13A.35 shall have effect in relation to the Regulatory Financial Statements for the Financial Year 2014-15 and each subsequent Financial Year.

**13A. 37** In this condition 13A:

- a) **“Accounting Methodology Documents”** means the documentation maintained by the Dominant Provider setting out in detail the rules, policies, methods, allocations, calculations, assumptions, procedures and Processes used by the Dominant Provider for the purpose of preparing Regulatory Financial Statements in accordance with the Regulatory Accounting Guidelines and the Regulatory Accounting Principles;
- b) **“Accounting Policies”** means the manner in which the Dominant Provider applies the requirements of Regulatory Accounting Guidelines and the Regulatory Accounting Principles in each of the Regulatory Financial Statements;
- c) **“Alternative Regulatory Auditor”** means any auditor not for the time being appointed as the Dominant Provider’s Regulatory

Auditor;

- d) **“Agreed Upon Procedures”** means an engagement carried out in accordance with international standard (ISRS 4400) under which the Regulatory Auditor or another independent third party performs a set of audit procedures agreed by OFCOM and based on OFCOM’s specific requirements in relation to the Regulatory Financial Statements, and reports the findings of that work to OFCOM;
- e) **“Attribution Methods”** means the practices used by the Dominant Provider to attribute revenue (including appropriate Transfer Charges), costs (including appropriate Transfer Charges), assets and liabilities to activities or, insofar as those activities have been aggregated into Wholesale Segments or Retail Segments in a given Market or Technical Area (as applicable), to each Wholesale Segment or Retail Segment;
- f) **“Current Year Figures”** means, in relation to any set of Regulatory Financial Statements, the amounts relating to the Financial Year to which the statements relate;
- g) **“External Wholesale Services”** means services supplied or offered to any Communications Provider other than the Dominant Provider;
- h) **“Financial Year”** means a financial year of the Dominant Provider in respect of which the Statutory Financial Statements are required to be (or to have been) prepared and audited in accordance with the requirements of the Companies Act 2006;
- i) **“ICAEW Guidance”** means the technical release titled “Reporting to Regulators of Regulated Entities: Audit 05/03” issued by the Audit and Assurance Faculty of the Institute of Chartered Accountants in England & Wales in October 2003;
- j) **“Internal Wholesale Services”** means services supplied within the Dominant Provider;

- k) **“Long Run Incremental Cost Methodology”** means the long run incremental cost principles, procedures and Processes which form the framework under which long run incremental costs are determined by the Dominant Provider;
- l) **“Market”** means the market to which these conditions apply;
- m) **“Material Error”** means a deviation from accuracy or correctness which meets the materiality threshold as directed by OFCOM from time to time for the purpose of these conditions;
- n) **“Material Difference”** means a difference identified in a systems reconciliation report which meets the materiality threshold as directed by OFCOM from time to time for the purpose of these conditions;
- o) **“Network Component”** means an element of the network that is used to provide Wholesale Services, and, to the extent the network components are used in the Market or Technical Area (as applicable), specified in a direction given by OFCOM from time to time for the purposes of these conditions;
- p) **“Network Services”** means those groups of Network Components used directly (or which in the absence of horizontal or vertical integration would be used directly) in the course of supplying Wholesale Services;
- q) **“Prior Year Comparatives”** means, in relation to any set of Regulatory Financial Statements, the amounts relating to the Financial Year immediately preceding the Financial Year to which the Regulatory Financial Statements relate, re-evaluated if necessary to ensure that such figures are comparable to the Current Year Figures;
- r) **“Process”** means the series of inter-related activities or actions to obtain, record or hold data or information or to carry out any operation or set of operations on the data or information, including:

- i. organisation, storage, adaptation, or alteration of the data or information;
  - ii. retrieval, consultation, computation or use of the data or information;
  - iii. disclosure of the data or information by transmission, dissemination, or otherwise making available; or
  - iv. alignment, combination, blocking, erasing or destruction of the data or information;
- s) **“Product”** means any product or service comprised in a Market or Technical Area to which these conditions apply;
- t) **“Regulatory Accounting Guidelines”** means documentation setting out the policies, methodologies, systems, Processes and procedures for deriving or calculating costs, revenues, assets and liabilities as directed by OFCOM from time to time for the purpose of these conditions;
- u) **“Regulatory Accounting Methodology”** means the rules, policies, methods, allocations, calculations, assumptions and procedures used by the Dominant Provider for the purpose of preparing Regulatory Financial Statements;
- v) **“Regulatory Accounting Principles”** means the principles as directed by OFCOM from time to time for the purpose of these conditions;
- w) **“Regulatory Accounting System”** means the set of computerised and manual accounting methods, procedures, Processes and controls established to determine and attribute the costs, revenues, assets and liabilities and summarise, interpret, and present the resultant financial data in an accurate and timely manner;
- x) **“Regulatory Auditor”** means the auditor for the time being

appointed by the Dominant Provider in accordance with these conditions;

- y) **“Regulatory Financial Statement”** means any financial statement in respect of a Financial Year prepared or required to be prepared by the Dominant Provider in accordance with these conditions;
- z) **“Retail Products”** means services used by or offered to any End Users (including the Dominant Provider);
- aa) **“Retail Segments”** means groups of Retail Products;
- bb) **“Statutory Accounting Standards”** means the accounting standards, including the requirements of the Companies Act 2006, by reference to which the Dominant Provider is required to prepare the Statutory Financial Statements;
- cc) **“Statutory Auditor”** means the auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 2006;
- dd) **“Statutory Financial Statements”** means any annual account required to be prepared by the Dominant Provider in accordance with the requirements of the Companies Act 2006;
- ee) **“Technical Area”** means the technical area to which these conditions apply;
- ff) **“Transfer Charge”** means the charge or price that is applied, or deemed to be applied, within the Dominant Provider by one division or business unit of the Dominant Provider to another for the use or provision of an activity or group of activities. For the avoidance of doubt, such activities or group of activities include, amongst other things, Products provided from, to or within the Market or Technical Area (as applicable) and the use of Network Components in the Market or Technical Area (as applicable);
- gg) **“Transfer Charge System Methodology”** means the methodology of the system employed by the Dominant Provider

which enables an activity to use a service or good from another activity and to account for it as though it had purchased that service or good from an unrelated party (including accounting for it at an appropriate amount);

- hh) **“Wholesale Catalogue”** means the documentation required to be produced by the Dominant Provider under condition 13A.33;
- ii) **“Wholesale Segments”** means groups of Wholesale Services;  
and
- jj) **“Wholesale Services”** means services related to network access on the Dominant Provider’s network used by or offered to any Communications Provider (including the Dominant Provider).

## **Condition 13B – Regulatory Financial Reporting**

**(in force from 1 July 2014 until the end of 30 September 2014)**

**13B.1** The Dominant Provider shall secure the approval of the Regulatory Financial Statements by the board of directors of the Dominant Provider and secure the signature of the Regulatory Financial Statements by a director of the Dominant Provider for and on behalf of the board of directors.

**13B.2** The Dominant Provider shall prepare a reconciliation report which sets out:

- (i) each and every change to the Regulatory Accounting Methodology made since the publication of the Regulatory Financial Statements related to the previous Financial Year;
- (ii) the impact of all changes to the Regulatory Accounting Methodology on the figures presented in the Regulatory Financial Statements, by setting out for all changes on an aggregated basis, the difference between the Current Year Figures and the Current Year Figures had such changes not been made, expressed as an absolute amount and as a percentage change;
- (iii) the impact of each Material Change on the figures presented in the Regulatory Financial Statements at the level of the Markets and Technical Areas (as applicable), by setting out the difference between the Current Year Figures and the Current Year Figures had such Material Change not been made, expressed as an absolute amount and as a percentage change; and
- (iv) the impact of all changes which are not Material Changes on the figures presented in the Regulatory Financial Statements at the level of the Markets and Technical Areas (as applicable), by setting out for all changes which are not Material Changes on an aggregated basis, the difference between the Current Year Figures and the Current Year Figures had such changes not been made, expressed as an absolute amount and as a percentage

change.

**13B.3** The Dominant Provider shall:

- (i) deliver to OFCOM a copy of the reconciliation report, which shall be in the form in which it is ultimately to be published, at least two weeks before it is published; and
- (ii) publish the reconciliation report by the end of 30 September 2014.

**13B.4** This condition 13B shall:

- (i) enter into force on 1 July 2014. For the avoidance of doubt, conditions 13B.1 to 13B.3 shall have effect in relation to the Regulatory Financial Statements for the Financial Year 2013-14; and
- (ii) continue to apply until the end of 30 September 2014.

**13B.5** In this condition 13B:

- a) “**Current Year Figures**” means, in relation to any set of Regulatory Financial Statements, the amounts relating to the Financial Year to which the statements relate;
- b) “**Financial Year**” means a financial year of the Dominant Provider in respect of which the Statutory Financial Statements are required to be (or to have been) prepared or audited in accordance with the requirements of the Companies Act 2006;
- c) “**Market**” means the market to which these conditions apply;
- d) “**Material Change**” means a change which results in an increase or a decrease in any figure presented in the Regulatory Financial Statements by an amount equal to or in excess of 5% or £1 million, whichever is greater;
- e) “**Regulatory Accounting Methodology**” means the rules, policies, methods, allocations, calculations, assumptions and procedures used by the Dominant Provider for the purpose of

preparing Regulatory Financial Statements;

- f) **“Regulatory Financial Statement”** means any financial statement in respect of a Financial Year prepared or required to be prepared by the Dominant Provider in accordance with the conditions set out at Annex 2 of “The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification” of 22 July 2004;
- g) **“Statutory Financial Statement”** means any annual account required to be prepared by the Dominant Provider in accordance with the requirements of the Companies Act 2006; and
- h) **“Technical Area”** means the technical area to which these conditions apply.

## Schedule 2: SMP conditions (KCOM)

### Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 2, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of Table 2 below to the extent specified in Column 2 of Table 2. Save as otherwise specified in any condition, each condition will enter into force on the date of publication of this notification and shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

**Table 2: Relevant markets for the purposes of this Schedule**

<b><i>Column 1: Relevant market</i></b>	<b><i>Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1</i></b>
The supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location in the Hull Area	Conditions 1 – 4, 5.1A, 5.2A, 5.3A, 5.4A, 5.5A, 5.6A, 5.7A, 5.8, and 6
Wholesale fixed analogue exchange line services in the Hull Area	Conditions 1 – 4, 5.1B, 5.2B, 5.3B, 5.4B, 5.5B, 5.6B, 5.7B, 5.8, and 6
Wholesale ISDN30 exchange line services in the Hull Area	Conditions 1, 3, 4, 5.1B, 5.2B, 5.3B, 5.4C, 5.5B, 5.6B, 5.7B, 5.8, and 6
Wholesale ISDN2 exchange line services in the Hull Area	Conditions 1, 3, 4, 5.1B, 5.2B, 5.3B, 5.4C, 5.5B, 5.6B, 5.7B, 5.8, and 6

The conditions referred to in Column 2 of Table 1 are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	Requests for new forms of network access (WLA and WFAEL)

Condition 3	No undue discrimination
Condition 4	Publication of a Reference Offer
Condition 5	Notification of charges and terms and conditions
Condition 6	Notification of technical information

## Part 2: Interpretation

1. In addition to the definitions set out above in this notification and in each condition below (where relevant), in this Schedule 2—
  - (c) “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with condition 1;
  - (d) “**Dominant Provider**” means KCOM;
  - (e) “**Reference Offer**” means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement; and
  - (f) “**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network.

### **Part 3: SMP conditions**

#### **Condition 1 – Network access on reasonable request**

- 1.1** The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2** The provision of network access by the Dominant Provider in accordance with this condition must:
- (a) take place as soon as reasonably practicable after receiving the request from a Third Party;
  - (b) be on:
    - (i) fair and reasonable terms, conditions and charges; and
    - (ii) such terms, conditions and charges as OFCOM may from time to time direct.
- 1.3** The provision of network access by the Dominant Provider in accordance with this condition must also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as OFCOM may from time to time direct.
- 1.4** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.

## **Condition 2 – Requests for new forms of network access (WLA and WFAEL)**

**2.1** The Dominant Provider must, for the purposes of transparency, publish guidelines, in relation to requests for new forms of network access made to it. Such guidelines must set out:

- (a) the form in which such a request should be made;
- (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access;
- (c) the timescales in which such requests will be handled by the Dominant Provider; and
- (d) any provisions directed by OFCOM.

**2.2** The guidelines must meet the following principles:

- (a) the process for consideration of requests shall be documented end-to-end;
- (b) the timescales for each stage of the process shall be reasonable;
- (c) the criteria by which requests will be assessed shall be clearly identified;
- (d) the reasons for rejecting any request shall be clear and transparent; and
- (e) any changes to the guidelines shall be agreed between the Dominant Provider and other communications providers in an appropriate manner.

**2.3** The Dominant Provider must, upon reasonable request from a Third Party considering making a request for a new form of network access, provide that Third Party with such information as may be reasonably required to enable that Third Party to make a request for a new form of network access. Such information must be provided within a reasonable period.

**2.4** On receipt of a written request for a new form of network access, the Dominant Provider must deal with the request in accordance with the guidelines described in condition 2.1 above. A modification of a request for a new form of network access

which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, must be considered as a new request.

- 2.5** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition requiring amendments to the guidelines.

### **Condition 3 – No undue discrimination**

- 3.1** The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with condition 1.
  
- 3.2** In this condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

#### **Condition 4 – Publication of a Reference Offer**

- 4.1** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish a Reference Offer in relation to the provision of network access pursuant to condition 1 and act in the manner set out below.
- 4.2** Subject to condition 4.8, the Dominant Provider must ensure that a Reference Offer in relation to the provision of network access pursuant to condition 1 includes, where applicable, at least the following—
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
  - (b) the locations at which network access will be provided;
  - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
  - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
  - (e) any ordering and provisioning procedures;
  - (f) relevant charges, terms of payment and billing procedures;
  - (g) details of interoperability tests;
  - (h) details of traffic and network management;
  - (i) details of maintenance and quality as follows—
    - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, and for provision of support services (such as fault handling and repair);
    - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;

- (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
- (iv) a definition and limitation of liability and indemnity; and
- (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (j) details of measures to ensure compliance with requirements for network integrity;
- (k) details of any relevant intellectual property rights;
- (l) a dispute resolution procedure to be used between the parties;
- (m) details of duration and renegotiation of agreements;
- (n) provisions regarding confidentiality of the agreements;
- (o) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts); and
- (p) the standard terms and conditions for the provision of network access.

**4.3** To the extent that the Dominant Provider provides to itself network access that:

- (a) is the same, similar or equivalent to that provided to any Third Party; or
- (b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any Third Party, the Dominant Provider must ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in condition 4.2(a) to (p).

**4.4** The Dominant Provider must, on the date that this condition enters into force, publish a Reference Offer in relation to any network access that it is providing as

at the date that this condition enters into force.

- 4.5** The Dominant Provider must update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this condition enters into force.
- 4.6** Publication referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by the Dominant Provider.
- 4.7** The Dominant Provider must send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 4.8** The Dominant Provider must make such modifications to the Reference Offer as OFCOM may direct from time to time.
- 4.9** The Dominant Provider must provide network access at the charges, terms and conditions in the relevant Reference Offer and must not depart therefrom either directly or indirectly.
- 4.10** The Dominant Provider must comply with any direction OFCOM may make from time to time under this condition.

## **Condition 5 – Notification of charges and terms and conditions**

**5.1A (WLA)** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this condition.

**5.1B (WFAEL, ISDN30 and ISDN2)** Except in so far as OFCOM may from time to time otherwise consent in writing, the Dominant Provider must publish charges and act in the manner set out in this condition.

**5.2A (WLA)** Where it proposes a WLA Access Change, the Dominant Provider must send to every person with whom it has entered into an Access Agreement pursuant to condition 1, a WLA Access Change Notice.

**5.2B (WFAEL, ISDN30 and ISDN2)** Where it proposes an Access Charge Change, the Dominant Provider must send to every person with whom it has entered into an Access Agreement pursuant to condition 1, an Access Charge Change Notice.

**5.3A (WLA)** The obligation in condition 5.2A shall not apply where the WLA Access Change is directed or determined by OFCOM or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act.

**5.3B (WFAEL, ISDN30 and ISDN2)** The obligation in condition 5.2B shall not apply where the Access Charge Change or is directed or determined by OFCOM or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act.

**5.4A (WLA)** A WLA Access Change Notice must—

(a) in the case of a WLA Access Change involving new network access, be sent not less than 28 days before any such amendment comes into effect;

(b) in the case of a WLA Access Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, a Special Offer), be sent not less than 28 days before any such amendment comes into effect;

(c) in the case of a WLA Access Change relating to the end of a temporary price reduction in accordance with the terms of the Special Offer, be sent not less than 28 days before any such amendment comes into effect; and

(d) in the case of any other WLA Access Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect.

**5.4B**

**(WFAEL)**

An Access Charge Change Notice must—

(a) in the case of an Access Charge Change relating to the Wholesale Line Rental Charge and subject to conditions (b) and (c) below, be sent not less than 90 days before any such amendment comes into effect;

(b) in the case of an Access Charge Change relating solely to a reduction in the price of the Wholesale Line Rental Charge, (including, for the avoidance of doubt, a Special Offer), be sent not less than 28 days before any such amendment comes into effect;

(c) in the case of an Access Charge Change relating to the end of a temporary price reduction to the Wholesale Line Rental Charge in accordance with the terms of a Special Offer, be sent not less than 28 days before any such amendment comes into effect; and

(d) in the case of any other Access Charge Change, not less than 28 days before any such amendment comes into effect.

**5.4C (ISDN30 and ISDN2)** An Access Charge Change Notice must in the case of an Access Charge Change involving either new or existing network access, be sent not less than 28 days before any such amendment comes into effect.

**5.5A (WLA)** The Dominant Provider must ensure that a WLA Access Change Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;

(c) the current and proposed new charge and/or current and proposed new terms and conditions (as the case may be); and

(d) the date on which, or the period for which, the WLA Access Change will take effect (the "**effective date**").

**5.5B (WFAEL, ISDN30 and ISDN2)** The Dominant Provider must ensure that an Access Charge Change Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access;

(c) the current and proposed new charge; and

(d) the date on which, or the period for which, the Access Charge Change will take effect (the "**effective date**").

**5.6A (WLA)** The Dominant Provider must not apply any WLA Access Change identified in a WLA Access Change Notice before the effective date.

**5.6B (WFAEL, ISDN30 and ISDN2)** The Dominant Provider must not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.

**5.7A (WLA)** To the extent that the Dominant Provider provides to itself network access that—

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party,

in a manner that differs from that detailed in a WLA Access Change Notice in relation to network access provided to any Third Party, the Dominant Provider must ensure that it sends to OFCOM a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in conditions 5.5A(a) to (d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with provides network access, it must ensure it sends to OFCOM a notice equivalent to a WLA Access Change Notice.

**5.7B (WFAEL, ISDN30 and ISDN2)** To the extent that the Dominant Provider provides to itself network access that—

(a) is the same, similar or equivalent to that provided to any Third Party; or

(b) may be used for a purpose that is the same, similar or equivalent to that provided to any Third Party,

in a manner that differs from that detailed in an Access Charge Change Notice in relation to network access provided to any Third Party, the Dominant Provider must ensure that it sends to OFCOM a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in conditions

5.5B(a) to (d) and, where the Dominant Provider amends the charges for network access which it provides to itself, it must ensure it sends to OFCOM a notice equivalent to an Access Charge Change Notice.

## 5.8

In this condition 5:

- (a) “**Access Charge Change**” means any amendment to the Dominant Provider’s charges for the provision of network access or for new network access;
- (b) “**Access Charge Change Notice**” means a notice given by the Dominant Provider of an Access Charge Change;
- (c) “**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;
- (d) “**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:
    - 1. to supply energy between such approved apparatus

and the network;

2. to protect safety or security of the operation of the network; or
3. 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);

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

(f) “**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;

(g) “**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;

(h) “**Special Offer**” means a temporary price reduction for a particular product or service, applicable to all customers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is no higher than the price immediately before the start of that period;

(i) “**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;

(j) “**Wholesale Line Rental Charge**” means the annual charge

levied by the Dominant Provider for Wholesale Analogue Line Rental including packages containing a line rental charge and any included levels of service sold as part of a single marketed product;

- (k) **“WLA Access Change”** means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access; and
- (l) **“WLA Access Change Notice”** means a notice given by the Dominant Provider of a WLA Access Change.

## Condition 6 – Notification of technical information

**6.1** Except in so far as OFCOM may from time to time otherwise consent in writing, where the Dominant Provider provides network access pursuant to condition 1 and proposes new or amended terms and conditions relating to the following—

(a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);

(b) the locations at which network access will be provided; or

(c) technical standards (including any usage restrictions and other security issues),

the Dominant Provider shall publish a written notice (the “**Notice**”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of an existing Access Agreement come into effect.

**6.2** The obligation in condition 6.1 shall not apply—

(a) where the new or amended charges or terms and conditions are directed or determined by OFCOM or are a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or are required by a notification or enforcement notification issued by OFCOM under sections 96A or 96C of the Act; or

(b) in relation to new or amended technical specifications determined by NICC Standards Limited, whose registered company number is 6613589.

**6.3** The Dominant Provider shall ensure that the Notice includes—

(a) a description of the network access in question;

(b) a reference to the location in the Dominant Provider’s Reference Offer of the relevant terms and conditions;

(c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access or any amendments to

the relevant terms and conditions will take effect (the “**effective date**”).

**6.4** The Dominant Provider shall not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

**6.5** Publication referred to in condition 6.1 shall be effected by the Dominant Provider—

(a) placing a copy of the Notice on any relevant publicly accessible website operated or controlled by the Dominant Provider;

(b) sending a copy of the Notice to OFCOM; and

(c) sending a copy of the Notice to any person at that person’s written request, and where the Notice identifies a modification to existing relevant terms and conditions, to every person with which the Dominant Provider has entered into an Access Agreement pursuant to condition 1. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

### **Schedule 3**

Please see the separate PDF document published alongside this Statement, which is available at the following link:

[http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/draftstatement/schedule\\_3\\_annex\\_29.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/draftstatement/schedule_3_annex_29.pdf)

## **PART II – DIRECTION RELATING TO VIRTUAL UNBUNDLED LOCAL ACCESS SERVICES (GEA) MIGRATION**

**Direction under section 49 of the Communications Act 2003 and condition 1 relating to the terms on which BT provides network access (Virtual Unbundled Local Access, which it currently provides by way of its GEA product)**

### **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 remedies*” (the “**July 2013 FAMR Consultation**”). OFCOM consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Part 2 of Annex 11 to the July 2013 FAMR Consultation set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its proposal to give a direction to BT for the purposes of an SMP service condition. OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
2. On 26 June 2014, OFCOM concluded its review of the Fixed Access Markets in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the notification at Annex 29 to the review, with the reasons and effect explained in the accompanying explanatory statement.
3. OFCOM determined in the review referred to in paragraph 2 above, that BT has significant market power in 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.
4. SMP service conditions 1 and 2 (network access on reasonable request and specific forms of network access) were set in relation to, amongst others, the market referred to in paragraph 3 and this Direction concerns matters to which those conditions relate.
5. In particular, under SMP conditions 1 and 2, BT is required to provide network access by means of Virtual Unbundled Local Access. Under condition 1.2, such access is required to be provided on such terms, conditions and charges as OFCOM may from time to time direct. SMP condition 1.5 provides that BT must comply with

any direction OFCOM may make from time to time under condition 1. This Direction is made under condition 1.2.

6. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent.
7. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
8. OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for the purposes of section 49A(6)(b) of the Act.
9. The proposals set out in the July 2013 FAMR Consultation contained proposals of EU significance for the purposes of the Act. Therefore, after making any modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the statement accompanying this Direction setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.
10. OFCOM received no comments from the European Commission, BEREC or the regulatory authorities of any other member State on its proposed direction.

#### **Direction**

11. OFCOM hereby, pursuant to section 49 of the Act and condition 1, directs the Dominant Provider to act as prescribed in paragraphs 12 to 14 below.

12. Where the Dominant Provider enters into a contract or other agreement or arrangement to the same or similar effect with a Third Party for VULA Migration the maximum fixed term of that contract, or other agreement or arrangement (as the case may be) must be no longer than one month.
13. The Dominant Provider must comply with the requirement set out in paragraph 12 from the final Working Day of the month in which this Direction comes into force.
14. The requirement set out in paragraph 12 will apply in respect of all contracts or other agreements or arrangements to the same or similar effect for VULA Migration that the Dominant Provider enters into on or after the date on which it complies with that requirement. For the avoidance of doubt, the Dominant Provider is not required under this Direction to amend the terms of any contracts for VULA Migration entered into before this date.
15. For the purpose of interpreting this Direction the following definitions shall apply:
  - a. “**Act**” means the Communications Act 2003 (c.21), as amended;
  - a. “**BT**” 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;
  - b. “**Communications Provider**” means a Third Party purchasing from BT Virtual Unbundled Local Access;
  - c. “**Dominant Provider**” means BT;
  - d. “**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;
  - e. “**July 2013 FAMR Consultation**” means the consultation described in paragraph 1 above;
  - 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. “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- h. “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);
- i. “**Point of Connection**” means a point at which BT’s electronic communications network and a Third Party’s electronic communications network are connected;
- j. “**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;
- k. “**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network;
- l. “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (c.30);
- m. “**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;
- n. “**VULA Migration**” means the transfer of control of a Virtual Unbundled Local Access service between Communications Providers and the subsequent provision by BT of such network access to the Communications Provider taking over such control; and
- o. “**Working Day**” means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

16. For the purpose of interpreting this Direction:

- a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 15 above, and otherwise any word or expression has 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 Direction shall be construed accordingly; and
- d. the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

17. This Direction shall come into force on 1 July 2014.

**Signed**

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

**26 June 2014**

## **PART III: DIRECTIONS RELATING TO KEY PERFORMANCE INDICATORS**

### **Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access 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 remedies*" (the "**July 2013 FAMR Consultation**"). OFCOM consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Part 3 of Annex 11 to the July 2013 FAMR Consultation set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its proposal to give a direction to BT requiring the publication of certain key performance indicators for specified Virtual Unbundled Local Access, Metallic Path Facilities and Shared Access services. OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
2. Following comments from stakeholders received in response to the July 2013 FAMR Consultation, OFCOM made some amendments to the proposals set out in that consultation and, on 19 December 2013, published a second consultation document entitled: "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" (the "**December 2013 LLU WLR Consultation**"). Part III to Annex 15 of the December 2013 LLU WLR Consultation, set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its amendments to the proposals set out in Part 3 of Annex 11 to the July 2013 FAMR Consultation. OFCOM invited responses to the December 2013 LLU WLR Consultation by 13 February 2014.
3. On 26 June 2014, OFCOM concluded its review of the Fixed Access Markets in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification, with the reasons and effect explained in the accompanying explanatory statement.
4. OFCOM determined in the review referred to in paragraph 3 above, that BT has significant market power in 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.

5. SMP service Condition 11 (*quality of service*) was set in relation to, amongst others, the market referred to in paragraph 4 and this Direction concerns matters to which Condition 11 relates.
6. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent.
7. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
8. OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for the purposes of section 49A(6)(b) of the Act.
9. The proposals set out in the July 2013 FAMR Consultation and the December 2013 LLU WLR Consultation contained proposals of EU significance for the purposes of the Act. Therefore, after making any modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the statement accompanying this Direction setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.

10. OFCOM received no comments from the European Commission, BEREC or the regulatory authorities of any other member State on its proposed direction.

## **Direction**

11. OFCOM hereby, pursuant to section 49 of the Act and Condition 11, directs the Dominant Provider to act as prescribed in paragraphs 12 to 17 below.
12. The Dominant Provider must publish to Third Party Customers the information specified in (i) paragraphs 1, 2, 3 and 8 of Part 1 and paragraphs 1 and 3 of Part 2 (as applicable) of each of Annexes A and C, and (ii) paragraphs 1, 2, 3 and 9 of Part 1, paragraphs 1 and 3 of Part 2 and paragraphs 1 and 7 of Part 3 (as applicable) of Annex B to this Direction in relation to the provision of Virtual Unbundled Local Access and Local Loop Unbundling Services (as applicable), as required in paragraph 16 below.
13. The Dominant Provider must provide to individual Third Party Customers on request the information specified in (i) paragraph 7 of Part 1 of each of Annexes A and C, and (ii) paragraph 8 of Part 1 and paragraph 6 of Part 3 of Annex B to this Direction in relation to the provision of Virtual Unbundled Local Access and Local Loop Unbundling Services (as applicable) to them, as required in paragraph 16 below.
14. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in (i) paragraphs 5 and 6 of Part 1 and paragraphs 2 and 3 of Part 2 (as applicable) of Annexes A and C, and (ii) paragraphs 5 and 7 of Part 1, paragraphs 2 and 3 of Part 2 and paragraphs 4 and 5 of Part 3 (as applicable) of Annex B to this Direction in relation to the provision of Virtual Unbundled Local Access and Local Loop Unbundling Services (as applicable), as required in paragraph 16 below.
15. The Dominant Provider must publish the information specified in paragraph 6 of Part 1 and paragraph 3 of Part 3 of Annex B on a publicly accessible website, which for the avoidance of doubt should not require password access.
16. The information required by paragraphs 12 to 14 above must be published and provided as required by the Dominant Provider on or before 18 September 2014 in respect of the previous month and, for each subsequent month, within 14 Working Days of the last Working Day of every month in respect of the previous month.

17. The information required by paragraph 15 above must be published as required by the Dominant Provider on or before 20 October 2014 in respect of the previous three months and, for subsequent periods, within 14 Working Days of the last Working Day of every third month in respect of the previous three months.
18. Annexes A, B and C to this Direction form part of the Direction.
19. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
20. For the purpose of interpreting this Direction the following definitions shall apply:
  - a. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of the Relevant Wholesale Service in accordance with conditions 1 and 2 (as applicable) of Part 3 of Schedule 1 to the Notification;
  - b. “**Act**” means the Communications Act 2003;
  - c. “**Appointed Order**” means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premise in order to become a Completed Order;
  - d. “**BT**” 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;
  - e. “**Committed Order**” means an Order that has been accepted by the Dominant Provider and for which a Contract Delivery Date has been confirmed;
  - f. “**Completed Order**” means an Order that has been provisioned and for which all other related work has been carried out;
  - g. “**Contract Delivery Date**” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;

- h. **"December 2013 LLU WLR Consultation"** means the consultation described in paragraph 2 above;
- i. **"Dominant Provider"** means BT;
- j. **"Equivalence Management Platform"** means the Dominant Provider's operation support system designed to handle the majority of transactions for equivalence of inputs and network access;
- k. **"Fault"** means a degradation or problem with the Relevant Wholesale Service that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider's operational support system;
- l. **"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;
- m. **"Installed Base"** means the average number of Relevant Wholesale Service lines that are in use during the relevant month;
- n. **"July 2013 FAMR Consultation"** means the consultation described in paragraph 1 above;
- o. **"KPI"** means key performance indicator;
- p. **"Local Loop Unbundling Services"** mean network access to Metallic Path Facilities or Shared Access;
- q. **"Local Serving Exchange"** means the site of an operational building of the Dominant Provider, where interconnection is made available by the Dominant Provider to a Third Party for Network Termination Points served by that site for the provision of Virtual Unbundled Local Access;
- r. **"MBORC"** (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;

- s. “**MBORC Declaration**” means a declaration made by the Dominant Provider that an MBORC has occurred in relation to the Relevant Wholesale Service and includes both ‘major’ and ‘local’ MBORC Declarations;
- t. “**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;
- u. “**Network Termination Point**” means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- v. “**Notification**” means the Notification at Part 1 of Annex 29 of the statement ‘Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30: Statement on the markets, market power determinations and remedies’ dated 26 June 2014;
- w. “**OFCOM**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);
- x. “**Order**” means a request for the Relevant Wholesale Service submitted to the Dominant Provider by a Third Party;
- y. “**Pending Order**” means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;
- z. “**Point of Connection**” means a point at which the Dominant Provider’s electronic communications network and a Third Party’s electronic communications network are connected;
- aa. “**Rejected Order**” means an Order rejected by the Dominant Provider because it is incomplete or incorrect;
- bb. “**Relevant Region**” means the ten regions specified in Schedule 3 to Part 1 of the Notification or other such regions as OFCOM may direct from time to time;

- cc. **“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;
- dd. **“Relevant Wholesale Service”** means:
- i. for the purposes of Annex A to this Direction, Virtual Unbundled Local Access;
  - ii. for the purposes of Annex B to this Direction, network access to Metallic Path Facilities; and
  - iii. for the purposes of Annex C to this Direction, network access to Shared Access.
- ee. **“Restored Service”** means the point at which the Relevant Wholesale Service in relation to which a Fault was registered becomes available again for use by the Third Party;
- ff. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for the Relevant Wholesale Service whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- gg. **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- hh. **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- ii. **“Service Maintenance Level 2”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;

- jj. **“Service Maintenance Level 3”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of the Relevant Wholesale Service to Third Parties;
- kk. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ll. **“Third Party Customer”** means a Third Party purchasing Virtual Unbundled Local Access or Local Loop Unbundling Services (as applicable) from the Dominant Provider;
- mm. **“Shared Access”** means the non-voice band frequency of Metallic Path Facilities;
- nn. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c.30);
- oo. **“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 the Dominant Provider and the Third Party for the Third Party’s exclusive use; and
- pp. **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

21. For the purpose of interpreting this Direction:

- a. except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them above and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 2 of Schedule 1 to the Notification.
- b. headings and titles shall be disregarded;
- c. expressions cognate with those referred to in this Schedule shall be construed accordingly; and

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

22. This Direction shall take effect on 1 July 2014.

**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

**26 June 2014**

## Annex A

### Key Performance Indicators for Virtual Unbundled Local Access

#### Part 1: Indicators

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xvi) below in relation to the provision of Virtual Unbundled Local Access, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (xiv) below in relation to the provision of Virtual Unbundled Local Access to itself.
3. In relation to KPIs (i) to (xiv), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Virtual Unbundled Local Access line rental services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must: (a) publish KPIs (i) to (xvi) for the United Kingdom as a whole; (b) in relation to Virtual Unbundled Local Access consisting of the provision of fibre to the cabinet publish KPIs (vi) to (ix), (xi) and (xii) split by reference to each Relevant Region; and (c) in relation to Virtual Unbundled Local Access consisting of the provision of fibre to the premises publish KPIs (vi) to (ix), (xi) and (xii) split by reference to each Relevant Region in which there are 100,000 or more such active connections.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xvi) as described in paragraphs 1 to 4 above and paragraph 8 below by electronic mail to the designated person.

6. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (xiv) below for that Third Party Customer.
8. Where the Dominant Provider does not provide a particular form of Virtual Unbundled Local Access to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) - Percentage of appointed orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for Appointed Orders;

**KPI(iii) - Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for all Orders;

**KPI(iv) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 28 calendar days of the date that it became a Completed Order;

**KPI(v) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(vi) – Appointment availability**

in relation to Appointed Orders that are placed on the Equivalence Management Platform by Third Parties during the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment;;

**KPI(vii) - Average installation time (requiring an engineering visit)**

in relation to Appointed Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(viii) - Average installation time (not requiring an engineering visit)**

in relation to Orders that became Completed Orders in the relevant month other than Appointed Orders, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(ix) - Average installation time (all order types)**

in relation to all Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(x) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(xi) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(xii) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(xiii) - Timing of fault repairs**

the percentage of Faults during the relevant month that achieved a Restored Service on each of the first ten calendar days from the date on which the Fault was validated and registered on the Dominant Provider's operational support system;

**KPI(xiv) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 28 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

**KPI(xv) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

**KPI(xvi) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

**Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below for the United Kingdom as a whole in relation to the

provision of Virtual Unbundled Local Access to all Third Party Customers (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Virtual Unbundled Local Access to itself).

2. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (vi) below in relation to the provision of Virtual Unbundled Local Access to itself. The Dominant Provider shall also provide to OFCOM data relating to specific Third Parties upon request.
3. Where the Dominant Provider does not provide Virtual Unbundled Local Access to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

**KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to all Orders;

**KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(v) – Volume of installations affected by MBORC declarations**

the total number of Orders during the relevant month that were not completed by the Contract Delivery Date that were subject to an MBORC Declaration by the Dominant Provider;

**KPI(vi) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.

## Annex B

### Key Performance Indicators for Metallic Path Facilities

#### Part 1: Indicators

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xv) below in relation to the provision of network access to Metallic Path Facilities, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (xiii) below in relation to the provision of network access to Metallic Path Facilities to itself.
3. In relation to KPIs (i) to (xiii), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Metallic Path Facilities services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must publish KPIs (i) to (xv) for the United Kingdom as a whole. In addition, in relation to KPIs (vi) to (ix), (xi) and (xii), the Dominant Provider must publish KPIs split by reference to each Relevant Region.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xv) as described in paragraphs 1 to 4 above and paragraph 9 below by electronic mail to the designated person.
6. The Dominant Provider must publish information derived from the information required in KPIs (iii), (vi) to (viii), (x)(a) and (xi) on a publicly accessible website, which for the avoidance of doubt should not require password access.
7. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.

8. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (xiii) below for that Third Party Customer.
9. Where the Dominant Provider does not provide a particular form of Metallic Path Facilities to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) - Percentage of appointed orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for Appointed Orders;

**KPI(iii) - Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for all Orders;

**KPI(iv) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 28 calendar days of the date that it became a Completed Order;

**KPI(v) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(vi) – Appointment availability**

in relation to Appointed Orders that are placed on the Equivalence Management Platform by Third Parties during the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the

average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment;

**KPI(vii) - Average installation time (requiring an engineering visit)**

in relation to Appointed Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(viii) - Average installation time (not requiring an engineering visit)**

in relation to Orders that became Completed Orders in the relevant month other than Appointed Orders, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(ix) - Average installation time (all order types)**

in relation to all Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(x) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(xi) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(xii) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(xiii) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 28 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

**KPI(xiv) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

**KPI(xv) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

**Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below for the United Kingdom as a whole in relation to the provision of network access to Metallic Path Facilities to all Third Party Customers (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. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (vi) below in relation to the provision of Metallic Path Facilities to itself. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.

3. Where the Dominant Provider does not provide Metallic Path Facilities to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

**KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to all Orders;

**KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

(a) Service Maintenance Level 2; and

(b) Service Maintenance Level 3;

**KPI(v) – Volume of installations affected by MBORC declarations**

the total number of Orders during the relevant month that were not completed by the Contract Delivery Date that were subject to an MBORC Declaration by the Dominant Provider;

**KPI(vi) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) were subject to an MBORC Declaration by the Dominant Provider.

### **Part 3: Late fault repair and provisions**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below in relation to the provision of network access to Metallic Path Facilities to all Third Party Customers (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 must publish KPIs for the United Kingdom as a whole.
3. The Dominant Provider must, in addition, publish information derived from the information required by KPIs (i) to (v) on a publicly accessible website. For the avoidance of doubt, the publicly accessible website should not require password access.
4. The Dominant Provider must provide to OFCOM KPIs (i) to (vi) as described in paragraphs 1 and 2 above and paragraph 7 below by electronic mail to the designated person.
5. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
6. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (vi) below for that Third Party Customer.
7. Where the Dominant Provider does not provide a particular form of Metallic Path Facilities to itself, it shall instead publish or provide to Third Party Customers (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 average daily number of Faults in the relevant month for which the Dominant Provider has not provided a Restored Service when the Relevant Commitment has been passed by (for services subject to Service Maintenance Level 2):

- (i) 1 calendar day or more;
- (ii) 5 calendar days or more;
- (iii) 11 calendar days or more;
- (iv) 31 calendar days or more.

**“Relevant Commitment”** means, the requirement for the Dominant Provider to complete repairs of Faults by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform, where **“Level 2 Working Day”** means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

**KPI(ii) – Total fault repairs**

the average daily number of Faults that have been validated and registered on the Equivalence Management Platform in the relevant month.

**KPI(iii) – Timing of first available appointment dates**

in relation to Appointed Orders placed on the Equivalence Management Platform by Third Parties in the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the total number of such Appointed Orders for which the first available date offered for an appointment was:

- (a) 13 Working Days or more;
- (b) 17 Working Days or more; and
- (c) 22 Working Days or more,

from the date on which the corresponding Order was placed on the Equivalence Management Platform by the Third Party.

**KPI(iv) – Total appointed orders**

the total number of Appointed Orders placed on the Equivalence Management Platform by Third Parties in the relevant month, in relation to the provision of network access to Metallic Path Facilities, that were appointed on the same day as they were placed on the Equivalence Management Platform.

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

the average daily number of Appointed Orders that did not become Completed Orders in the relevant month for which the Contract Delivery Date has been passed by:

- (a) one calendar day or more;
- (b) five calendar days or more;
- (c) 11 calendar days or more; and
- (d) 31 calendar days or more.

**KPI(vi) – Total appointed orders that did not become completed orders**

the total number of Appointed Orders that did not become Completed Orders during the relevant month.

## Annex C

### Key Performance Indicators for Shared Access

#### Part 1: Indicators

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xi) below in relation to the provision of network access to Shared Access, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (ix) below in relation to the provision of network access to Shared Access to itself.
3. In relation to KPIs (i) to (ix), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Shared Access services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must publish KPIs (i) to (xi) for the United Kingdom as a whole. In addition, in relation to KPIs (vi) and (vii), the Dominant Provider must publish KPIs split by reference to each Relevant Region.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xi) as described in paragraphs 1 to 4 above and paragraph 8 below by electronic mail to the designated person.
6. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (ix) below for that Third Party Customer.
8. Where the Dominant Provider does not provide a particular form of Shared Access to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) - Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for all Orders;

**KPI(iii) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 28 calendar days of the date that it became a Completed Order;

**KPI(iv) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(v) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

(a) Service Maintenance Level 2; and

(b) Service Maintenance Level 3;

**KPI(vi) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(vii) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(viii) - Timing of fault repairs**

the percentage of Faults during the relevant month that achieved a Restored Service on each of the first ten calendar days from the date on which the Fault was validated and registered on the Dominant Provider's operational support system;

**KPI(ix) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 28 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

**KPI(x) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

**KPI(xi) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

**Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (v) below for the United Kingdom as a whole in relation to the provision of network access to Shared Access to all Third Party Customers (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of network access to Shared Access to itself).

2. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (v) below in relation to the provision of Shared Access to itself. The Dominant Provider shall also provide to OFCOM data relating to specific Third Parties upon request.
3. Where the Dominant Provider does not provide Shared Access to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

**KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to all Orders;

**KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(v) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.

## **Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified 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 remedies*" (the "**July 2013 FAMR Consultation**"). OFCOM consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Part 3 of Annex 11 to the July 2013 FAMR Consultation set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its proposal to give a direction to BT requiring the publication of certain key performance indicators for specified Wholesale Line Rental services. OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
2. Following comments from stakeholders received in response to the July 2013 FAMR Consultation, OFCOM made some amendments to the proposals set out in that consultation and, on 19 December 2013, published a second consultation document entitled: "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" (the "**December 2013 LLU WLR Consultation**"). Part III to Annex 15 of the December 2013 LLU WLR Consultation, set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its amendments to the proposals set out in Part 3 of Annex 11 to the July 2013 FAMR Consultation. OFCOM invited responses to the December 2013 LLU WLR Consultation by 13 February 2014.
3. On 26 June 2014, OFCOM concluded its review of the Fixed Access Markets in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification, with the reasons and effect explained in the accompanying explanatory statement.
4. OFCOM determined in the review referred to in paragraph 3 above, that BT has significant market power in the market for wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area.

5. SMP service Condition 11 (*quality of service*) was set in relation to, amongst others, the market referred to in paragraph 4 and this Direction concerns matters to which Condition 11 relates.
6. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent.
7. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
8. OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom for the purposes of section 49A(6)(b) of the Act.
9. The proposals set out in the July 2013 FAMR Consultation and the December 2013 LLU WLR Consultation contained proposals of EU significance for the purposes of the Act. Therefore, after making any modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the statement accompanying this Direction setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.
10. OFCOM received no comments from the European Commission, BEREC or the regulatory authorities of any other member State on its proposed direction.

## Direction

11. OFCOM hereby, pursuant to section 49 of the Act and Condition 11, directs the Dominant Provider to act as prescribed in paragraphs 12 to 17 below.
12. The Dominant Provider must publish to Third Party Customers the information specified in paragraphs 1, 2, 3 and 9 of Part 1, paragraphs 1 and 3 of Part 2 and paragraphs 1, 2 and 8 of Part 3 (as applicable) of Annex A to this Direction in relation to the provision of Wholesale Line Rental, as required in paragraph 16 below.
13. The Dominant Provider must provide to individual Third Party Customers on request the information specified in paragraph 8 of Part 1 and paragraph 7 of Part 3 (as applicable) of Annex A to this Direction in relation to the provision to them of Wholesale Line Rental, as required in paragraph 16 below.
14. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in paragraphs 5 and 7 of Part 1, paragraphs 2 and 3 of Part 2 and paragraphs 5 and 6 of Part 3 (as applicable) of Annex A to this Direction in relation to the provision of Wholesale Line Rental, as required in paragraph 16 below.
15. The Dominant Provider must publish the information specified in paragraph 6 of Part 1 and paragraph 4 of Part 3 of Annex A on a publicly accessible website, which for the avoidance of doubt should not require password access.
16. The information required by paragraphs 12 to 14 above must be published and provided as required by the Dominant Provider on or before 18 September 2014 in respect of the previous month and, for each subsequent month, within 14 Working Days of the last Working Day of every month in respect of the previous month.
17. The information required by paragraph 15 above must be published as required by the Dominant Provider on or before 20 October 2014 in respect of the previous three months and, for subsequent periods, within 14 Working Days of the last Working Day of every third month in respect of the previous three months.
18. Annex A to this Direction forms part of the Direction.
19. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.

20. For the purpose of interpreting this Direction, the following definitions shall apply:

- a. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of Wholesale Line Rental in accordance with conditions 1 and 2 (as applicable) of Part 3 of Schedule 1 to the Notification;
- b. “**Act**” means the Communications Act 2003;
- c. “**Appointed Order**” means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premise in order to become a Completed Order;
- d. “**BT**” 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;
- e. “**Committed Order**” means an Order that has been accepted by the Dominant Provider and for which a Contract Delivery Date has been confirmed;
- f. “**Completed Order**” means an Order that has been provisioned and for which all other related work has been carried out;
- g. “**Contract Delivery Date**” means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- h. “**December 2013 LLU WLR Consultation**” means the consultation described in paragraph 2 above;
- i. “**Dominant Provider**” means BT;
- j. “**Equivalence Management Platform**” means the Dominant Provider’s operation support system designed to handle the majority of transactions for equivalence of inputs and network access;
- k. “**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;

- l. **“Fault”** means a degradation or problem with Wholesale Line Rental that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider’s operational support system;
  
- m. **“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;
  
- n. **“Installed Base”** means the average number of Wholesale Line Rental lines that are in use during the relevant month;
  
- o. **“July 2013 FAMR Consultation”** means the consultation described in paragraph 1 above;
  
- p. **“KPI”** means key performance indicator;
  
- q. **“MBORC”** (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
  
- r. **“MBORC Declaration”** means a declaration made by the Dominant Provider that an MBORC has occurred in relation to Wholesale Line Rental and includes both ‘major’ and ‘local’ MBORC Declarations;
  
- s. **“Network Termination Point”** means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
  
- t. **“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:
  - 1. to supply energy between such approved apparatus and the network;
  - 2. to protect safety or security of the operation of the network; or
  - 3. 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);
- u. **“Newly Provisioned Lines”** means an Order where any Wholesale Line Rental service is not being provided by the Dominant Provider to the Third Party at the time of such Order;
- v. **“Notification”** means the Notification at Part 1 of Annex 29 of the statement ‘Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30: Statement on the markets, market power determinations and remedies’ dated 26 June 2014;
- w. **“OFCOM”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);
- x. **“Order”** means a request for Wholesale Line Rental submitted to the Dominant Provider by a Third Party;
- y. **“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;
- z. **“Pending Order”** means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;

- aa. **“Rejected Order”** means an Order rejected by the Dominant Provider because it is incomplete or incorrect;
- bb. **“Relevant Region”** means the ten regions specified in Schedule 3 to Part 1 of the Notification or other such regions as OFCOM may direct from time to time;
- cc. **“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;
- dd. **“Restored Service”** means the point at which the Wholesale Line Rental service in relation to which a Fault was registered becomes available again for use by the Third Party;
- ee. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for the provision of Wholesale Line Rental whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- ff. **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- gg. **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- hh. **“Service Maintenance Level 1”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of Wholesale Line Rental to Third Parties;
- ii. **“Service Maintenance Level 2”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of Wholesale Line Rental to Third Parties;

- jj. **“Service Maintenance Level 3”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of Wholesale Line Rental to Third Parties;
- kk. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ll. **“Third Party Customer”** means a Third Party purchasing Wholesale Line Rental services from the Dominant Provider;
- mm. **“Transferred Lines”** means an Order for the:
  - (i) transfer of a Wholesale Line Rental service from one Third Party to another Third Party; and
  - (ii) conversion of a different wholesale service (or a combination thereof) provided by one Third Party into a Wholesale Line Rental service provided by that Third Party or another Third Party;
- nn. **“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;
- oo. **“Wholesale Line Rental”** means Wholesale Analogue Line Rental provided to Third Parties’ end users;
- pp. **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (c.30);
- qq. **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

21. For the purpose of interpreting this Direction:

- a. except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them above and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 2 of Schedule 1 to the Notification.

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

22. This Direction shall take effect on 1 July 2014.

**Signed**

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

**26 June 2014**

## Annex A

### Key Performance Indicators for Wholesale Line Rental

#### Part 1: Indicators

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xvi) below in relation to the provision of Wholesale Line Rental, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (xiv) below in relation to the provision of Wholesale Line Rental to itself.
3. In relation to KPIs (i) to (xiv), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Wholesale Line Rental services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must publish KPIs (i) to (xvi) for the United Kingdom as a whole. In addition, in relation to KPIs (vi) to (ix) and (xi) to (xiii), the Dominant Provider must publish KPIs split by reference to each Relevant Region.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xvi) as described in paragraphs 1 to 4 above and paragraph 9 below by electronic mail to the designated person.
6. The Dominant Provider must publish information derived from the information required in KPIs (iii), (vi) to (viii), (x)(a) and (x)(b), (xi) and (xii) on a publicly accessible website, which for the avoidance of doubt should not require password access.
7. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.

8. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (xiv) below for that Third Party Customer.
9. Where the Dominant Provider does not provide Wholesale Line Rental to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) - Percentage of appointed orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for Appointed Orders;

**KPI(iii) - Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month in relation to each of:

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(iv) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 30 calendar days of the date that it became a Completed Order in relation to each of;

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(v) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(vi) – Appointment availability**

in relation to Appointed Orders that are placed on the Equivalence Management Platform by Third Parties during the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment;

**KPI(vii) - Average installation time (requiring an engineering visit)**

in relation to Appointed Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(viii) - Average installation time (not requiring an engineering visit)**

in relation to Orders that became Completed Orders in the relevant month other than Appointed Orders, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(ix) - Average installation time (for all order types)**

in relation to all Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order;

**KPI(x) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2; and
- (c) Service Maintenance Level 3;

**KPI(xi) – Percentage of faults restored on time for services subject to Service Maintenance Level 1**

for services subject to Service Maintenance Level 1, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 1;

**KPI(xii) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(xiii) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(xiv) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 30 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

**KPI(xv) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

### **KPI(xvi) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

### **Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below for the United Kingdom as a whole in relation to the provision of Wholesale Line Rental to all Third Party Customers (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of Wholesale Line Rental to itself).
2. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (vi) below in relation to the provision of Wholesale Line Rental to itself. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
3. Where the Dominant Provider does not provide Wholesale Line Rental to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

### **KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to each of:

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

### **KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2; and
- (c) Service Maintenance Level 3;

**KPI(v) – Volume of installations affected by MBORC declarations**

the total number of Orders during the relevant month that were not completed by the Contract Delivery Date that were subject to an MBORC Declaration by the Dominant Provider;

**KPI(vi) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 1, Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.

**Part 3: Late fault repair and provisions**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below in relation to the provision of Wholesale Line Rental to all Third Party Customers (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 must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different Wholesale Line Rental services.
3. In relation to KPIs (i) to (vi), the Dominant Provider must publish KPIs for the United Kingdom as a whole.

4. The Dominant Provider must, in addition, publish information derived from the information required by KPIs (i) to (v) on a publicly accessible website. For the avoidance of doubt, the publicly accessible website should not require password access.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (vi) as described in paragraphs 1 to 3 above and paragraph 8 below by electronic mail to the designated person.
6. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (vi) below for that Third Party Customer.
8. Where the Dominant Provider does not provide Wholesale Line Rental to itself, it must instead publish or provide to Third Party Customers (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 average daily number of Faults in the relevant month for which the Dominant Provider has not provided a Restored Service when the Relevant Commitment has been passed by:

- (a) for services subject to Service Maintenance Level 1:
  - (i) 1 calendar day or more;
  - (ii) 5 calendar days or more;
  - (iii) 11 calendar days or more;
  - (iv) 31 calendar days or more.
- (b) for services subject to Service Maintenance Level 2:
  - (i) 1 calendar day or more;

- (ii) 5 calendar days or more;
- (iii) 11 calendar days or more;
- (iv) 31 calendar days or more.

**“Relevant Commitment”** means –

- (a) for services subject to Service Maintenance Level 1, the requirement for the Dominant Provider to complete repairs of Faults by the end of the second Working Day; and
- (b) for services subject to Service Maintenance Level 2, the requirement for the Dominant Provider to complete repairs of Faults by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform, where **“Level 2 Working Day”** means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland and Northern Ireland (as applicable).

**KPI(ii) – Total fault repairs**

the average daily number of Faults that have been validated and registered on the Equivalence Management Platform in the relevant month.

**KPI(iii) – Timing of first available appointment dates**

in relation to Appointed Orders placed on the Equivalence Management Platform by Third Parties in the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the total number of such Appointed Orders for which the first available date offered for an appointment was:

- (a) 13 Working Days or more;
- (b) 17 Working Days or more; and
- (c) 22 Working Days or more,

from the date on which the corresponding Order was placed on the Equivalence Management Platform by a Third Party.

**KPI(iv) – Total appointed orders**

the total number of Appointed Orders placed on the Equivalence Management Platform by Third Parties in the relevant month that were appointed on the same day as they were placed on the Equivalence Management Platform.

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

the average daily number of Appointed Orders that did not become Completed Orders in the relevant month for which the Contract Delivery Date has been passed by:

- (a) one calendar day or more;
- (b) five calendar days or more;
- (c) 11 calendar days or more; and
- (d) 31 calendar days or more.

**KPI(vi) – Total appointed orders that did not become completed orders**

the total number of Appointed Orders that did not become Completed Orders during the relevant month.

## **Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified 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 remedies*" (the "**July 2013 FAMR Consultation**"). OFCOM consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Part 3 of Annex 11 to the July 2013 FAMR Consultation set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its proposal to give a direction to BT requiring the publication of certain key performance indicators for specified wholesale ISDN2 exchange line services. OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
2. Following comments from stakeholders received in response to the July 2013 FAMR Consultation, OFCOM made some amendments to the proposals set out in that consultation and, on 19 December 2013, published a second consultation document entitled: "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" (the "**December 2013 LLU WLR Consultation**"). Part III to Annex 15 of the December 2013 LLU WLR Consultation, set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its amendments to the proposals set out in Part 3 of Annex 11 to the July 2013 FAMR Consultation. OFCOM invited responses to the December 2013 LLU WLR Consultation by 13 February 2014.
3. On 26 June 2014, OFCOM concluded its review of the Fixed Access Markets in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification, with the reasons and effect explained in the accompanying explanatory statement.
4. OFCOM determined in the review referred to in paragraph 3 above, that BT has significant market power in the market for wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area.

5. SMP service Condition 11 (*quality of service*) was set in relation to, amongst others, the market referred to in paragraph 4 and this Direction concerns matters to which Condition 11 relates.
6. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent.
7. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
8. OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom the purposes of section 49A(6)(b) of the Act.
9. The proposals set out in the July 2013 FAMR Consultation and the December 2013 LLU WLR Consultation contained proposals of EU significance for the purposes of the Act. Therefore, after making any modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the statement accompanying this Notification setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.
10. OFCOM received no comments from the European Commission, BEREC or the regulatory authorities of any other member State on its proposed direction.

## Direction

11. OFCOM hereby, pursuant to section 49 of the Act and Condition 11, directs the Dominant Provider to act as prescribed in paragraphs 12 to 15 below.
12. The Dominant Provider must publish to Third Party Customers the information specified in paragraphs 1, 2, 3 and 8 of Part 1 and paragraphs 1 and 3 of Part 2 (as applicable) of Annex A to this Direction in relation to the provision of wholesale ISDN2 exchange line services, as required in paragraph 15 below.
13. The Dominant Provider must provide to individual Third Party Customers on request the information specified in paragraph 7 of Part 1 of Annex A to this Direction in relation to the provision to them of wholesale ISDN2 exchange line services, as required in paragraph 15 below.
14. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in paragraphs 5 and 6 of Part 1 and paragraphs 2 and 3 of Part 2 (as applicable) of Annex A to this Direction in relation to the provision of wholesale ISDN2 exchange line services, as required in paragraph 15 below.
15. The information required by paragraphs 12 to 14 above must be published and provided as required by the Dominant Provider on or before 18 September 2014 in respect of the previous month and, for each subsequent month, within 14 Working Days of the last Working Day of every month in respect of the previous month.
16. Annex A to this Direction forms part of the Direction.
17. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
18. For the purpose of interpreting this Direction the following definitions shall apply:
  - a. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of the ISDN2 exchange line services in accordance with conditions 1 and 2 (as applicable) of Part 3 of Schedule 1 to the Notification;
  - b. “**Act**” means the Communications Act 2003;

- c. **“Appointed Order”** means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premise in order to become a Completed Order;
- d. **“BT”** 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;
- e. **“Committed Order”** means an Order that has been accepted by the Dominant Provider and for which a Contract Delivery Date has been confirmed;
- f. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;
- g. **“Contract Delivery Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- h. **“December 2013 LLU WLR Consultation”** means the consultation described in paragraph 2 above;
- i. **“Dominant Provider”** means BT;
- j. **“Fault”** means a degradation or problem with an ISDN2 exchange line service that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider’s operational support system;
- k. **“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;
- l. **“Installed Base”** means the average number of ISDN2 channels that are in use during the relevant month;
- m. **“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;

- n. "**July 2013 FAMR Consultation**" means the consultation described in paragraph 1 above;
- o. "**KPI**" means key performance indicator;
- p. "**MBORC**" (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
- q. "**MBORC Declaration**" means a declaration made by the Dominant Provider that an MBORC has occurred in relation to ISDN2 exchange line services and includes both 'major' and 'local' MBORC Declarations;
- r. "**Newly Provisioned Lines**" means an Order where any ISDN2 exchange line service is not being provided by the Dominant Provider to the Third Party at the time of such Order;
- s. "**Notification**" means the Notification at Part 1 of Annex 29 of the statement 'Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30: Statement on the markets, market power determinations and remedies' dated 26 June 2014;
- t. "**OFCOM**" means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);
- u. "**Order**" means a request for an ISDN2 exchange line submitted to the Dominant Provider by a Third Party;
- v. "**Pending Order**" means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;
- w. "**Rejected Order**" means an Order rejected by the Dominant Provider because it is incomplete or incorrect;
- x. "**Relevant Region**" means the ten regions specified in Schedule 3 to Part 1 of the Notification or other such regions as OFCOM may direct from time to time;

- y. **“Restored Service”** means the point at which the ISDN2 exchange line service in relation to which a Fault was registered becomes available again for use by the Third Party;
- z. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for wholesale ISDN2 exchange line services whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- aa. **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- bb. **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- cc. **“Service Maintenance Level 2”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of wholesale ISDN2 exchange line services to Third Parties;
- dd. **“Service Maintenance Level 3”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of wholesale ISDN2 exchange line services to Third Parties;
- ee. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ff. **“Third Party Customer”** means a Third Party purchasing wholesale ISDN2 exchange line services from the Dominant Provider;
- gg. **“Transferred Lines”** means an Order for the:
  - (i) transfer of an ISDN2 exchange line service from one Third Party to another Third Party; and

(ii) conversion of a different wholesale service (or a combination thereof) provided by one Third Party into an ISDN2 exchange line service provided by that Third Party or another Third Party;

hh. “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (c.30); and

ii. “**Working Day**” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

19. For the purpose of interpreting this Direction:

a. except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them above and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 2 of Schedule 1 to the Notification.

b. headings and titles shall be disregarded;

c. expressions cognate with those referred to in this Schedule shall be construed accordingly; and

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

20. This Direction shall take effect on 1 July 2014.

**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

**26 June 2014**

## **Annex A**

### **Key Performance Indicators for wholesale ISDN2 exchange line services**

#### **Part 1: Indicators**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xiv) below in relation to the provision of ISDN2 exchange line services, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (xii) below in relation to the provision of ISDN2 exchange line services to itself.
3. In relation to KPIs (i) to (xii), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different ISDN2 exchange line services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must publish KPIs (i) to (xiv) for the United Kingdom as a whole. In addition, in relation to KPIs (vi), (vii), (ix) and (x), the Dominant Provider must publish KPIs split by reference to each Relevant Region.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xiv) as described in paragraphs 1 to 4 above and paragraph 8 below by electronic mail to the designated person.
6. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (xii) below for that Third Party Customer.
8. Where the Dominant Provider does not provide ISDN2 exchange line services to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) - Percentage of appointed orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for Appointed Orders;

**KPI(iii) - Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month in relation to each of:

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(iv) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 30 calendar days of the date that it became a Completed Order in relation to each of;

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(v) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(vi) – Appointment availability**

in relation to Appointed Orders that are placed on the Equivalence Management Platform by Third Parties during the relevant month and which were appointed on the same day as they were placed on the Equivalence Management Platform, the average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment;

**KPI(vii) - Average installation time (for all Order types)**

in relation to Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from an Order being placed on the Equivalence Management Platform by a Third Party and that Order becoming a Completed Order;

**KPI(viii) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(ix) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(x) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(xi) - Timing of fault repairs**

the percentage of Faults during the relevant month that achieved a Restored Service on each of the first ten calendar days from the date on which the Fault was validated and registered on the Dominant Provider's operational support system;

**KPI(xii) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 30 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

**KPI(xiii) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

**KPI(xiv) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

**Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below for the United Kingdom as a whole in relation to the provision of ISDN2 exchange line services to all Third Party Customers (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of ISDN2 exchange line services to itself).
2. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (vi) below in relation to the provision of ISDN2 exchange line services to itself. The Dominant Provider shall also provide to OFCOM data relating to specific Third Parties upon request.
3. Where the Dominant Provider does not provide ISDN2 exchange line services to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

**KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to each of:

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(v) – Volume of installations affected by MBORC declarations**

the total number of Orders during the relevant month that were not completed by the Contract Delivery Date that were subject to an MBORC Declaration by the Dominant Provider;

**KPI(vi) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair

times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.

**Direction under section 49 of the Communications Act 2003 and Condition 11 requiring the publication of KPIs by BT for specified 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 remedies*" (the "**July 2013 FAMR Consultation**"). OFCOM consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Part 3 of Annex 11 to the July 2013 FAMR Consultation set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its proposal to give a direction to BT requiring the publication of certain key performance indicators for specified wholesale ISDN30 exchange line services. OFCOM invited responses to the July 2013 FAMR Consultation by 25 September 2013.
2. Following comments from stakeholders received in response to the July 2013 FAMR Consultation, OFCOM made some amendments to the proposals set out in that consultation and, on 19 December 2013, published a second consultation document entitled: "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" (the "**December 2013 LLU WLR Consultation**"). Part III to Annex 15 of the December 2013 LLU WLR Consultation, set out the notification under section 49A of the Act in which OFCOM set out for domestic consultation its amendments to the proposals set out in Part 3 of Annex 11 to the July 2013 FAMR Consultation. OFCOM invited responses to the December 2013 LLU WLR Consultation by 13 February 2014.
3. On 26 June 2014, OFCOM concluded its review of the Fixed Access Markets in which it identified markets, made market power determinations and set appropriate SMP conditions as set out in the Notification, with the reasons and effect explained in the accompanying explanatory statement.
4. OFCOM determined in the review referred to in paragraph 3 above, that BT has significant market power in the market for wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area.

5. SMP service Condition 11 (*quality of service*) was set in relation to, amongst others, the market referred to in paragraph 4 and this Direction concerns matters to which Condition 11 relates.
6. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that, in accordance with section 49(2) of the Act, this Direction is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent.
7. For the reasons set out in the explanatory statement accompanying this Direction, OFCOM is satisfied that it has acted in accordance with the relevant duties set out in sections 3 and 4 of the Act.
8. OFCOM has considered every representation about the proposed Direction duly made to it and the Secretary of State has not notified OFCOM of any international obligation of the United Kingdom the purposes of section 49A(6)(b) of the Act.
9. The proposals set out in the July 2013 FAMR Consultation and the December 2013 LLU WLR Consultation contained proposals of EU significance for the purposes of the Act. Therefore, after making any modifications of the proposals that appeared to OFCOM to be appropriate following domestic consultation, OFCOM sent on 19 May 2014 a copy of them, and of a draft of the statement accompanying this Notification setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.
10. OFCOM received no comments from the European Commission, BEREC or the regulatory authorities of any other member State on its proposed direction.

## Direction

11. OFCOM hereby, pursuant to section 49 of the Act and Condition 11, directs the Dominant Provider to act as prescribed in paragraphs 12 to 15 below.
12. The Dominant Provider must publish to Third Party Customers the information specified in paragraphs 1, 2, 3 and 8 of Part 1 and paragraphs 1 and 3 of Part 2 (as applicable) of Annex A to this Direction in relation to the provision of wholesale ISDN30 exchange line services, as required in paragraph 15 below.
13. The Dominant Provider must provide to individual Third Party Customers on request the information specified in paragraph 7 of Part 1 of Annex A to this Direction in relation to the provision to them of wholesale ISDN30 exchange line services, as required in paragraph 15 below.
14. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in paragraphs 5 and 6 of Part 1 and paragraphs 2 and 3 of Part 2 (as applicable) of Annex A to this Direction in relation to the provision of ISDN30 exchange line services, as required in paragraph 15 below.
15. The information required by paragraphs 12 to 14 above must be published and provided as required by the Dominant Provider on or before 18 September 2014 in respect of the previous month and, for each subsequent month, within 14 Working Days of the last Working Day of every month in respect of the previous month.
16. Annex A to this Direction forms part of the Direction.
17. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.
18. For the purpose of interpreting this Direction the following definitions shall apply:
  - a. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of ISDN30 exchange line services in accordance with conditions 1 and 2 (as applicable) of Part 3 of Schedule 1 to the Notification;
  - b. “**Act**” means the Communications Act 2003;

- c. **“Appointed Order”** means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premise in order to become a Completed Order;
- d. **“BT”** 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;
- e. **“Committed Order”** means an Order that has been accepted by the Dominant Provider and for which a Contract Delivery Date has been confirmed;
- f. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;
- g. **“Contract Delivery Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- h. **“December 2013 LLU WLR Consultation”** means the consultation described in paragraph 2 above;
- i. **“Dominant Provider”** means BT;
- j. **“Fault”** means a degradation or problem with an ISDN30 exchange line service that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider’s operational support system;
- k. **“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;
- l. **“Installed Base”** means the average number of ISDN30 channels that are in use during the relevant month;
- m. **“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;

- n. "**July 2013 FAMR Consultation**" means the consultation described in paragraph 1 above;
- o. "**KPI**" means key performance indicator;
- p. "**MBORC**" (Matters Beyond Our Reasonable Control) means a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
- q. "**MBORC Declaration**" means a declaration made by the Dominant Provider that an MBORC has occurred in relation to ISDN30 exchange line services and includes both 'major' and 'local' MBORC Declarations;
- r. "**Newly Provisioned Lines**" means an Order where any ISDN30 exchange line service is not being provided by the Dominant Provider to the Third Party at the time of such Order;
- s. "**Notification**" means the Notification at Part 1 of Annex 29 of the statement 'Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30: Statement on the markets, market power determinations and remedies' dated 26 June 2014;
- t. "**OFCOM**" means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11);
- u. "**Order**" means a request for an ISDN30 exchange line submitted to the Dominant Provider by a Third Party;
- v. "**Pending Order**" means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;
- w. "**Rejected Order**" means an Order rejected by the Dominant Provider because it is incomplete or incorrect;
- x. "**Relevant Region**" means the ten regions specified in Schedule 3 to Part 1 of the Notification or other such regions as OFCOM may direct from time to time;

- y. **“Restored Service”** means the point at which the ISDN30 exchange line service in relation to which a Fault was registered becomes available again for use by the Third Party;
- z. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for wholesale ISDN30 exchange line services whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- aa. **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- bb. **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- cc. **“Service Maintenance Level 2”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of wholesale ISDN30 exchange line services to Third Parties;
- dd. **“Service Maintenance Level 3”** means the fault clearance timescale specification of that name as defined by the Dominant Provider in its contracts for the provision of wholesale ISDN30 exchange line services to Third Parties;
- ee. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ff. **“Third Party Customer”** means a Third Party purchasing wholesale ISDN30 exchange line services from the Dominant Provider;
- gg. **“Transferred Lines”** means an Order for the:
  - (i) transfer of an ISDN30 exchange line service from one Third Party to another Third Party; and

(ii) conversion of a different wholesale service (or a combination thereof) provided by one Third Party into an ISDN30 exchange line service provided by that Third Party or another Third Party;

hh. “**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (c.30);

ii. “**Working Day**” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

19. For the purpose of interpreting this Direction:

a. except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them above and otherwise any word or expression shall have the same meaning as it has in the Act, or if it has no meaning there, in Part 2 of Schedule 1 to the Notification.

b. headings and titles shall be disregarded;

c. expressions cognate with those referred to in this Schedule shall be construed accordingly; and

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

20. This Direction shall take effect on 1 July 2014.

**Signed**

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

**David Clarkson**

**Competition Policy Director**

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

**26 June 2014**

## **Annex A**

### **Key Performance Indicators for wholesale ISDN30 exchange line services**

#### **Part 1: Indicators**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (xiii) below in relation to the provision of ISDN30 exchange line services, in at least the detail outlined below:
  - a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so).
2. The Dominant Provider must also publish to Third Party Customers the information required in KPIs (i) to (xi) below in relation to the provision of ISDN30 exchange line services to itself.
3. In relation to KPIs (i) to (xi), the Dominant Provider must also publish to Third Party Customers separate KPI results where options exist for Third Parties (excluding the Dominant Provider) to purchase different ISDN30 exchange line services.
4. Where the Dominant Provider is required to publish KPIs under paragraphs 1 to 3 above, it must publish KPIs (i) to (xiii) for the United Kingdom as a whole. In addition, in relation to KPIs (vi), (viii) and (ix), the Dominant Provider must publish KPIs split by reference to each Relevant Region.
5. The Dominant Provider must provide to OFCOM KPIs (i) to (xiii) as described in paragraphs 1 to 4 above and paragraph 8 below by electronic mail to the designated person.
6. The Dominant Provider must also provide to OFCOM data relating to specific Third Parties upon request.
7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in KPIs (i) to (xi) below for that Third Party Customer.
8. Where the Dominant Provider does not provide ISDN30 exchange line services to itself, it must instead publish or provide to Third Party Customers (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) - Percentage of orders rejected**

the percentage of Orders submitted during the relevant month that became Rejected Orders;

**KPI(ii) Percentage of appointed orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month for Appointed Orders;

**KPI (iii) Percentage of orders provisioned on time**

the percentage of Completed Orders that were completed by the Contract Delivery Date during the relevant month in relation to each of:

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(iv) - Percentage of orders reported as faulty**

the percentage of Completed Orders that were reported as having a Fault during the relevant month whereby that Fault was reported within 30 calendar days of the date that it became a Completed Order in relation to each of;

- (a) Newly Provisioned Lines;
- (b) Transferred Lines; and
- (c) all Orders;

**KPI(v) - Percentage of installed base reported as faulty**

the number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base;

**KPI(vi) - Average installation time (for all Order types)**

in relation to Orders that became Completed Orders in the relevant month, the average number of days (in Working Days) from an Order being placed on the Equivalence Management Platform by a Third Party and that Order becoming a Completed Order;

**KPI(vii) - Average time to restore service**

the average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 2; and
- (b) Service Maintenance Level 3;

**KPI(viii) – Percentage of faults restored on time for services subject to Service Maintenance Level 2**

for services subject to Service Maintenance Level 2, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 2;

**KPI(ix) – Percentage of faults restored on time for services subject to Service Maintenance Level 3**

for services subject to Service Maintenance Level 3, the percentage of Faults during the relevant month whereby the Dominant Provider achieved a Restored Service within the timescales for Service Maintenance Level 3;

**KPI(x) - Timing of fault repairs**

the percentage of Faults during the relevant month that achieved a Restored Service on each of the first ten calendar days from the date on which the Fault was validated and registered on the Dominant Provider's operational support system;

**KPI(xi) - Percentage of repeat faults**

the percentage of Faults for which Restored Service was achieved in the relevant month that were repeat faults, where a repeat fault is a Fault registered within 30 calendar days of the Dominant Provider having achieved Restored Service of a previous Fault with the same service;

### **KPI(xii) - Gateway availability (excluding Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, excluding any Scheduled Outages; and

### **KPI(xiii) - Gateway availability (including Scheduled Outages)**

the percentage of actual availability of the Dominant Provider's ordering gateway during the relevant month compared to the potential availability during the same period as published by the Dominant Provider, including any Scheduled Outages.

## **Part 2: Volumes**

1. The Dominant Provider must publish to Third Party Customers the information required in KPIs (i) to (vi) below for the United Kingdom as a whole in relation to the provision of ISDN30 exchange line services to all Third Party Customers (as an aggregate figure which, for the avoidance of doubt includes provision by the Dominant Provider of ISDN30 exchange line services to itself).
2. The Dominant Provider must provide to OFCOM by electronic mail the information required in KPIs (i) to (vi) below in relation to the provision of ISDN30 exchange line services to itself. The Dominant Provider shall also provide to OFCOM data relating to specific Third Parties upon request.
3. Where the Dominant Provider does not provide ISDN30 exchange line services to itself, it must instead publish or provide to Third Party Customers and OFCOM (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) - Volume of orders submitted**

the total number of Orders that became Pending Orders during the relevant month;

### **KPI(ii) - Volume of orders completed**

the total number of Committed Orders that became Completed Orders during the relevant month in relation to each of:

(a) Newly Provisioned Lines;

(b) Transferred Lines; and

(c) all Orders;

**KPI(iii) - Volume of Installed Base**

the Installed Base during the relevant month;

**KPI(iv) - Volume of completed faults**

the number of Faults where the Dominant Provider subsequently achieves Restored Service during the relevant month in relation to each of:

(a) Service Maintenance Level 2; and

(b) Service Maintenance Level 3;

**KPI(v) – Volume of installations affected by MBORC declarations**

the total number of Orders during the relevant month that were not completed by the Contract Delivery Date that were subject to an MBORC Declaration by the Dominant Provider;

**KPI(vi) – Volume of repairs impacted by MBORC declarations**

the total number of Faults during the relevant month that were not completed within either Service Maintenance Level 2 or Service Maintenance Level 3 contracted repair times (as applicable) that were subject to an MBORC Declaration by the Dominant Provider.