



Changes to BT and KCOM's  
regulatory and financial reporting  
2012/13 update

Statement

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## Section 1

# Executive Summary

## Background

- 1.1 Relevant, reliable and timely regulatory financial information informs many of our decisions. We require this information in order to monitor and enforce various obligations that are placed on dominant providers in markets where they are found to have significant market power ("SMP").
- 1.2 In this statement we set out various changes to enhance the presentation and improve the quality of BT's regulatory financial statements ("RFS") reflecting developments over the last 12 months in the regulatory, technological and competitive environment, our ongoing analysis and use of the RFS, comments from users of the RFS and discussions with BT.
- 1.3 We note that at the same time we are conducting a fundamental review of the regulatory reporting framework to ensure that it is fit for purpose, provides good quality data and provides an effective basis for monitoring compliance. We published a Regulatory Financial Reporting Review consultation in September 2012<sup>1</sup> and are planning further publications on regulatory reporting and cost orientation in 2013. In this document we are proposing short term improvements for the 2012/13 RFS.
- 1.4 We set out our proposals in our consultation published on 23<sup>rd</sup> January 2012 (the "January Consultation").
- 1.5 The main change to BT's 2012/13 RFS reflected Ofcom's decision in the March 2012 Charge control review for LLU and WLR services ("LLU/WLR charge control review")<sup>2</sup>. A decision was made in this review to remove the cost orientation obligation for certain services in the LLU/WLR market (the "relevant services")<sup>3</sup>.
- 1.6 As a consequence of the decision we proposed to remove the obligation for BT to publish Distributed Long Run Incremental Cost (DLRIC) and Distributed Stand Alone Cost (DSAC) data for the relevant services. We proposed to retain the obligation for BT to continue to collect the information on DSAC and DLRIC costs for these services and provide it to Ofcom on demand. We also proposed to retain the obligation for BT to publish Fully Allocated Cost (FAC) data for these services.
- 1.7 Other changes on which we consulted were mainly concerned with improving the presentation and content of the statements including more granular reporting for growing services and amalgamation of reporting for services that have been withdrawn or where the revenue is very small.
- 1.8 The regulatory financial reporting regime is also applicable to KCOM. This year, however, we have identified no reporting changes relating to KCOM which require consultation.

<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/reg-financial-report/summary/condoc.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/consultations/wlr-cc-2011/statement-march2012/>

<sup>3</sup> MPF rentals, MPF ceases, SMPF ceases, Enhanced Service Level Care Services, analogue core WLR rentals and WLR transfers

## Scope of this document

1.9 This statement sets out our final decisions in respect of the proposals in the January Consultation.

1.10 The tables below summarise the issues and objectives we address in this statement and our final decisions taking full account of the responses to the January Consultation. A glossary of the terms used is contained at Annex 2.

### A) PRESENTATION AND DISCLOSURE (Section 3)

<i>Proposal</i>	<i>Decision: BT to...</i>
1) Improved disclosure of AISBO services	
We proposed to require BT to report EAD Local Access connections and rentals separately as the revenues for these services have grown.	Report EAD Local Access connections and rentals separately across 10Mb, 100Mb and 1000Mb bandwidths.
We also proposed to allow BT to amalgamate certain low revenue services within this market.	Amalgamate BES and WES connections into 'Other Ethernet'.
2) Improved disclosure of services in WBA markets 1 and 2	
We proposed to require BT to report WBC services separately as the revenues for these services have grown.	Report WBC services separately across WBA markets 1 and 2.
We also proposed to allow BT to amalgamate Datastream reporting into ancillary services due to low revenues.	Amalgamate Datastream reporting into ancillary services.
3) Improved disclosure of services in Call Origination, Call Termination and Point of Handover Markets	
We proposed to allow BT to amalgamate reporting for certain services with low revenues in those markets.	Amalgamate 'Internal Wholesale call origination local exchange Stick' and 'Internal Wholesale call origination local exchange Stick (ISDN)'  Amalgamate 'Internal Wholesale call termination local exchange Stick' and 'Internal Wholesale call termination local exchange Stick (ISDN)'  Report External 3rd Party POH Rentals services split between charges for equipment and charges for circuits, and only publish POH services by bandwidth where the revenue for the bandwidth is over £1m
4) Improved accessibility	
We proposed to require BT to publish an Excel version of the RFS online to enable easier use and checks by stakeholders.	Publish an Excel version of the RFS online to enable easier use and checks by stakeholders.
BT proposed to remove the 'Average price/FAC' column in market summaries and we agreed to consult conditional on BT publishing the RFS in Excel.	Remove the "Average price/FAC" column in market summaries.

B) OUTCOMES FROM MARKET REVIEWS  
(Section 4)

*Issue/Objective*

*Decision: BT to...*

1) Implementation of LLU/WLR charge control review

We proposed to reflect the outcome of the LLU/WLR charge control review by removing the requirement for reporting DSAC and DLRIC data for the services where the cost orientation obligation has been removed. We proposed to require BT to produce DSACs and DLRICs for these services to Ofcom as and when required. We proposed to retain the obligation for BT to publish FAC data for these services.

Produce DSACs and DLRICs for these services to Ofcom as and when required. We removed the obligation on BT to publish DLRIC/DSAC data for MPF rental, MPF cease, SMPF cease, Analogue core WLR rental and WLR transfer but retain the obligation to publish FAC data for these services.

- 1.11 BT have also indicated that they will amend the look of the Regulatory Financial Statements in 2012/13. This will include re-ordering of some of the reported information. BT has demonstrated that changes to the format or content of information relating to each service will be limited, rather, the proposed change is as to how the information is ordered as a whole, and the changes are intended to make the RFS more user friendly. BT has agreed to provide a mapping of the 'old' look RFS to the 2012/13 version in the 2012/13 RFS. We agree with BT's proposals on the basis that none of the information that is currently published will be lost. We will be considering the format and content of the RFS in more detail as part of the fundamental review referred to in paragraph 1.3 above, in time for the 2013/14 statement.

## Section 2

# Introduction

## Background

- 2.1 Relevant, reliable and timely regulatory financial information is required to inform many of our decisions. It is essential therefore that the regulatory reporting framework is kept up to date and fit for purpose.
- 2.2 Under sections 87 to 91<sup>4</sup> of the Communications Act 2003 (the “Act”) there are a range of remedies that can be implemented by Ofcom once it has been determined that an undertaking has SMP in an identified services market. These include obligations:
- to offer cost-oriented charges;
  - not to discriminate unduly; and
  - to cap charges, i.e. charge controls.
- 2.3 When setting SMP conditions, Ofcom is exercising its duties under sections 3 and 4 of the Act. These include the duty to further the interests of consumers in relevant markets by promoting competition and to act in accordance with the six Community requirements, the first of which is to promote competition. Where these obligations have been imposed it is essential that they are monitored and enforced effectively through, in part, an effective regulatory financial reporting framework.
- 2.4 Regulatory financial information is normally prepared either on a regular (e.g. annual) basis for ongoing monitoring purposes or on request, for example in connection with investigations.
- 2.5 BT's RFS, like any form of business information, evolve over time to reflect a range of internally and externally driven factors. These include changes to accounting policies and standards, improved understanding or knowledge of cost drivers, changes in technologies and business processes and changes in the regulatory environment.

## The January Consultation

- 2.6 The January Consultation included proposals for several improvements that Ofcom believed were justified in order to maintain a fit for purpose reporting framework.
- 2.7 Responses to the January Consultation were received from BT, Vodafone, Verizon, Virgin Media, and Everything Everywhere. Collectively Vodafone, Verizon, Virgin Media and Everything Everywhere will be referred to as the other communications providers (OCPs) in the rest of this document. We also received one response from The Bit Commons Limited which did not specifically address our proposals but raised a separate point on reporting of BT's investment in Next Generation Access ('NGA').

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<sup>4</sup> As amended by the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210)

## Structure of the Document

- 2.8 In the January Consultation we invited comments on our proposals by way of questions. This statement sets out these questions as they appeared in the January Consultation, considers the responses received and sets out our final decision.
- 2.9 The statement has been split into three main subject sections as set out below.
- 2.10 In Section 3 we set out our decisions on the proposals raised in the January Consultation for BT to make improvements to the RFS.
- 2.11 In Section 4 we set out our decisions on the proposals raised to implement the conclusions of the LLU/WLR charge control review.
- 2.12 The reporting changes that we present in this document impact solely on BT. There are no reporting changes which impact KCOM.

## Legal Tests

- 2.13 In order to implement our proposed changes, Ofcom will need to modify Direction 4 under SMP condition OA2. For this purpose, for each proposal we show how our duties have been met under sections 3, 4, 4A and 49(2) of the Act.

### **Sections 3, 4 and 4A – general duties, the six Community requirements and the duty to take account of European Commission recommendations for harmonisation**

- 2.14 Section 3 of the Act sets out Ofcom's duties in carrying out its functions, in particular that it furthers the interests of citizens in relation to communications matters and furthers the interests of consumers in relevant markets.
- 2.15 Section 4 of the Act requires that Ofcom acts in accordance with the six Community requirements concerning: the promotion of competition; the development of the European internal market; the promotion of the interests of all EU citizens; non-discrimination; promoting efficiency and sustainable competition and the maximum benefit for consumers; and facilitating service interoperability and securing freedom of choice for consumers.
- 2.16 Section 4A of the Act requires Ofcom to take into account all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive<sup>5</sup>.

### **Section 49(2) tests**

- 2.17 Under section 49<sup>6</sup> of the Act, Ofcom can only modify a direction that gives effect to an SMP obligation where it is satisfied that the tests under section 49(2) have been met. The tests are that the modification of the direction is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

<sup>5</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common framework for electronic communications and services (OJ L 108 24.04.2002, p33), as amended.

<sup>6</sup> As amended by the Electronic Communications and Wireless Telegraphy Regulations 2011/1210.

- b) not unduly discriminatory against particular persons or against a particular description of persons;
- c) proportionate to what it is intended to achieve; and
- d) transparent in relation to what it is intended to achieve.

### **Sections 49A and 49B**

- 2.18 Sections 49A and 49B of the Act set out the relevant procedures that must be followed for domestic and EU consultations respectively on proposals to modify directions. Section 49A applies where the proposals are for the purposes of:
- a) an SMP apparatus condition; or
  - b) any other condition set under section 45 where what is proposed would, in Ofcom's opinion, have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which Ofcom has functions under Chapter 1 of Part 2 of the Act.
- 2.19 Section 49B applies where the proposals are of EU significance. Section 150A(2) sets out the cumulative criteria that must be satisfied in order for a proposal to be of EU significance.

### **Conclusion**

- 2.20 In summary, Ofcom considers that the decisions set out in Sections 1 to 4 of this document are necessary and appropriate because they represent amendments and enhancements required to maintain the relevance and usefulness of the financial statements.
- 2.21 We will work closely with BT to ensure the implementation of the final requirements is carried out as efficiently as possible.

## Section 3

# Updated requirements: Presentation and Disclosure

## Introduction

3.1 In the January Consultation we proposed three reporting changes. These changes relate solely to BT. We present our conclusions below having fully taken into account respondents' views on these proposals and our duties under the Communications Act 2003, as set out in Section 2 and below.

## Amalgamation of services in AISBO, Call Origination, Call Termination and Point of Handover markets

**Question 1: Do you agree with Ofcom's proposed amalgamation of certain low revenue disclosed services in the AISBO, WBA, Call Origination, Call Termination and Point of Handover markets?**

### Summary of Proposed Change

- 3.2 In our January Consultation we proposed to amalgamate some of the services reported separately in 2011/12 with low revenues and costs, in AISBO, WBA, Call Origination, Call Termination and Point of Handover markets.
- 3.3 The purpose of this proposal was to ensure the RFS remains proportionate and focusses on the main regulated services produced by BT and these are not obscured by the reporting of many small services. It does not affect the requirement where there is a cost orientation obligation to ensure that each and every charge is cost orientated and for BT to demonstrate compliance with the obligation.
- 3.4 Namely, in the AISBO market we proposed to amalgamate BES and WES connections into 'Other Ethernet connections' reporting.<sup>7</sup>
- 3.5 In the WBA market we proposed to amalgamate Datastream services into 'Ancillary services' reporting.<sup>8</sup>
- 3.6 In the Call Origination market we proposed to amalgamate two internal services : 'Internal Wholesale call origination local exchange Stick' and 'Internal Wholesale call origination local exchange Stick (ISDN)'.

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<sup>7</sup> We proposed to:

Amalgamate the following service into "Other internal Ethernet connections":

- Wholesale extension services connections – Internal;

Amalgamate the following services into "Other external Ethernet connections":

- Wholesale extension services connections – External
- Backhaul extension services other bandwidth connections – External.

<sup>8</sup> We proposed to amalgamate the following services into 'External ancillary charges' in WBC markets 1 and 2:

- External Datastream virtual path
- External Datastream end user access rentals.

- 3.7 In the Call Termination market we proposed to amalgamate two internal services : 'Internal Wholesale call termination local exchange Stick' and 'Internal Wholesale call termination local exchange Stick (ISDN)'.
- 3.8 In the Point of Handover market, as some Point of Handover services are immaterial, BT suggested splitting External 3rd Party POH Rentals services between charges for equipment and charges for circuits, and to only publish POH services by bandwidth where the revenue for the bandwidth is over £1m. We considered that this was a sensible proposal given the size of the market.

### OCP responses

- 3.9 Virgin Media and Verizon agreed with the proposed amalgamation of the low revenue services.
- 3.10 OCPs also made some observations in connection with the amalgamated reporting. In particular, Vodafone argued that when deciding whether to amalgamate reporting for low revenue services, Ofcom should consider not only current revenue but also how the revenue for the services is expected to change in the next 18 to 24 months and the balance in demand between internal and external supply.
- 3.11 Vodafone also noted that BT did not provide unit information for 'other Ethernet rentals' or 'other Ethernet connections' in the 2011/12 RFS and that the amalgamation of services should not be used as an excuse to omit publication of total volumes and average price/cost information.
- 3.12 EE commented that greater transparency and disaggregation of information will always be more useful. EE recognises that Ofcom needs to assess materiality, however they consider that this decision needs to be made in the fundamental regulatory reporting review. EE say that making ad hoc changes as a result of this consultation before setting the wider principles is inappropriate.
- 3.13 While Verizon agreed with the proposals, it expressed a view that Ofcom should have a natural preference for increased granularity in the RFS, even where volumes of services are decreasing. However, Verizon also recognised the need for a balanced approach and for a greater emphasis on in-demand services.

### BT response

- 3.14 BT agreed with the proposed amalgamation of the low revenue services. BT also said that Ofcom's proposals to amalgamate these services do not go far enough. In particular, BT consider that for the purposes of demonstrating compliance with cost orientation obligations, it is sufficient that BES and WES services are reported by bandwidth. BT consider it disproportionate that connections and rentals are required to be reported separately.

### Decision

- 3.15 We have decided to adopt the proposed changes.
- 3.16 We noted the stakeholders' concerns that we are deciding on materiality ahead of fundamental review and the suggestion that we consider future as well as current revenue where we propose to amalgamate services. We also noted the general preference from OCPs for greater reporting and from BT for reduced reporting.

- 3.17 As set out in Section 3 of the January consultation, we considered both current and future revenue forecasts in our proposal to amalgamate reporting for the services outlined above. This is consistent with the current practice we use for assessing the level of granularity of reporting in the RFS as part of the annual update process, and as set out in paragraphs 3.10 and 3.11 of the RFS update for 2009/2010<sup>9</sup>.
- 3.18 The services where the current proposals to amalgamate reporting apply have low and falling revenues. In amalgamating the reporting of certain services, we are modifying BT's regulatory obligations so that the reporting of many small revenue services does not obscure the focus on the main reported services and ensure reporting requirements are proportionate. For the reasons set out above and in the January consultation, we therefore decided to adopt the proposal to amalgamate the reporting of specified services.
- 3.19 We also discussed the issue of unit volume data reporting with BT.
- 3.20 BT explained that they use the 'sx' and 'ux' notations if the service comprises a number of underlying services with varying prices, costs, and volumes. BT believe it is confusing and therefore inappropriate to provide average data where the underlying services have heterogeneous prices and costs.
- 3.21 BT said that even disclosing volumes on their own could lead readers of the RFS to an inappropriate conclusion. For example, as a revenue number is disclosed for services with 'sx' and 'ux' notations, a reader could divide the revenue by volumes to create a price which would not be reflective of the underlying services. In addition, there are different types of volumes – some could be measured in 'km' and others in 'local ends' or 'links' and combining these would not give meaningful information.
- 3.22 BT have also explained that specifically for WLR transfers, as part of an internal systems review within Openreach during 2011-12, it was found that WLR transfers were not a single service but multiple services with prices ranging from £3 to £70. Therefore, the 'sx' and 'ux' notations were used in 2011-12.
- 3.23 BT also consider that disclosing all 'sx' and 'ux' information will result in publishing a disproportionate amount of information in the RFS.
- 3.24 We consider that in some cases BT's concerns may be valid as demonstrated by their examples above. However, we consider that where volumes are uniform (eg where all volumes are circuit volumes), we expect to see a figure for volumes and an average price. We will review the use of other 'sx' and 'ux' notations and implications for reporting in the course of the next year.

## Separate disclosure of services in AISBO and WBA markets

### Question 2: Do you agree with Ofcom's proposal for separate disclosure of EAD Local Access and Wholesale Broadband Connect services?

#### Summary of change

- 3.25 In our January Consultation we proposed to require BT to report separately:

<sup>9</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/btreqs10/statement/statement.pdf>

- External and internal EAD Local Access connections across 10Mb, 100Mb and 1000 Mb bandwidths<sup>10</sup>;
  - External and internal EAD Local Access rentals across 10Mb, 100Mb and 1000Mb bandwidths<sup>11</sup>;
  - Report separately Wholesale Broadband Connect (“WBC”) services, across WBA markets 1 and 2<sup>12</sup>.
- 3.26 The exact detail of the above reporting changes is outlined in Annex A on pages 30-43.
- 3.27 The main purpose of the change was to ensure that BT is disclosing reliable financial information for each main service provided in these growing markets.

### OCP responses

- 3.28 All respondents agreed with the proposed change.
- 3.29 Vodafone also raised the issue of Ethernet Backhaul Direct (‘EBD’) reporting that was previously raised in 2011 and 2012. Vodafone would like to see reporting of internal volumes for EBD on the basis that this is an EoI product. Vodafone stated that EBD is a strategic product that is expected to grow strongly in the future and that by BT’s own admission EBD is a product developed to meet their obligations in the Undertakings for a WES backhaul requirement. Vodafone considers that it is necessary for EBD volumes to be included in the RFS to ensure compliance.
- 3.30 Vodafone also raised the question of NGA reporting. They believe that the materiality threshold for NGA products has been passed as the demand for the services has grown. They would like to see internal and external sales split by FTTP and FTTC product variants. They would also like to see the split of the RFS into areas with and without the state funding.
- 3.31 We also received a response from The Bit Commons which suggested that in the context of the NGA rollout and receipt of state funding by BT, it would be beneficial to impose separate reporting on BT that would include identifying incremental costs of BT’s NGA investment and the proportion paid for by state funding.

### BT response

- 3.32 BT agreed with separate reporting of EAD local access services and WBC services.

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<sup>10</sup> The proposal was to split existing ‘Ethernet Access Direct connection’ reporting into the following services:

- Ethernet Access Direct Local Access connection,
- ‘Ethernet Access Direct other connection’.

This split would apply separately for internal and external connections and for each of the 10Mb, 100Mb and 1000Mb bandwidths.

<sup>11</sup> The proposal is to split existing ‘Ethernet Access Direct rental’ reporting into the following services:

- ‘Ethernet Access Direct Local Access rental’
- ‘Ethernet Access Direct other rental’.

This split would apply separately for internal and external connections and for each of the 10Mb, 100Mb and 1000Mb bandwidths.

<sup>12</sup> “WBC” services are currently reported in Ancillary Charges. We propose to report separately the following services:

- Wholesale Broadband Connect bandwidth
- Wholesale Broadband Connect End User Access.

Internal and external variants both for WBC market 1 and 2 will be reported separately.

- 3.33 BT thought that for the purpose of demonstrating compliance with cost orientation obligations, it is sufficient that EAD services are reported, at most, at the service level per bandwidth. BT think that it is neither appropriate nor proportionate to require connections and rentals to be reported separately.

### Decision

- 3.34 We consider that the modification outlined at paragraph 3.25 and 3.26 above will allow us better to monitor whether BT is complying with its non-discrimination and cost orientation obligations in these particular markets, and is necessary for that purpose. Therefore, for the reasons set out in the January consultation and above, we decided to adopt all the proposals we consulted on in relation to separate disclosure of services in AISBO and WBA markets. There were a number of other points raised by stakeholders and we discuss these below.

### EBD reporting

- 3.35 We note that Vodafone have raised the issue of EBD reporting in previous years. The March 2013 BCMR statement confirmed previous Ofcom findings that Ethernet products are subject to EOI and no undue discrimination obligations.<sup>13</sup>
- 3.36 With respect to Equivalence of Input, the Undertakings state the following: 'Transfer charges in the regulatory accounts for products provided to and from AS and other BT divisions will be separately identified and based on the transfer charging principles set out in the Primary Accounting Documents of the regulatory financial statements'<sup>14</sup>. Therefore, even though EBD is an input into a downstream market, there may be an argument that the financial information related to internal EBD should be reported in the RFS (external EBD is currently reported).
- 3.37 Following the 2012 RFS update we referred the matter to the Equality of Access Office (EAO), which has the remit of looking at compliance with the Undertakings. The EAO found no breach of the current reporting obligations in the Undertakings in this case.
- 3.38 We also discussed this matter with BT. BT explained that the costing for this product is done on an end-to-end basis and the product is an internal input into a downstream market. BT therefore considered that reporting the costs and revenues for the product separately would distort downstream reporting. BT also said EBD reporting is a point of principle, as the lack of internal EBD reporting is in common with some other EOI services, such as SMPF. They therefore argued that a decision should not be taken for internal EBD reporting in isolation and without a consultation.
- 3.39 As EBD is subject to non discrimination obligations, we consider that there is therefore an argument that BT should report internal EBD volumes in the RFS. This reporting can be done in a note to the AISBO market reporting.
- 3.40 At this point while we require publication of volumes, we are not going to require publication of costs for these services given that the costing for these products is done on an end-to-end basis and we have not fully consulted on this issue at this

<sup>13</sup> Para 12.293, 12.300 and 12.303. <http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/statement/Sections8-16.pdf>

<sup>14</sup> Consolidated version of the Undertakings given to Ofcom by BT Pursuant to Enterprise Act 2002 <http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/bt/consolidated.pdf>

point. We also understand from BT that as internal EBD is an input to Wholesale products and is reported in their costs, additional calculations would be required to reflect the changes to internal revenue and costs for all those products, to ensure that accurate reporting of costs and revenues for any of the services. BT told us it would be difficult to do this in time for the 12/13 RFS. However, we will revisit reporting for Eol services including internal EBD in the fundamental review of regulatory reporting.

### NGA reporting

- 3.41 Regarding NGA reporting, under section 87 of the Communications Act (which is where the core obligation for BT's regulatory financial reporting is found<sup>15</sup>), we can only impose reporting obligations on BT "*where OFCOM has made a determination that [BT] has significant market power in an identified services market*", i.e. on the basis of outcomes from market reviews and charge controls.
- 3.42 The October 2010 WLA market review found that BT has SMP in the UK market for WLA service and imposed remedies, including remedies relating to the provision of VULA<sup>16</sup>. However, these remedies currently do not require any financial reporting. This is because, for the reasons set out in the 2010 WLA market review statement, NGA services are currently not charge controlled, and as a consequence, it has not been considered necessary or appropriate to impose more detailed reporting. Any future remedies relating to NGA will be considered as part of the next Wholesale Local Access review. If the review imposes remedies that require changes to financial reporting, we will implement those in the annual review of the RFS following that market review statement. The WLA review consultation is due to be published in the summer of 2013 and CPs are invited to respond to the consultation with their concerns.
- 3.43 We note that BT receives state funding and that it may be relevant both for users of the RFS and for any future regulation of NGA to have a split of regulated asset base into the capital expenditure paid for by the state and the remainder.
- 3.44 We discussed this with BT who have suggested in the meantime reporting state funded assets in the schedule 'Attribution of Wholesale Current Cost Mean Capital Employed (Annex 6A). This would be a one line reporting state aid funding capital expenditure. This capital expenditure would be deducted from other asset categories. The detailed schedule is in Annex A. We welcome this suggestion and consider that this reporting is appropriate for the 12/13 RFS.

### **Legal Tests**

- 3.45 In order to implement the changes outlined in paragraphs 3.4 to 3.8, 3.25 to 3.26 and 3.44 above, Ofcom has modified Direction 4 under SMP condition OA2. We have set out how we have satisfied the legal tests under sections 3, 4, 4A and 49(2) of the Act to implement these changes below.

### **Section 3, 4 and 4A**

- 3.46 As noted above, as part of the relevant EU market review processes Ofcom has imposed wholesale cost accounting and accounting separation obligations (through SMP conditions and associated directions) on BT in specific identified markets as

<sup>15</sup> Further obligations are found in paragraphs 5.30 – 5.32 of the Undertakings.

<sup>16</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)

part of the appropriate remedies to its SMP in these markets, as well as cost orientation obligations in some cases. The relevant individual market reviews determined that these regulatory accounting obligations met the tests outlined in Sections 3, 4 and 4A of the Act. In relation to the products and services listed below, the relevant market reviews and charge controls are:

- AISBO products and services – Business Connectivity Market Review, December 2008.<sup>17</sup>
- Wholesale Broadband Access products and services - Wholesale Broadband Services Market Review, December 2010<sup>18</sup>.
- Call Origination, Call Termination – Review of Fixed Narrowband Service Markets, October 2009<sup>19</sup>
- Point of Handover services – Business Connectivity Market Review, February 2010<sup>20</sup>

3.47 The changes are designed to enable BT to more effectively and efficiently fulfil the main purpose for which these particular obligations were imposed (i.e. demonstrate cost orientation and non-discrimination) by:

- disclosing information about the above products and services in more detail, where these products and services have grown in significance in the relevant regulated markets. It is therefore appropriate for BT to disclose more information about them, in order to comply in a meaningful way with the relevant cost accounting obligations; and
- amalgamating the reporting of certain low revenue products and services, for which reporting in this way is no longer needed, which also allows BT to focus reporting on the most important products and services, so that the reporting of many small revenue services does not obscure the focus on the main reported services.

3.48 In consequence Ofcom believes the amendments to Direction 4 meet the tests in Sections 3,4 and 4A.

3.49 In making the changes to Direction 4, Ofcom has also taken into account all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive, in particular Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications<sup>21</sup>.

<sup>17</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr08/summary/bcmr08.pdf>

<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/wba/statement/wbastatement.pdf>

See also <http://stakeholders.ofcom.org.uk/binaries/consultations/823069/statement/statement.pdf>

<sup>19</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr\\_statement\\_consultation/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/wnmr_statement_consultation/statement/statement.pdf)

<sup>20</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr08/summary/bcmr08.pdf>

See also <http://stakeholders.ofcom.org.uk/consultations/llcc/statement/>

<sup>21</sup> OJ L 266 11.10.2005, p64. This recommends, amongst other things, that “a national regulatory authority, when assessing the features and specifications of the cost accounting system, reviews the capability of the notified operator’s cost accounting system to analyse and present cost data in a way that supports regulatory objectives”, and that “national regulatory authorities make relevant accounting information from notified operators available to interested parties at a sufficient level of detail” (see paragraphs 3 and 5 respectively).

## **Section 49(2) tests**

### Objectively justifiable in relation to the networks, services, facilities, apparatus or directions to which it relates

3.50 Ofcom considers that modifying Direction 4 in the manner described in paragraphs 3.4 to 3.8, 3.25 to 3.26 and 3.44 and Annex A is objectively justifiable. We are proposing reporting for certain services at a greater degree of granularity and amalgamating the reporting of certain low revenue services. This is consistent with forecast growth of revenues for these services. As set out in detail above and in the January consultation, the modification would therefore allow us and stakeholders better to monitor whether BT is complying with its non-discrimination and cost orientation obligations in these particular markets, and is necessary for that purpose.

### Not unduly discriminatory against particular persons or against a particular description of services

3.51 Ofcom considers that modifying Direction 4 in the manner described in paragraphs 3.4 to 3.8, 3.25 to 3.26 and 3.44 and Annex A is not unduly discriminatory. BT is the only communications provider with SMP in the AISBO, WBA, Call Origination, Call Termination and Points of Handover markets which provides the relevant (or similar) services externally. KCOM, the only other communications provider with similar obligations, does not provide these or similar services externally.

### Proportionate to what it is intended to achieve

3.52 Ofcom considers that modifying Direction 4 in the manner described in paragraphs 3.4 to 3.8, 3.25 to 3.26 and 3.44 and Annex A is proportionate. In proposing to amalgamate the reporting of certain services, we are modifying BT's regulatory obligations so that the reporting of many small revenue services does not obscure the focus on the main reported services and ensures that reporting requirements are proportionate. However, WBC and EAD revenues have grown and therefore greater granularity of reporting would allow us and other communications providers to monitor more effectively BT's compliance with obligations regarding those services. The extent of BT's obligations would therefore correspond with the main purpose and effect of the RFS: monitoring whether BT is complying with its non-discrimination and cost orientation obligations in the relevant markets. The proposed modifications are, accordingly, no more than is necessary for BT to demonstrate compliance with its obligations in the AISBO, WBA, Call Origination, Call Termination and Point of Handover markets, as well as providing assurance to market participants that products and services are not being provided on discriminatory terms.

### Transparent in relation to what it is intended to achieve

3.53 Ofcom considers that modifying Direction 4 in the manner described in paragraph 3.4 to 3.8, 3.25 to 3.26 and 3.44 and Annex A is transparent. Ofcom explained and consulted on this change and has provided background explanatory material and evidence from other projects.

## **Section 49A**

3.54 Section 49A(1)(a) did not apply because Ofcom did not propose to modify Direction 4 for the purposes of an SMP apparatus condition. Section 49A(1)(b) did not apply because, on the basis of the analysis and impact assessment set out in this

document and the January consultation, in Ofcom's view our proposals would not have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which we have functions under Chapter 1 of Part 2 of the Act.

## Section 49B

- 3.55 Section 49B did not apply because our consultation proposals are not of EU significance, as defined under section 150A(2), in particular because in our opinion, given the nature and limited extent of the proposals on which we are consulting and on the basis of the analysis and impact assessment set out in this document and the January consultation, these proposals would not affect trade between Member States.

## Accessibility improvements

### Question 3: Do you agree with the proposed changes to the presentation of the RFS?

#### Summary of change

- 3.56 In the January Consultation we proposed to require BT to publish the RFS online in an Excel format, linking the information in the Excel file as far as practicable. We were hoping that this would improve the usability of the RFS for stakeholders by enabling them to perform calculations involving RFS data more easily. We also proposed to remove the average price/FAC column from market summaries in Annexes 11 and 13. This is because the publication of the RFS in Excel format will enable stakeholders to easily recreate the calculation.

#### OCP responses

- 3.57 All OCPs were in favour of the publication of the RFS online in Excel.
- 3.58 All OCPs apart from Verizon agreed with the removal of the average price/FAC column from market summaries. Verizon disagreed with the proposal on the grounds that the information is useful and Ofcom has not clearly explained why it should be removed. Verizon argue that it does not cause BT a material amount of effort to produce the information and that the data is a useful cross check that the stakeholders would otherwise have to ensure that they are calculating correctly themselves.

#### BT response

- 3.59 BT agreed with the proposals.

#### Decision

- 3.60 We have decided to adopt the proposal. We consider that having an Excel version of the RFS online will greatly improve usability for stakeholders.
- 3.61 With respect to the average price/FAC column, we consider that it is easy for stakeholders to calculate this ratio and carry out other cross checks when the Excel version of the RFS is available online and there is no significant benefit in retaining

the average price/FAC column in the RFS. We have therefore also decided to adopt the proposal to remove the average price/FAC column from market summaries.

## Legal Tests

- 3.62 In order to implement these changes Ofcom has modified Direction 4 under SMP condition OA2. We have set out how we have satisfied the legal tests under sections 3, 4, 4A and 49(2) of the Act to implement these changes below.

### Sections 3, 4 and 4A

- 3.63 As part of the relevant EU market review process Ofcom has imposed wholesale cost accounting and accounting separation obligations (conditions and directions) on BT in specific identified markets as part of the appropriate remedies to its SMP in these markets. The relevant individual market reviews determined that these regulatory accounting obligations met the tests outlined in Sections 3, 4 and 4A of the Act. The proposal to require BT to disclose its RFS in Excel format is designed to enable BT to more effectively fulfil the main purpose for which these particular obligations were imposed (i.e. demonstrate cost orientation and non-discrimination), as it will make the RFS more accessible for other stakeholders, and improve usability and therefore increase transparency. The changes improve the presentation and usefulness of the RFS and in consequence Ofcom believes the proposed amendments meet the tests in Sections 3, 4 and 4A.
- 3.64 In making the changes to Direction 4, Ofcom has also taken into account all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive, in particular Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications<sup>22</sup>.

### Section 49(2) tests

#### Objectively justifiable in relation to the networks, services, facilities, apparatus or directions to which it relates

- 3.65 Ofcom considers that modifying Direction 4 in the manner described in paragraphs 3.60 and 3.61 is objectively justifiable. As a result of its regulatory accounting obligations, BT provides detailed information on a large number of products and services in a number of relevant markets. The RFS is a long and complicated document, containing large amounts of data, which is used by Ofcom and stakeholders to amongst other things, monitor BT's compliance with its non-discrimination and cost orientation obligations. Provision of the accounts in an Excel format will help make the accounts more user-friendly and accessible for stakeholders, and thus aid transparency.

#### Not unduly discriminatory against particular persons or against a particular description of services.

- 3.66 Ofcom considers that modifying Direction 4 in the manner described above is not unduly discriminatory. BT's regulatory accounts are far more complex and longer than the accounts produced by KCOM. There is therefore less of a need for KCOM to publish its accounts in a Excel format as its accounts are more manageable and easier for stakeholders to understand.

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<sup>22</sup> see footnote 21.

### Proportionate to what it is intended to achieve

- 3.67 Ofcom considers that modifying Direction 4 in the manner described above is proportionate. It is necessary for BT to report a large amount of information on the relevant services in the relevant markets, as set out above. As BT already produces an Excel version of the RFS, it is not disproportionate to require that this be published, in order to aid transparency.

### Transparent in relation to what it is intended to achieve

- 3.68 Ofcom considers that modifying Direction 4 in the manner described in the manner described above is transparent. Ofcom explained and consulted on this change and has provided background explanatory material.

### **Section 49A**

- 3.69 Section 49A(1)(a) did not apply because Ofcom did not propose to modify Direction 4 for the purposes of an SMP apparatus condition. Section 49A(1)(b) did not apply because, on the basis of the analysis and impact assessment set out in this document and the January consultation, in Ofcom's view this proposal would not have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which we have functions under Chapter 1 of Part 2 of the Act.

### **Section 49B**

- 3.70 Section 49B did not apply because this proposal is not of EU significance, as defined under section 150A(2) of the Act, in particular because in our opinion, given the nature and limited extent of the proposal on which we are consulting and on the basis of the analysis and impact assessment set out in this document and the January consultation, this proposal would not affect trade between Member States.

## Section 4

# Outcomes of market reviews concluded in 2012

## Question 4: Do you think we have fairly reflected the decisions of the relevant market review in the scope, form and content of the RFS?

### Summary of change

- 4.1 There was one specific market review which triggers potential changes to BT's RFS: the LLU/WLR charge control review, which was published in March 2012. The main outcome of the LLU/WLR charge control review insofar as affects BT's regulatory financial reporting, was the removal of the cost orientation obligation for a number of services (MPF rental, MPF cease, SMPF cease, Analogue core WLR rental, WLR transfer, Enhanced service level care services).
- 4.2 We proposed to remove the obligation for BT to publish DLRIC and DSAC information for the services where the LLU/WLR charge control review removed the cost orientation obligation. We proposed to require BT to continue to produce and publish FAC data for these services. We also proposed to require BT to produce but not publish the DSAC and DLRIC information for these services.

### OCP responses

- 4.3 All OCPs disagreed with the proposal to remove reporting of DSAC and DLRIC for these services. All said that it is not acceptable to remove the DLRIC/DSAC publication simply because the cost orientation obligation has been revoked.
- 4.4 OCPs gave a number of reasons as to why the published DSAC and DLRIC figures would be useful in the absence of the cost orientation obligations. The main arguments were:
- DLRIC and DSAC reporting should be maintained even in the absence of the cost orientation obligation.
  - The cost of publishing DLRIC and DSAC information to BT is negligible given that Ofcom would still require that the data is produced.
  - Where charges are regulated within a basket, prices on individual services are not constrained. Publication of cost information is necessary to ensure the ongoing effectiveness of the price control where a basket control applies.
  - Publication would enable CPs understand if the charges are consistent with competition law and potentially lead to less need to make competition complaints.
  - Availability of cost benchmarks over time allows CPs to make more meaningful inputs into charge controls and market reviews. Charge controls are based on forecast data and understanding historical cost trends is important to assess reliability of the data.

- Where downstream managed services are purchased the availability of this cost information allows CPs to better negotiate with BT. DLRIC and DSAC data helps CPs understand the extent to which the prices for these important inputs could vary.
  - Stakeholders' ability to scrutinise regulated charges will be removed where DLRIC and DSAC information is removed.
- 4.5 CPs were also concerned about the lack of guidance around how Ofcom will judge prices to be fair in the absence of the cost orientation obligation and how and when the DLRIC and DSAC information provided by BT to Ofcom will be used.
- 4.6 Virgin Media raised a number of further points. Firstly, they said that Ofcom has not followed the correct procedure in consulting on this change since the reporting direction for LLU/WLR was not consulted on in the market review. Therefore, they argued that the impact of removal of cost orientation on financial reporting obligations has not been properly consulted on.
- 4.7 Secondly, Virgin Media made specific points in relation to each LLU/WLR service where we proposed to remove LRIC/DSAC reporting.
- 4.8 Specifically, Virgin Media said that they could see reasons for removing MPF/SMPF reporting.
- 4.9 However, they thought that it was inappropriate to rely on the 2012 LLU/WLR Charge Control statement to justify the removal of DLRIC/DSAC reporting for MPF and WLR rentals given that the 2012 SMP conditions simply reflect previous regulation deriving from the 2005 review. Virgin Media also stated that the removal of cost orientation stems from earlier documents than the LLU WLR Charge Control and therefore relying on this document as the source of removing cost orientation is inappropriate.
- 4.10 Virgin Media also stated that there is a 'fair and reasonable' obligation for LLU/WLR rentals and that the LRIC data is useful for stakeholders to monitor compliance with this obligation.
- 4.11 Virgin Media also pointed out an uncertainty around the Enhanced Care Services reporting, where we said that DLRIC and DSAC data should not be reported going forward. Virgin Media noted that the FAC data is also currently not reported and are seeking clarification on whether it should be.
- 4.12 Virgin Media also pointed out that WLR Transfer currently does not have cost data reported (in 12/13 RFS) due to the aggregation of data in BT's accounts, whereas this data was reported in 11/12.
- 4.13 Virgin Media also stated that we ought to have consulted on implementing a change to financial reporting arising from the ISDN30 price control review. They refer to the ISDN30 August 2010 Market Review Statement where we said 'The RFS review will therefore take into account the conclusions of this review and the conclusions of the ISDN30 price control review before proposing any amendments or additions to the financial reporting direction'<sup>23</sup>. They also quoted ISDN30 CC April 2012 statement: 'As we have explained in Section 5 above, the ISDN30 2010 Market Review Statement decided that cost accounting information should be reported by Openreach in relation to ISDN30 in order to support any price control imposed by this

<sup>23</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/isdn30/statement/statement.pdf>

review. As the control imposed as a result of this review only comes into force on 11 May 2012, and therefore part way through the 2012/2013 financial year, any amendment to the financial reporting direction would be made in the review that we anticipate conducting next year. SMP condition AAA(IS)4A, imposed under this review, will therefore provide the authority and scope for any proposal made to amend the financial reporting direction next year, where stakeholders will get a further opportunity to comment.<sup>24</sup>

- 4.14 Virgin Media further said that if Ofcom decided not to consult that this is a change of position that would require a consultation. They also considered that the decision that no changes to the reporting obligations are required is wrong, as the introduction of a charge control should be supported by an increased transparency requirement. They said that it is of particular note that the pricing of ISDN30 services were required to reduce significantly under the control, and those pricing levels have a significant effect on investment incentives within the market and within associated markets for IP based alternative solutions.

### BT response

- 4.15 BT agreed with the removal of the DLRIC/DSAC reporting for the relevant LLU/WLR services.
- 4.16 BT also argued that our proposals did not go far enough and that reporting at a level greater than the market or basket level is disproportionate where cost orientation obligations do not apply. It suggested these concerns should be taken forward as part of Ofcom's review of regulatory financial reporting obligations. Their arguments are summarised below:
- Publication of cost information is not relevant to monitoring compliance with charge controls, where the only relevant issues are year on year movements in prices and volumes across the baskets or sub baskets.
  - Monitoring compliance with non-discrimination obligations only includes confirming that internal and internal sales are at the same price and does not require cost information.
  - Ofcom can collect information required for setting charge controls or conducting investigations rather than from the RFS.
  - If the purpose of the information is monitor effectiveness of remedies, it is unclear what level of detail will be required. BT argued that costs and revenues at a basket level would be sufficient.
  - BT also questioned the ability of stakeholders to better assess accuracy of BT's cost information. They also said that it is unclear what level of reporting is justified even if there is a benefit in greater transparency.

### Decision

- 4.17 We are going to adopt the proposal to remove DLRIC and DSAC reporting for the relevant services (i.e. MPF rental, MPF cease, SMPF cease, Analogue core WLR

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<sup>24</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/isdn30-price-control/statement/ISDN30\\_final\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/isdn30-price-control/statement/ISDN30_final_statement.pdf)

rental and WLR transfer). BT will still be required to produce DLRIC and DSAC data and supply it to Ofcom on request.

- 4.18 We previously proposed that BT would still be required to produce and publish the FAC data for all of the services outlined in paragraph 4.1. However, there is no current obligation on BT to produce FAC data for Enhanced level care services due to the fact that they are not subject to a charge control<sup>25</sup>, which was referred to in the consultation in error. We therefore will not require BT to produce FAC data for Enhanced level care services. For the avoidance of doubt, we still require BT to produce and publish FAC data for MPF rental, MPF cease, SMPF cease, analogue core WLR rental and WLR transfer.

#### Our response on removal of DLRIC and DSAC reporting

- 4.19 We previously said that the LLU/WLR charge control review removed the cost orientation obligation for the following services:

- MPF rental
- MPF cease
- SMPF cease
- Analogue core WLR rental
- WLR transfer

- 4.20 Accordingly, we need to consider how the removal of cost orientation obligation for these services should be reflected insofar as BT's regulatory financial reporting is concerned.

- 4.21 We note Virgin Media's comment that the original decision to remove cost orientation was not uniformly made in the 2012 LLU/WLR charge control review for all of these services. However, the 2012 LLU/WLR charge control review considered each of these products in detail (taking into account the outcomes of previous reviews) and confirms that cost orientation is not necessary with respect to each of these products in the wholesale analogue exchange line services market and wholesale local access market. We therefore consider that it is appropriate to refer to this document as it sets the charge control with respect to which cost orientation was considered for the current controls.

- 4.22 We currently require BT to publish DLRIC and DSAC figures in order that CPs may gain confidence in BT's compliance with cost orientation obligations. Given that demonstrating compliance with cost orientation obligations was the primary purpose of the publication of these figures and this obligation has been removed, and in line with the reasoning in the March 2013 BCMR statement,<sup>26</sup> we consider that for similar reasons, for the products listed above, the rationale for the publication of DLRICs and DSACs has now fallen away. We discuss our reasoning further below.

- 4.23 BT is not required to take account of DLRIC and DSAC in order to comply with the charge controls or other obligations we are imposing on the above products.

<sup>25</sup> Para 4.388-4.401 [http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc/statement/LLU\\_WLR\\_CC\\_statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc/statement/LLU_WLR_CC_statement.pdf)

<sup>26</sup> Para 16.21 <http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/statement/Sections8-16.pdf>

Consequently publication of these figures is not necessary to enable CPs to monitor BT's compliance with the charge controls set out in the LLU/WLR charge control review. CPs will be able to use BT's charge control compliance statements to monitor BT's compliance with those charge controls.

- 4.24 We noted Virgin Media's point that WLR and MPF rentals are subject to the obligation to maintain 'fair and reasonable' charges. However, to assess if a charge is fair and reasonable involves consideration of a large number of factors. DLRIC and DSAC information is not necessarily needed to see if a charge is fair and reasonable and would have to be considered in conjunction with other information. Consequently, there is no reporting obligation arising from the fair and reasonable obligation for the LLU/WLR charge control alone. WLR and MPF rentals are subject to a charge control where compliance can be monitored without the need for DLRIC and DSAC data and there is no cost orientation requirement for these services. Bearing in mind that the fundamental review is coming up, we are not minded to create a new reporting obligation on BT.
- 4.25 There also does not appear to be a strong case for continued publication to enable CPs to monitor the effectiveness of the charge controls or monitor BT's charges for anti-competitive pricing. We consider that we have demonstrated that the charge controls will adequately constrain BT's pricing. We will consider further what the purpose of the regulatory financial statements should be in the fundamental review.
- 4.26 We have also considered whether DLRIC and DSAC numbers should be published so that CPs can scrutinise them for accuracy and contribute their analysis of these figures to our work. Whilst scrutiny by CPs is welcome we do not consider this alone is sufficient justification for publication in this case.
- 4.27 We will still require BT to provide DLRIC and DSAC numbers to Ofcom upon request. These figures would be used to inform our decision about whether to make starting charge adjustments when setting charge controls and would be subject to detailed review during the preparation of our charge control proposals.
- 4.28 In line with the March 2013 BCMR statement we also continue to require BT to produce and publish FAC figures for wholesale markets at the product/service level and also to publish the calculation of FAC based on component costs. Publication of this information is appropriate in markets where there is a risk of pricing distortions or undue discrimination. Such transparency will, in particular, enable CPs to:
- assess the accuracy of product/service level data;
  - monitor BT's compliance with other SMP obligations, including the no undue discrimination obligations.
- 4.29 We also note Virgin Media's point that we have not properly consulted on this change to financial reporting. We disagree and consider we have given stakeholders a proper opportunity to express their views on this matter. With respect to DLRIC/DSAC data, this issue links back to Ofcom's views on whether or not a charge should be cost oriented. As set out above, the main purpose for publication of these figures would be to demonstrate compliance with cost orientation obligations. Removal of cost orientation (with respect to all the services outlined above) was consulted on in the LLU/WLR charge control review. As a result, we considered that the proposed decision would not have a significant impact on the relevant market. (see paragraph 4.43 below).

- 4.30 We note that we are currently reviewing BT's regulatory financial reporting obligations as part of our cost orientation and regulatory financial reporting project. We published a consultation<sup>27</sup> last year on regulatory financial reporting obligations setting out initial proposals. We also plan a publication on cost orientation obligations later this year. We note that wider concerns about the appropriateness of the current level of publication of regulatory financial information are best considered in our review of the regulatory financial reporting obligations, and therefore do not address them further here.

### ISDN30

- 4.31 We have also considered whether any changes to the RFS are necessary as a result of the ISDN30 charge control statement. Current reporting in the RFS includes revenue, cost and Mean Capital Employed information at market level and revenue, volume and average price information at service level for ISDN30.
- 4.32 We have concluded that no amendments to the RFS are necessary in this respect because we consider that the current level of reporting in the RFS is sufficient to demonstrate compliance with the updated ISDN30 charge control. There was therefore no proposal to amend the RFS on this basis. This is because additional cost information is not required to monitor compliance with the charge control. Compliance with a charge control of this kind can be monitored by reference to prices rather than costs.
- 4.33 In particular in this case, there are potential distortions to FAC of ISDN30 due to heavily depreciated assets.<sup>28</sup> Consequently, FAC does not reflect the true costs of providing the service and the charge control is based on Ofcom adjusted cost stack. This is because the adjustments we made in setting the charge control, eg an uplift to the fully depreciated assets, changed the cost stack significantly. We therefore considered that cost reporting would not be beneficial to stakeholders in this case.
- 4.34 We note Virgin Media's point on our alleged failure to consult on ISDN30, and welcome their views. Virgin Media quoted two documents published by Ofcom, the ISDN30 market review and subsequent charge control. We note in particular, that Virgin Media considers "increased transparency requirements" would be needed as a result of the ISDN30 charge control but do not set out or specify exactly what those would be. We have given careful consideration to Virgin Media's request for "increased transparency requirements", and in particular have considered whether it is necessary to require BT to publish FAC data, but have come to the view, for the reasons set out above, that it is not necessary to require BT to include further information in the RFS as a result of the ISDN30 charge control.

### Legal Tests

- 4.35 In order to implement the changes set out in paragraphs 4.17 and 4.18 Ofcom will have to modify Direction 4 under SMP condition OA2. We have set out how we have satisfied the legal tests under sections 3, 4, 4A and 49(2) of the Communications Act to implement these below.

<sup>27</sup> Regulatory Financial Reporting: a review, published 6 September 2012

[http://stakeholders.ofcom.org.uk/consultations/regulatory-financial-reporting/?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=reg-financial-reporting](http://stakeholders.ofcom.org.uk/consultations/regulatory-financial-reporting/?utm_source=updates&utm_medium=email&utm_campaign=reg-financial-reporting)

<sup>28</sup> Para A3.52 <http://stakeholders.ofcom.org.uk/binaries/consultations/isdn30-price-control/statement/isdn30-annexes.pdf>

## Section 3, 4 and 4A

- 4.36 As part of the relevant EU market review process Ofcom has imposed wholesale cost accounting and accounting separation obligations (through conditions and directions) on BT in the Wholesale Local Access (WLA) and Wholesale Fixed Analogue Exchange Line (WFAEL) markets as part of the appropriate remedies to its SMP in these markets<sup>29</sup>. The relevant individual market reviews and charge control review determined that these regulatory accounting obligations met the tests outlined in Sections 3, 4 and 4A of the Act. The LLU/WLR charge control review, published in March 2012, confirmed that there is no cost orientation obligation on BT in respect of certain services (namely MPF rental, MPF cease, SMPF cease, Analogue core WLR rental, and WLR transfer). As noted above, Ofcom therefore considers that while it is appropriate to require BT to produce DLRIC and DSAC figure for these services, it should not be required to publish them, as the primary purpose for publication of these figures has fallen away. As noted above, in this case, compliance with charge controls is monitored by reference to prices. In this case therefore Ofcom believes the proposed changes appropriately reflect the outcome of the market reviews and charge control review referred to above and so meet the tests in Sections 3 and 4, and 4A.
- 4.37 In proposing the changes to Direction 4, Ofcom has also taken into account all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive, in particular Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications<sup>30</sup>.

## Section 49(2) tests

### Objectively justifiable in relation to the networks, services, facilities, apparatus or directions to which it relates

- 4.38 Ofcom considers that modifying Direction 4 in the manner described in 4.17 and 4.18 is objectively justifiable. The form and content of the RFS should be no more detailed and complex than necessary. Wherever possible, they should be simplified, provided they still fulfil the purpose of demonstrating BT's compliance with its obligations. The proposed changes achieve that.

### Not unduly discriminatory against particular persons or against a particular description of services

- 4.39 Ofcom considers that modifying BT's regulatory reporting requirements in the manner described above is not unduly discriminatory. KCOM, the only other communications provider with similar obligations, is not affected insofar as regulatory reporting is concerned, by the changes proposed by the March 2012 LLU/WLR charge control review.

### Proportionate to what it is intended to achieve

- 4.40 Ofcom considers that modifying Direction 4 in the manner described above is proportionate. The changes following the charge control statement would ensure that the extent and nature of BT's obligations reflect what is required for it to show

<sup>29</sup> See 2010 WLA market review <http://stakeholders.ofcom.org.uk/consultations/wla/statement> and 2010 WFAEL market review <http://stakeholders.ofcom.org.uk/consultations/review-wholesale-fixed-exchange/statement>

<sup>30</sup> see footnote 21.

compliance with its charge control obligations. The changes would ensure that BT's obligations require no more of it than is necessary for it to show compliance with its accounting obligations, and do not extend beyond these. It is proportionate as it is necessary as a mechanism to allow Ofcom and third parties to monitor for discriminatory behaviour by BT, whilst not being more intrusive than necessary with respect to their business to achieve its purpose effectively. The changes are necessary to ensure the RFS remains fit for purpose and adequately reflect the outcomes of the LLU/WLR charge control review.

#### Transparent in relation to what it is intended to achieve

- 4.41 Ofcom considers that modifying Direction 4 in the manner described above is transparent. Ofcom explained and consulted on this change and has provided background explanatory material.

#### **Section 49A**

- 4.42 Section 49A(1)(a) did not apply because Ofcom did not propose to modify Direction 4 for the purposes of an SMP apparatus condition. Section 49A(1)(b) did not apply because, on the basis of the analysis and impact assessment set out in this document and the January consultation, in Ofcom's view this proposal would not have a significant impact on a market for any of the services, facilities, apparatus or directories in relation to which we have functions under Chapter 1 of Part 2 of the Act.
- 4.43 In particular, we consider that while the underlying decision in the LLU/WLR charge control review to remove cost orientation for certain services was a decision which required consultation as it had a significant impact on the relevant market, the proposal in this review is simply a consequence of that decision and does not by itself have a significant impact.

#### **Section 49B**

- 4.44 Section 49B did not apply because this proposal is not of EU significance, as defined under section 150A(2), in particular because in our opinion, given the nature and limited extent of the proposal on which we are consulting and the analysis and impact assessment set out in this consultation, this proposal would not affect trade between Member States.

## Annex 1

# Modifications to Direction 4 (BT)

## **Direction modifying Directions under section 49 of the Communications Act 2003 and SMP services condition OA2 specifying requirements for the form and content of Regulatory Financial Statements in respect of wholesale cost accounting, accounting separation and retail cost accounting**

### **BACKGROUND:**

- (A) As a result of a market analysis carried out by the Director General of Telecommunications (the 'Director') and OFCOM in accordance with section 79 of the Act, BT has been designated as having SMP in respect of certain identified markets in accordance with section 79 of the Act.
- (B) As a result of such SMP designations, BT has been subject to various SMP services conditions in accordance with sections 45 and 86 to 91 of the Act, including conditions OA1 to OA34 and FA10 imposing obligations on BT in respect of wholesale cost accounting, accounting separation and retail cost accounting in relation to BT's activities in those markets where BT has been designated as having SMP.
- (C) The FA10 SMP services conditions have now been revoked in accordance with section 48 of the Act, but BT remains subject to the OA SMP services conditions.
- (D) In complying with the OA SMP services conditions referred to in paragraphs B and C above, and in particular condition OA5, BT is required to prepare such Regulatory Financial Statements as directed by OFCOM from time to time.
- (E) By virtue of the Transitional Provisions, references to the Director in any of those SMP services conditions should be read as references to OFCOM.
- (F) Condition OA2 includes, and FA10.2 included, in accordance with section 45(10) of the Act, the ability for OFCOM to make such directions as they consider appropriate from time to time in relation to BT's obligations under conditions OA1 to OA34 and FA10.
- (G) Ofcom has made such directions under conditions OA2 and FA10.2 in relation to BT's obligations under conditions OA1 – OA 34 and FA10, although those made under condition FA10.2 now have force as if made under condition OA2 and are to be read accordingly.
- (H) This Direction modifies Direction 4 which relates to BT's obligations under SMP services conditions OA1 to OA34, in that it sets out the form and content to be applied by BT in preparing certain Regulatory Financial Statements required by virtue of condition OA5 and Direction 3.
- (I) BT is entitled to depart from the form and content set out in this Direction in certain circumstances in accordance with conditions OA7 and OA21.
- (J) For the reasons set out in the explanatory statement accompanying this modified Direction, OFCOM are satisfied that, in accordance with section 49(2) of the Act, this Direction is:

- i. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- ii. not such as to discriminate unduly against particular persons or against a particular description of persons;
- iii. proportionate to what it is intended to achieve; and
- iv. in relation to what it is intended to achieve, transparent.

(K) For the reasons set out in the explanatory statement accompanying this modified Direction, OFCOM have considered and acted in accordance with the six Community requirements set out in section 4 of the Act, and (to the extent applicable) with their duty in section 4A of the Act, and with their duties in section 3 of the Act.

(L) For the reasons set out in the explanatory statement accompanying this modified Direction, OFCOM have considered that sections 49A and 49B of the Act do not apply.

(M) In accordance with section 49C of the Act, a copy of this modified Direction will be sent to:

- the Secretary of State; and
- the European Commission.

## DECISION:

1. Ofcom directs that the form and content to be applied by BT in preparing certain Regulatory Financial Statements required by virtue of condition OA5 and Direction 3, and set out in Direction 4, shall be modified as set out in Annex A to this Direction.

2. For the purpose of interpreting this Direction, the following definitions shall apply:

- a) "Act" means the Communications Act 2003 (c. 21);
- b) "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 by section 1159 of the Companies Act 2006;
- c) "Direction 3" means the Original Direction 3 and the following modifying Directions: at Annex 2 of the *Changes to BT's regulatory financial reporting framework*, dated 31 August 2005; at Annex 3 of the *Changes to BT's regulatory financial reporting and audit requirements*, dated 16 August 2006; at Annex 4 of *BT's regulatory financial reporting requirements*, dated 30 May 2007; at Annex 4 of *Changes to BT's 2007/08 Regulatory Financial Statement*, dated 26 June 2008; at Annex 4 of *Changes to BT and KCOM's regulatory financial reporting – 2008/09 update*, dated 15 June 2009; at Annex 3 of *Changes to BT and KCOM's regulatory financial reporting – 2009/10 update*, dated 4 June 2010; and at Annex 4 of *Changes to BT and KCOM's regulatory and financial reporting – 2010/11 update*, dated 2 June 2011, which relates to BT's obligations under SMP services conditions OA1 to OA34, in that it sets out requirements for the preparation, audit and delivery of Regulatory Financial Statements in respect of wholesale cost accounting, accounting separation and retail cost accounting;
- d) "Direction 4" means the Original Direction 4 and the following modifying Directions: at Annex 3 of the *Changes to BT's regulatory financial reporting framework*, dated 31 August 2005; at Annex 4 of the *Changes to BT's regulatory financial reporting and audit requirements*, dated 16 August 2006; at Annex 5 of *BT's regulatory financial reporting requirements*, dated 30 May 2007; at Annex 5 of *Changes to BT's 2007/08 Regulatory Financial Statement*, dated 26 June 2008; at Annex 5 of *Changes to BT and KCOM's regulatory financial reporting – 2008/09 update*, dated 15 June 2009; at Annex 4 of *Changes to BT and KCOM's regulatory financial reporting – 2009/10 update*, dated 4 June 2010; at Annex 5 of *Changes to BT and KCOM's regulatory and financial reporting – 2010/11 update*, dated 2 June 2011; and at Annex 2 of *Changes to BT and KCOM's regulatory and financial reporting 2011/12 update*, dated 17 April 2012, which relates to BT's obligations in that it sets out the form and content to be applied by BT in preparing certain Regulatory Financial Statements required by virtue of condition OA5 and Direction 3;
- e) "Director" means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
- f) "Notification" means the notifications which set in place the obligations on BT referred to in recital (B) of this modified Direction above;
- g) "Original Direction 3" means the Direction given under SMP services condition OA2 at Annex 4 of *The Regulatory Financial Reporting obligations on BT and Kingston Communications statement*, dated 22 July 2004;

- h) "Original Direction 4" means Direction 4 given under SMP services condition OA2 at Annex 4 of *The Regulatory Financial Reporting obligations on BT and Kingston Communications statement*, dated 22 July 2004;
- i) "OFCOM" means the Office of Communications;
- j) "Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003, and the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003.

4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Direction and otherwise any word or expression shall have the same meaning as it has in the Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

5. For the purpose of interpreting this Direction:

- a) headings and titles shall be disregarded; and
- b) the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

6. This Direction shall take effect on the day it is published.

7. The Annex to this Direction shall form part of this Direction.

**David Brown**

**Director of Competition Finance, Ofcom**

**A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002**

**25 April 2013**

## **Annex A**

1. The form and content of the Regulatory Financial Statements set out in Direction 4 shall be amended as set out in paragraphs 2 to 4 below.
2. BT shall publish the Regulatory Financial Statements in Excel spreadsheet format as well as in portable document format ("PDF").
3. The requirement to publish "Average price/FAC" information as part of the market summary information in Annexes 11 and 13 is removed.
4. The form and content of the Regulatory Financial Statements set out in Direction 4 shall be amended as shown below in that:
  - Words struck through are deleted;
  - information highlighted in purple or blue shall be removed ;
  - the services highlighted in yellow and green shall be amalgamated as indicated;
  - the services highlighted in grey shall be further disclosed as indicated.

**Annex 11**

**Market summary**

Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations

**Wholesale analogue exchange line services**

Summary

	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adjs. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													

Detailed service analysis

	Non-discrimination			Cost orientation			
	Revenue £m	Volume Unit (b)	Average price £	FAC (see App 1.2) £	Unaudited (D)LRIC £	Unaudited DSAC £	Average price/FAC
<b>For the year ended 31 March 2013</b>							
<b>Service</b>							
Wholesale basic analogue internal service rentals	x	x x	x	x	x	x	x
Wholesale basic analogue external service rentals	x	x x	x	x	x	x	x
Wholesale premium analogue internal service rentals	x	x x	x	x	x	x	x
Wholesale premium analogue external service rentals	x	x x	x	x	x	x	x
Wholesale basic analogue internal service connections							
Wholesale premium analogue internal service connections							
Wholesale premium and basic analogue internal service connections	x	x x	x	x	x	x	x
Wholesale premium and basic analogue external service connections	x	x x	x	x	x	x	x
Wholesale premium and basic analogue internal service transfers	x	x x	x	x	x	x	x
Wholesale premium and basic analogue external service transfers	x	x x	x	x	x	x	x
Roundings	-						
<b>TOTAL</b>	<b>x</b>						

**Key:**

- Remove LRIC and DSAC information
- Remove Average Price/FAC column from all Market Summaries (i.e. Annexes 11/12/13)

Annex 11													
Market summary													
Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations													
Alternative interface symmetric broadband origination (up to and including 1Gbit/s)													
Summary													
	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													
Detailed service analysis													
	Non-discrimination				Cost orientation								
	Revenue	Volume	Unit (b)	Average price	FAC (see App 1.2)	Unaudited (D)LRIC	Unaudited DSAC	Average price/FAC					
	£m			£	£	£	£						
For the year ended 31 March 2013													
Service													
Wholesale extension services 10Mbit/s rentals - Internal	x		x	x	x								
Wholesale extension services 10Mbit/s rentals - External	x		x	x	x	x	x	x					
Wholesale extension services 100Mbit/s rentals - Internal	x		x	x	x								
Wholesale extension services 100Mbit/s rentals - External	x		x	x	x	x	x	x					
Wholesale extension services 1000Mbit/s rentals - Internal	x		x	x	x								
Wholesale extension services 1000Mbit/s rentals - External	x		x	x	x	x	x	x					
Wholesale extension services other bandwidth rentals - Internal	x		x	x	x								
Wholesale extension services other bandwidth rentals - External	x		x	x	x	x	x	x					
<b>Wholesale extension services connections – Internal</b>													
<b>Wholesale extension services connections – External</b>													
Backhaul extension services 1000Mbit/s rentals - external	x		x	x	x	x	x	x					
Backhaul extension services other bandwidth rentals - external	x		x	x	x	x	x	x					
<b>Backhaul extension services other bandwidth connections – external</b>													
Other internal Ethernet rentals	x		x	x	x	x	x	x					
Other internal Ethernet connections	x		x	x	x	x	x	x					
Other external Ethernet rental	x		x	x	x	x	x	x					
Other external Ethernet connection	x		x	x	x	x	x	x					

Ethernet Access Direct Local Access 10Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 10Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 100Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 100Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 1000Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 1000Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 10Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 10Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 100Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 100Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 1000Mbit/s rental - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 1000Mbit/s rental - External	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 10Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 10Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 100Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 100Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 1000Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Local Access 1000Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 10Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 10Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 100Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 100Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct Other 1000Mbit/s connection - Internal	x	x	x	x	x	x	x
Ethernet Access Direct Other 1000Mbit/s connection - External	x	x	x	x	x	x	x
Ethernet Access Direct 10Mbit/s rental - Internal							
Ethernet Access Direct 10Mbit/s rental - External							

BT and KCOM's regulatory financial reporting

Ethernet Access Direct 100Mbit/s rental - Internal								
Ethernet Access Direct 100Mbit/s rental - External								
Ethernet Access Direct 1000Mbit/s rental - Internal								
Ethernet Access Direct 1000Mbit/s rental - External								
Ethernet Access Direct 10Mbit/s connection - Internal								
Ethernet Access Direct 10Mbit/s connection - External								
Ethernet Access Direct 100Mbit/s connection - Internal								
Ethernet Access Direct 100Mbit/s connection - External								
Ethernet Access Direct 1000Mbit/s connection - Internal								
Ethernet Access Direct 1000Mbit/s connection - External								
Ethernet Backhaul Direct rentals - external	x	x	x	x	x	x	x	x
Ethernet Backhaul Direct connections - external	x	x	x	x	x	x	x	x
Main link rental charges - Internal	x	x	x	x	x	x	x	x
Main link rental charges - External	x	x	x	x	x	x	x	x
<b>Support Service</b>								
Equipment depreciation	x					x		
Excess construction charges - Internal	x	x		x		x		
Excess construction charges - External	x	x		x		x		
Roundings	x							
TOTAL	<u>x</u>							
<b>Key:</b>								
Consolidate Internal WES Connections service into the existing Other Internal Ethernet Connections service.								
Consolidate External Ethernet Connections services into the existing Other External Ethernet Connections service.								
Split Ethernet Access Direct (EAD) into EAD Local Access rentals and connections and 'Other' rentals and connections by bandwidth.								
Remove current Ethernet Access Direct services and split into EAD Local Access and EAD Other services by bandwidth.								
Remove Average Price/FAC column from all Market Summaries								

**Annex 11**

**Market summary**

Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations

**Wholesale local access**

Summary

	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													

Detailed service analysis

	Non-discrimination				Cost orientation			
	Revenue £m	Volume	Unit (b)	Average price £	FAC (see App 1.2) £	Unaudited (D)LRIC £	Unaudited DSAC £	Average price/FAC
<b>For the year ended 31 March 2013</b>								
<b>Service</b>								
MPF New Provides	x		x	x	x	x	x	x
MPF Single Migrations	x		x	x	x	x	x	x
MPF Buk Migrations	x		x	x	x	x	x	x
MPF Ceases	x		x	x	x	x	x	x
MPF Rentals	x		x	x	x	x	x	x
Co-mingling New Provides	x		x	x	x	x	x	x
Co-mingling Rentals	x		x	x	x	x	x	x
Tie Cables	x		x	x	x	x	x	x
SMPF New Provides	x		x	x	x	x	x	x
SMPF Single Migrations	x		x	x	x	x	x	x
SMPF Bulk Migrations	x		x	x	x	x	x	x
SMPF Ceases	x		x	x	x	x	x	x
SMPF Rentals	x		x	x	x	x	x	x
Roundings	x							
<b>TOTAL</b>	<b>759</b>							

**Key:**

Remove LRIC and DSAC information  
Remove Average Price/FAC column from all Market Summaries (i.e. Annexes 11/12/13).

Annex 13

Market summary

Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations

Call origination on fixed public narrowband networks

Summary

	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													

Detailed service analysis

	Non-discrimination						Cost orientation						
	Revenue £m	NCC traffic - millions of minutes (mm)				Average NCC rates - pence per minute (ppm)				FAC (see App 1.2) ppm	Unaudited (D)LRIC ppm	Unaudited DSAC ppm	Average price/FAC ppm
		Day	Evening	Weekend	24 hours	Day ppm	Evening ppm	Weekend ppm	Weighted Average ppm				
<b>For the year ended 31 March 2013</b>													
<b>Service</b>													
Internal Wholesale call originating local exchange segment PSTN and ISDN (excl OA)	x	x	x	x	x	x	x	x	x	x	x	x	x
External Wholesale call originating local exchange segment PSTN and ISDN (excl OA)	x	x	x	x	x	x	x	x	x	x	x	x	x
Internal Wholesale call originating local exchange segment (incl Operator Assistance)	x	x	x	x	x	x	x	x	x	x	x	x	x
External Wholesale call originating local exchange segment (incl Operator Assistance)	x	x	x	x	x	x	x	x	x	x	x	x	x
Internal Wholesale call originating local exchange segment (ISDN) (incl OA)	x	x	x	x	x	x	x	x	x	x	x	x	x
Internal Wholesale call origination local exchange Stick													
Internal Wholesale call origination local exchange Stick (ISDN)													
Internal Wholesale call origination local exchange Stick (PSTN & ISDN)	x	x	x	x	x	x	x	x	x	x	x	x	x
Internal Wholesale PPP	x	x	x	x	x	x	x	x	x	x	x	x	x
External Wholesale PPP	x	x	x	x	x	x	x	x	x	x	x	x	x
Roundings	x												
	<u>x</u>												

Key:

Consolidate the internal Wholesale call origination local exchange Stick services for PSTN & ISDN into one service.

Remove Average Price/FAC column from all Market Summaries

Annex 13

Market summary

Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations

Fixed call termination

Summary

	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													

Detailed service analysis

	Non-discrimination										Cost orientation			
	Revenue £m	NCC traffic - millions of minutes (mm)				Average NCC rates - pence per minute (ppm)				FAC (see App 1.2) ppm	Unaudited (D)LRIC ppm	Unaudited DSAC ppm	Average price/FAC ppm	
		Day	Evening	Weekend	24 hours	Day ppm	Evening ppm	Weekend ppm	Weighted Average ppm					
<b>For the year ended 31 March 2013</b>														
<b>Service</b>														
Internal Wholesale call termination local exchange segment	x	x	x	x	x	x	x	x	x	x	x	x	x	
External Wholesale call termination local exchange segment	x	x	x	x	x	x	x	x	x	x	x	x	x	
Internal Wholesale call termination local exchange segment (ISDN)	x	x	x	x	x	x	x	x	x	x	x	x	x	
Internal Wholesale call termination local exchange stick														
Internal Wholesale call termination local exchange stick (ISDN)														
Internal Wholesale call termination local exchange stick (PSTN & ISDN)	x	x	x	x	x	x	x	x	x	x	x	x	x	
Roundings	x													
	<u>x</u>													

Key:

Consolidate the internal Wholesale call termination local exchange Stick services for PSTN & ISDN into one service.  
Remove Average Price/FAC column from all Market Summaries

Annex 11													
Market summary													
Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations													
Technical Areas (Point of Handover)													
Summary													
	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adjs. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													
Detailed service analysis													
	Non-discrimination						Cost orientation				Average price/FAC		
	Revenue £m	Volume	Unit (b)	Average price £	FAC (see App 1.2) £	Unaudited (D)LRIC £	Unaudited DSAC £						
<b>For the year ended 31 March 2013</b>													
<b>Service</b>													
External Customer Sited Handover connections			x	x	x	x		x	x	x			
External Customer Sited Handover rentals			x	x	x	x		x	x	x			
External In Span Handover connections			x	x	x	x		x	x	x			
External In Span Handover rentals			x	x	x	x		x	x	x			
External 3rd Party POH Rentals - equipment			x	x	x	x		x	x	x			
External 3rd Party POH Rental 64kbit/s - circuit			x	x	x	x		x	x	x			
External 3rd Party POH Rental 2Mbit/s non CLZ - circuit			x	x	x	x		x	x	x			
External 3rd Party POH Rental 2Mbit/s other - circuit			x	x	x	x		x	x	x			
External 3rd Party POH Rental 64kbit/s													
External 3rd Party POH Rental 2Mbit/s non CLZ													
External 3rd Party POH Rental 2Mbit/s CLZ													
External 3rd Party POH Rental 34/45Mbit/s													
External 3rd Party POH Rental 155Mbit/s													
Roundings													x
TOTAL													x
<b>Key:</b>													
Create a POH Rentals - equipment service. Single service unrelated to bandwidth.													
Create POH Rentals - circuits services by bandwidth (only material services shown).													
Delete existing POH Rentals services.													
Remove Average Price/FAC column from all Market Summaries													

Annex 11													
Market summary													
Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations													
Wholesale broadband access market 1													
Summary													
	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													
Detailed service analysis													
	Non-discrimination						Cost orientation				Average price/EAC		
	Revenue £m	Volume	Unit (b)	Average price £			FAC (see App 1.2) £	Unaudited (D)LRIC £	Unaudited DSAC £				
For the year ended 31 March 2013													
Service													
Internal End user access connections Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
External end user access connections Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
External Datastream End user access Rentals Mkt 1													
EOI													
WBA Input													
Internal IPstream Connect End user access Rentals Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
External IPstream Connect End user access Rentals Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
External Datastream Virtual Paths Mkt 1													
EOI													
WBA Input													
Internal IPstream Connect Bandwidth Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
External IPstream Connect Bandwidth Mkt 1													
EOI									x	x	x		
WBA Input									x	x	x		
			x		x x				x	x	x		
Key:													
Consolidate Internal and External Datastream services into Ancillary Charges.													
Create new WBC services previously included in Ancillary Charges.													
Ancillary Charge services to include Datastream services but exclude WBC services.													
Remove Average Price/FAC column from all Market Summaries													

BT and KCOM's regulatory financial reporting

Internal WBC End User Access Rentals Mkt1							
EOI					x	x	x
WBA Input					x	x	x
					<u>x</u>	<u>x</u>	<u>x</u>
External WBC End User Access Rentals Mkt1							
EOI					x	x	x
WBA Input					x	x	x
					<u>x</u>	<u>x</u>	<u>x</u>
Internal WBC Bandwidth Mkt1							
EOI					x	x	x
WBA Input					x	x	x
					<u>x</u>	<u>x</u>	<u>x</u>
External WBC Bandwidth Mkt1							
EOI					x	x	x
WBA Input					x	x	x
					<u>x</u>	<u>x</u>	<u>x</u>
Internal Ancillary Charges and Other Mkt 1 (inc Datastream)							
EOI	x	x	x	x	x	x	x
WBA	x	x	x	x	x	x	x
External Ancillary Charges and Other Mkt 1 (inc Datastream)							
EOI	x	x	x	x	x	x	x
WBA	x	x	x	x	x	x	x
Roundings					1		
TOTAL					<u>415</u>		
<b>Key:</b>							
Consolidate Internal and External Datastream services into Ancillary Charges.							
Create new WBC services previously included in Ancillary Charges.							
Ancillary Charge services to include Datastream services but exclude WBC services.							
Remove Average Price/FAC column from all Market Summaries							

**Annex 11**

**Market summary**

Purpose of statement: to provide more detail on financial performance and first order tests of compliance with cost orientation and non-discrimination obligations

**Wholesale broadband access market 2**

Summary

	Internal Revenue £m	External Revenue £m	Revenue £m	Operating costs £m	Depreciation £m	Holding (gain)/loss £m	Supp. Dep. £m	Other adj. £m	Roundings £m	Total CCA operating costs £m	Return £m	MCE £m	Return on MCE
2013													
2012													

Detailed service analysis

	Non-discrimination				Cost orientation			
	Revenue	Volume	Unit (b)	Average price	FAC (see App 1.2)	Unaudited (D)LRIC	Unaudited DSAC	Average price/FAC
	£m			£	£	£	£	
<b>For the year ended 31 March 2013</b>								
<b>Service</b>								
Internal End user access connections Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	
External end user access connections Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	
External Datastream End user access Rentals Mkt 2								
EOI								
WBA Input								
Internal IPstream Connect End user access Rentals Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	
External IPstream Connect End user access Rentals Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	
External Datastream Virtual Paths Mkt 2								
EOI								
WBA Input								
Internal IPstream Connect Bandwidth Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	
External IPstream Connect Bandwidth Mkt 2								
EOI					x	x	x	
WBA Input	x	x	x	x	x	x	x	

**Key:**

Consolidate Internal and External Datastream services into Ancillary Charges.

Create new WBC services previously included in Ancillary Charges.

Ancillary Charge services to include Datastream services but exclude WBC services.

Remove Average Price/FAC column from all Market Summaries

BT and KCOM's regulatory financial reporting

Internal WBC End User Access Rentals Mkt2							
EOI					x	x	x
WBA Input	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
External WBC End User Access Rentals Mkt2							
EOI					x	x	x
WBA Input	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
Internal WBC Bandwidth Mkt2							
EOI					x	x	x
WBA Input	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
External WBC Bandwidth Mkt2							
EOI					x	x	x
WBA Input	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
Internal Ancillary Charges and Other Mkt 2							
EOI		x	x	x	x	x	x
WBA	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
External Ancillary Charges and Other Mkt 2							
EOI		x	x	x	x	x	x
WBA	<u>          </u>	x	x	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
		x		x	x	x	x
Roundings					x		
TOTAL	<u>          </u>			<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
					x		
<b>Key:</b>							
Consolidate Internal and External Datastream services into Ancillary Charges.							
Create new WBC services previously included in Ancillary Charges.							
Ancillary Charge services to include Datastream services but exclude WBC services.							
Remove Average Price/FAC column from all Market Summaries							

**Section 6.3 - Attribution of Wholesale Current Cost Mean Capital Employed 2013 (Annex 6A)**

For the year ended 31 March 2013

	Wholesale analogue exchange line services	Wholesale ISDN2 exchange line services	Wholesale business ISDN30 exchange line services	TISBO (up to and including 8Mbit/s)	TISBO (above 8Mbit/s up to and including 45Mbit/s)	TISBO (above 45Mbit/s up to and including 155Mbit/s)	AISBO (up to and including 1Gbit/s)	Wholesale local access	Total Access Markets	Call origination on fixed public narrowband networks	Single transit on fixed public narrowband networks	Technical areas (Interconnect Circuits)	Fixed call termination	Wholesale trunk segments	Technical areas (Point of Handover)	Sub-total Other Wholesale & SMP National Markets	Wholesale broadband access - Market 1	Wholesale broadband access - Market 2	Total Other Wholesale & SMP Markets	Wholesale Residual	Total Markets
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m
<b>Non-current Assets</b>																					
Land & Buildings	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Access - Copper	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Access - Fibre	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Access - Duct	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Switch	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Transmission	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Other	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Gross non-current assets	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Less government grants	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Net non-current assets	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Investments	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
<b>Total Non-current Assets</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
<b>Current Assets</b>																					
Inventories	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Receivables																					
- Internal	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
- External	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
<b>Total Current Assets</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
<b>Payables falling due within one year</b>																					
- Internal	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
- External	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
<b>Total payables falling due within one year</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
<b>Net Current Assets/(Payables)</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
<b>Total Assets less Current Payables</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
Provisions for liabilities & charges	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Roundings	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
<b>Mean Capital Employed</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>	<b>x</b>
Key																					
Separately report state funded non current assets																					

## Annex 2

# Glossary

**21CN:** BT's next generation network upgrade.

**ADSL (Asymmetric Digital Subscriber Line):** a digital technology that allows the local loop to send a large quantity of data in one direction and a lesser quantity in the other.

**Alternative interface symmetric broadband origination (AISBO)**

A form of symmetric broadband origination service providing symmetric capacity between two sites, generally using an Ethernet IEEE 802.3 interface.

**Backhaul:** Connection from the first access node (for example the local exchange or street cabinet) to the core network.

**Backhaul Ethernet Services (BES)**

A wholesale Ethernet service which provides high speed, point-to-point data circuits. Each one provides a secure link from a customer's premises, to a Communications Provider's Digital Subscriber Line Access Multiplexer and the Communications Provider's site.

**Ethernet Access Direct (EAD)**

A wholesale Ethernet product which offers permanently connected, point-to-point high speed data circuits that provide a secure and un-contended access service for Communications Providers. EAD is a next generation network compatible service designed to complement Openreach's Ethernet Backhaul Direct (EBD) and Bulk Transport Link (BTL) products already offered within the Connectivity Services portfolio.

**Ethernet Backhaul Direct (EBD)**

A wholesale Ethernet product which offers permanently connected, point-to-point high speed data circuits that provide a secure and un-contended backhaul service for Communications Providers.

**Fully allocated cost (FAC)**

An accounting approach under which all the costs of the company are distributed between its various products and services. The fully allocated cost of a product or service may therefore include some common costs that are not directly attributable to the service.

**Long Run Incremental Cost (LRIC)**

The cost caused by the provision of a defined increment of output given that costs can, if necessary, be varied and that some level of output is already produced.

**Point of Handover (POH)**

A point where one communications provider interconnects with another communications provider for the purposes of connecting their networks to 3rd party customers in order to provide services to those end customers.

**Wholesale Extension Service (WES)**

A BT wholesale Ethernet product that can be used to link a customer premise to a node in a communications network.

**Distributed long run incremental cost (DLRIC):** The LRIC of the individual service with a share of costs which are common to other services over BT's core network.

**Distributed stand alone cost (DSAC):** An accounting approach estimated by adding to the DLRIC a proportionate share of the inter-increment common costs. Rather than all common costs shared by a service being allocated to the service under consideration, the common costs are instead allocated amongst all the services that share the network increment.

**Local loop unbundling (LLU):** A process by which a dominant provider's local loops are physically disconnected, or partially disconnected, from its network and connected to competing provider's networks. This enables operators other than the incumbent to use the local loop to provide services directly to customers.

**Metallic path facilities (MPF):** The provision of access to the copper wires from the customer premises to a BT MDF that covers the full available frequency range, including both narrowband and broadband channels, allowing a competing provider to provide the customer with both voice and/or data services over such copper wires.

**MPF Cease and SMPF Cease:** charges for record keeping services which may be incurred when a CP terminates an LLU service.

**Wholesale Line Rental (WLR):** The service offered by BT to other UK communications providers to enable them to offer retail line rental services in competition with BT's own retail services. Line rental is offered along with calls (and other service elements, such as broadband) to retail customers.

**Shared metallic path facility (SMPF)/shared access:** the provision of access to the copper wires from the customer's premises to a BT MDF that allows a competing provider to provide the customer with broadband services, while the dominant provider continues to provide the customer with conventional narrowband communications.

**Wholesale Broadband Connect (WBC):** BT's WBA 21CN product using Ethernet backhaul and ADSL2+ technology.