

**LAWRENCE KNIGHT
OFCOM
BY EMAIL**

28 November 2011

Dear Lawrence

Dispute between Talk Talk Group and Openreach relating to the MPF rental charge

Ofcom is finding it necessary to resort to implementing voluntary commitments for charging between charge controls on an ever more frequent basis.

These voluntary commitments are not subject to public consultation and as such represent an agreement between BT and Ofcom which is not subject to the scrutiny that charge controls are.

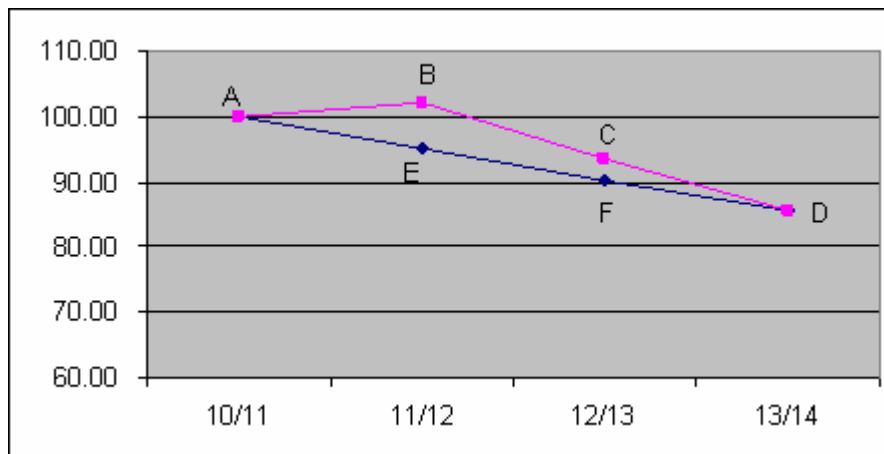
We find it highly concerning that any disconnect between the charges offered during the voluntary commitment period and charges that are appropriately found to be lower during the charge control consultation cannot be remedied.

Presently the incentives upon BT are to agree voluntary commitments for charges that are in excess of the charges that should be set in place had a charge control followed on directly from an expired control. Furthermore BT has the incentive to delay the conclusion of the new charge control for as long as possible by providing insufficient data or changing data thus requiring additional consultation (as more data on a subject transpires, or when modelling on updated data reveals that the conclusions no longer sit within the consulted upon range).

Ofcom approaches the resolution of this dispute by following the standard approach of considering whether BT was in compliance with the rules in place at the time: not to price above

the voluntary commitment and to price on a cost orientated basis. As BT's prices have not exceeded the voluntary commitment or the DSAC (which we presume to be the last years DSAC as the current DSAC cannot yet be know) Ofcom finds that BT is in compliance. In this situation the "DSAC" test is an inappropriate test.

We firmly believe that a new approach to dealing with this important issue is necessary. A change in approach will alter the incentives to set voluntary commitments too high and protract consultation processes. We consider that Ofcom does not view the current process as economically harming competition in these markets. We note that in the latest LLU / WLR charge control consultation within paragraphs 2.10 to 2.13 Ofcom discusses the interplay between the old and new charge controls. It is presented that despite the gap year of the voluntary commitment that the end outcome can be modified to result in the same end. This is not the case as we illustrate in the table below.



We understand the proposal to be as follows:

A = where prices were last year

B = where prices are now

D = where prices are to be at the end of the charge control

Ofcom's approach to resolve the gap between where prices are where they should be is to move direct to F for next year, then D the year after, as opposed to going C then D. Whilst the end out

come / trajectory is the same this approach does not in any way attempt to correct the fact that the bridging arrangement in 2011/12 was wrong and that BT received a windfall benefit for the year 2011/12.

We urge Ofcom to reconsider its treatment of this matter and certainly modify the approach to putting in place future voluntary commitments which set a clear expectation of a claw back of overcharging during such periods.

Yours sincerely

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