Fixed access market reviews

Further consultation on notification periods, compliance with requirements on the VULA margin, and approach to pricing for TRCs and SFIs

Redacted for publication [✂]

Consultation

Publication date: 16 January 2014

Closing Date for Responses: 17 February 2014

Contents

Section 1

Executive summary

1.1 In July 2013, Ofcom consulted on its proposals for market definition, SMP assessment and remedies across a number of fixed access markets ('the July 2013 FAMR Consultation').[1]

1.2 In light of stakeholder responses[2], and our own further analysis, we consider that it is appropriate to consult further in relation to:

- the notification period for price reductions to the Wholesale Line Rental ('WLR') rental charge;
- the provision of information necessary to monitor BT's compliance with the fair and reasonable terms, conditions and charges requirement with regards to the margin for Virtual Unbundled Local Access ('VULA'); and
- pricing for Time Related Charges ('TRCs') and Special Fault Investigations ('SFIs').

Notification period for reductions to the WLR rental charge

1.3 In the July 2013 FAMR Consultation we proposed to apply a shorter notification period of 28 days for price reductions in the Wholesale Local Access ('WLA') market. However we retained the standard notification period of 90 days for WLR rental charges in the Wholesale Fixed Analogue Exchange Lines ('WFAEL) market.

1.4 In light of responses to the consultation, we consider that it is appropriate to propose a shorter notification period of 28 days for WLR rental price reductions in the WFAEL market, aligning the notification period with the WLA market.

VULA margin compliance

1.5 In the July 2013 FAMR Consultation, we proposed to impose on BT a requirement to provide network access on fair and reasonable terms, conditions and charges. We also set out proposed guidance on what is likely to constitute a margin between the price of VULA and downstream prices that is consistent with this obligation (the VULA margin).

1.6 We are now proposing to require BT to provide information necessary to monitor its compliance with this obligation in respect of the VULA margin. We therefore propose an obligation on BT to provide information on the VULA margin to Ofcom every six months.

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[1] Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, 3 July 2013, http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/.
[2] See http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/?showResponses=true.

TRCs and SFIs

1.7 In the July 2013 FAMR Consultation we proposed Basis of charges obligations for TRCs and SFIs provided by BT in relation to Local Loop Unbundling ('LLU') and WLR services, requiring BT to set charges on a forward looking fully allocated cost (FAC) basis (allowing for an appropriate return on capital employed), reflecting the average costs in any year.

1.8 In light of responses to the consultation we have conducted further analysis on the contestability of TRCs and SFIs and the costs involved in their provision. Following this, we now consider that a charge control is appropriate for those TRCs and SFIs which are reasonably necessary for the provision of services based on LLU, WLR, wholesale ISDN30 and wholesale ISDN2. In particular we propose:

- a one-off reduction to each and every TRC charge in the range of 12-40% (with a base case reduction of 16%), with charges subsequently indexed to +0.2%; and

- that the hourly charge used to calculate SFI module prices should be aligned with the TRC "Additional Hour" charge, with charges subsequently indexed to +0.2%, and to extend the requirement for fair and reasonable charges on SFIs.

Next steps

1.9 We invite comments from interested parties on the proposals in this document. The consultation period runs for 1 month, to 17 February 2014. Please see Annex 1 for details on how to respond.

1.10 Following consideration of consultation responses we expect to publish our Statement on the issues covered by the Fixed Access Market reviews in spring 2014.

Section 2

Introduction

2.1 In this section we set out the scope of this consultation along with the legal and regulatory framework within which we are making these proposals. We also explain our approach to Impact Assessment and Equality Impact Assessment.

Scope of this consultation

2.2 This consultation forms part of Ofcom's Fixed Access Market Reviews ('FAMR').

2.3 In July 2013, we published for consultation the preliminary conclusions of our review of the Wholesale Local Access ('WLA'), Wholesale Fixed Analogue Exchange Lines ('WFAEL'), ISDN30, and ISDN2 markets in the UK ('the July 2013 FAMR Consultation').[3] We assessed the state of competition in these markets and, where appropriate, we proposed regulatory obligations on CPs that we provisionally identified as having significant market power ('SMP'). The regulatory conditions we proposed were those that we identified as being appropriate to address the competition concerns arising out of that SMP.

2.4 In light of stakeholder responses[4], and our own further analysis, we consider that it is appropriate to consult on further remedy proposals for the following areas:

- the notification period for price reductions to the Wholesale Line Rental ('WLR') rental charge;
- the provision of information necessary to monitor BT's compliance with the fair and reasonable terms, conditions and charges requirement with regards to the margin for Virtual Unbundled Local Access ('VULA'); and
- pricing for Time Related Charges ('TRCs') and Special Fault Investigations ('SFIs').

2.5 This consultation therefore addresses our revised proposals for these three specific areas. For the reasons set out in this document, we consider that our revised proposals are a necessary and proportionate means of addressing the relevant concerns identified in the July 2013 FAMR Consultation.

2.6 We do not repeat in this document the description or reasoning relating to the full set of the July 2013 FAMR Consultation proposals. Where stakeholder responses to the July consultation raised issues that are not the subject of this consultation, these responses will be addressed in the final statement. Instead, we focus on those areas set out above for which we have revised our proposals or introduced new proposals. In forming the proposals set out in this consultation, we have taken account of relevant stakeholder responses to the July 2013 FAMR Consultation along with,

[3] Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, 3 July 2013, http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/.

[4] See http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/?showResponses=true.

where appropriate, further evidence obtained through the use of our statutory information gathering powers.

The legal and regulatory framework

2.7 Annex 7 of the July 2013 FAMR Consultation[5] sets out an overview of the legal and regulatory framework for the market review process, including for the imposition of remedies, providing appropriate context for the matters that document discussed. We supplement this in each of the sections below where we set out how our proposed remedies meet with the required legal tests.

Impact Assessment and Equality Impact Assessment (EIA)

Impact Assessment

2.8 The July 2013 FAMR Consultation constituted an impact assessment as defined by section 7 of the Communications Act 2003 ('the CA03'). This consultation supplements that impact assessment. Further information about Ofcom's approach to impact assessments can be found in our guidelines *Better Policy-Making: Ofcom's approach to Impact Assessment*.[6]

EIA

2.9 Ofcom is required by statute to assess the potential impact of all our functions, policies, projects and practices on race, disability and gender equality. EIAs also assist us in making sure that we are meeting our principle duty of furthering the interests of citizens and consumers regardless of their background or identity. Annex 8 of the July 2013 FAMR Consultation set out our EIA for this market review and this applies to the additional proposals set out in this consultation.[7]

2.10 In summary, it is not apparent to us that the outcome of our review will have any particular impact on race, disability and gender equality. While our research identifies differences in take-up and use of fixed-line services by different groups within society, our proposals concerning wholesale network access remedies are aimed at promoting competition across the range of fixed-line services and therefore it is not apparent that they are likely to have any particular impact at the retail level on race, disability and gender equality. Further, we do not envisage any need to carry out separate EIAs in relation to race, gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes.

Next steps

2.11 We invite comments from interested parties on the proposals in this document. The consultation period runs for one month, to 17 February 2014. Please see Annex 1 for details on how to respond.

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[5] Ofcom, *Fixed access market reviews consultation annexes – Annex 7*, 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/annexes/FAMR_Consultation_annexes.pdf.

[6] Ofcom, *Better Policy-Making: Ofcom's approach to impact assessment,* 21 July 2005, http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf.

[7] Ofcom, *Fixed access market reviews consultation annexes – Annex 7*, 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/annexes/FAMR_Consultation_annexes.pdf.

2.12 Following consideration of consultation responses we would expect to publish our Statement on the issues covered by the Fixed Access Market Reviews in spring 2014.

Document structure

2.13 The remainder of this consultation document is set out in the following structure:

- Section 3: Notification period for price reductions to the WLR rental charge
- Section 4: Reporting requirement on the VULA margin
- Section 5: Time Related Charges and Special Fault Investigations – approach to pricing

2.14 The Annexes cover:

- Annex 1: Responding to this Consultation
- Annex 2: Ofcom's consultation principles
- Annex 3: Consultation response cover sheet
- Annex 4: Consultation questions
- Annex 5: TRC/SFI ordering steps and processes
- Annex 6: Cost accounting templates
- Annex 7: Draft legal instrument
- Annex 8: Consolidated SMP conditions 7A, 7C, 7D and 7E
- Annex 9: Sources of evidence
- Annex 10: Glossary

Section 3

Notification period for price reductions to the WLR rental charge

Background

July 2013 FAMR Consultation proposals

3.1 In the July 2013 FAMR Consultation[8] we set out our proposals to impose certain requirements on BT and KCOM to notify changes to their charges (and terms and conditions where specified) for network access products and services in each of the wholesale fixed access markets. These proposals formed part of the package of remedies to address the competition problems arising from the position of SMP we provisionally found BT and KCOM to hold in the WLA, WFAEL, wholesale ISDN30 and wholesale ISDN2 markets.[9]

3.2 While, in the main, we considered that it was appropriate to re-impose existing price notification requirements in wholesale fixed access markets, we made a new proposal to apply a shorter 28 day notification period for price reductions in the WLA market. However, we did not propose the same shorter notification period for reductions to the WLR rental charge[10] in the WFAEL market.

July 2013 FAMR Consultation responses

3.3 BT[11] and EE[12] questioned why we had not also proposed to introduce a shorter notification period for WLR rental charge reductions. BT said that notification periods need to be consistent otherwise it would be prevented from structuring special offers for CPs using WLR/Shared Metallic Path Facility ('SMPF) and Metallic Path Facility ('MPF') on similar timescales.

3.4 EE, as a consumer of WLR and SMPF, was concerned that it and other CPs could be placed at disadvantage with MPF based rivals going forward, for example, in passing through price reductions. EE therefore strongly recommended that Ofcom revise the proposed terms of SMP Condition 9.4B so that it mirrors the proposed terms of SMP Condition 9.4A.

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[8] Paragraphs 10.186-10.227, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.
[9] KCOM in the Hull Area only and BT in the UK excluding the Hull Area.
[10] We proposed to re-impose the existing 90 day notification requirement.
[11] Paragraph 208, *BT Response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/BT.pdf.
[12] Pp.9-10, *EE Response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/EE.pdf.

Further proposal

3.5 In light of the responses from BT and EE we are consulting on a 28 day notification period for reductions to the WLR rental charge. We consider that this approach recognises the benefits to industry and end users from shorter notification periods when prices are being reduced and that there is no risk of financial exposure for CPs. Often price reductions can be part of a special offer to which conditions are attached so the shorter notice period would also apply to such conditions.[13]

3.6 We invite further comments from stakeholders on allowing a shorter notice period of 28 days for WLR rental charge reductions. We set out at Annex 7 the changes to the proposed SMP condition necessary to implement this change.

Consultation question

3.1 Do you agree with our proposal to reduce from 90 days to 28 days the notification period that BT and KCOM are required to give in respect of reductions to the WLR rental charge? Please provide reasons in support of your views.

Legal tests

3.7 We set out at paragraphs 10.223 to 10.227 of the July 2013 FAMR Consultation why we were satisfied that our proposal that BT and KCOM in each of the markets where we proposed to find SMP be subject to a requirement to notify charges (and terms and conditions where specified) met the legal tests set out in the CA03. We do not consider that the above proposed amendment to the proposed SMP conditions for BT in respect of the WFAEL market in the UK but excluding the Hull Area and for KCOM in the WFAEL market for the Hull Area[14] changes that assessment and therefore, for the reasons set out in the July 2013 FAMR Consultation, we consider that our proposed SMP conditions continue to meet the various tests set out in the CA03.[15]

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[13] As with our WLA proposal, we further consider that a 28 day notice period should apply to any increase in prices that may occur at the end of the special offer (where the price immediately following the end of the special offer is no higher than the price immediately before the start of the special offer).

[14] See Annex 11, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/annexes/FAMR_Consultation_annexes.pdf.

[15] Paragraphs 10.223-10.227, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf. http://www.stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf

Section 4

Reporting requirement on the VULA margin

Background

4.1 In the July 2013 FAMR Consultation, we proposed to impose on BT a requirement to provide network access, including VULA, on fair and reasonable terms, conditions and charges. We also set out proposed guidance on what is likely to constitute a margin between the wholesale price of VULA and downstream prices that is consistent with this obligation ('the VULA margin').

4.2 We are proposing an addition to the SMP condition imposing the fair and reasonable terms, conditions and charges requirement, namely to require BT to provide certain information necessary to monitor its compliance with this obligation in respect of the VULA margin.

Further proposal

4.3 We are proposing to impose an obligation on BT that would require it to provide Ofcom with information necessary to monitor its compliance with the fair and reasonable terms conditions and charges condition (SMP Condition 1.3) every six months. The proposed requirement would be implemented through the amendment set out in Annex 7 to SMP Condition 1 proposed in the July 2013 FAMR Consultation.

4.4 The proposed condition is required for Ofcom to monitor BT's compliance with the requirement in respect of the VULA margin. It is similar to the obligations we apply in respect of reporting on compliance for other charge controls, such as those proposed for Local Loop Unbundling ('LLU') and WLR (WFAEL).[16]

4.5 At the time we first imposed VULA as a remedy to address BT's SMP in the 2010 WLA market review[17], we noted that given BT would need to ensure it complied with its regulatory obligations, we expected that "*BT would need to maintain financial models that contain relevant information on VULA and downstream product costs and prices, and their development over time*".[18] We repeated this expectation in the

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[16] In our consultation *Fixed access market reviews: approach to setting LLU and WLR charge controls,* of 11 July 2013 (http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf), we proposed such requirements in respect of the LLU and WLR charge controls; see paragraph 8.24 and proposed SMP conditions 7A.11 and 7C.8 in Part 1 of Annex 15 of Ofcom, *Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*, 9 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-llu-wlr-charge-controls/summary/famr-2013.pdf.

[17] Ofcom, *Review of the wholesale local access market: Statement on market definition, market power determinations and remedies*, 7 October 2010, http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf.

[18] Paragraph 8.133, Ofcom, *Review of the wholesale local access market: Statement on market definition, market power determinations and remedies*, 7 October 2010, http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf.

July 2013 FAMR Consultation.[19] Our proposed condition would mean that in addition to keeping these records for itself, BT also needs to provide them to Ofcom on a periodic basis.

4.6 Subject to a final decision to apply the obligation as part of the forthcoming 2014 FAMR Statement, we will undertake discussions with BT about the exact format we would expect the information to be provided in. It could, for example, be similar to the internal model that it maintains, which would minimise the regulatory burden on BT in complying with this requirement.

4.7 We consider that it is appropriate to impose a requirement on BT to report its compliance more than once a year (for instance the current and proposed LLU and WLR (WFAEL) charge controls require annual reporting) given that BT has pricing flexibility over VULA and thus can change VULA prices significantly at any time (subject to giving required notice). Therefore, we consider that requiring BT to report every six months is an appropriate frequency, reflecting the fact that CPs typically change their prices once or twice a year and the fact that the superfast broadband market is in a developing rather than mature phase. It also recognises that, even where prices have not changed since the last report, updated compliance information will also capture changes in costs and volumes.

4.8 We anticipate seeking the first report from BT shortly after the publication of our final proposals on the VULA margin, recognising that, depending on when we publish these, it may be appropriate for the first reporting date to be a different date to the regular reporting dates proposed. We have also considered the risk of BT making significant product or pricing changes only shortly after lodging their biannual report. However, we do not consider it necessary at this stage to include a specific power to require BT to report on request outside the biannual reports, noting we could use our formal information request powers to seek updated data as necessary.

Consultation question

5.1 Do you agree with our proposals for BT to provide information on the VULA margin every six months? Please provide reasons in support of your views.

Legal tests

4.9 We explained at paragraphs 10.32 to 10.43 of the July 2013 FAMR Consultation the reasons why we considered that the proposed requirement on BT to provide network access, including VULA on fair and reasonable terms, conditions and charges, met the various tests set out in the CA03. The additional reporting requirement we are proposing to impose on BT is necessary to monitor compliance with the fair and reasonable requirement and is ancillary to that obligation.

4.10 Section 87(5)(b) authorises conditions for securing that the obligations contained in conditions are complied with within the periods and at the times required by or under the conditions. Further, section 87(9)(c) authorises conditions imposing such rules as we may make for the purposes of matters connected with the provision of network access to the relevant network, or with the availability of relevant facilities, about the

[19] Paragraph 11.471, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

use of cost accounting systems. Such conditions include conditions requiring the application of presumptions in the fixing and determination of costs and charges for the purposes of the price controls, rules and obligations imposed by virtue of that subsection (section 87(10)). Where such conditions are imposed, we must be satisfied that the conditions about network access pricing set out in section 88 are also satisfied.

4.11 We consider that imposing a reporting obligation is consistent with section 88 for the reasons set out in paragraphs 10.36 to 10.40 of the July 2013 FAMR Consultation.

4.12 We have considered our statutory obligations and the Community requirements set out in sections 3 and 4 of the CA03. In particular, we consider that the imposition of the proposed reporting obligation is justifiable and proportionate to promote competition in relation to the provision of electronic communications networks and services and to ensure the provision of network access (including supporting ancillary services) and service interoperability for the purpose of securing efficient and sustainable competition and the maximum benefit for the persons who are customers of CPs. This is because the imposition of the obligation will ensure that other obligations designed to curb potentially damaging leverage of market power – in particular the setting of VULA wholesale charges that are not fair and reasonable with respect to the VULA margin – can be effectively monitored and enforced.

4.13 We have considered the Community requirements set out in section 4 of the CA03 and believe for the same reasons that the proposed reporting obligation in particular promotes competition in relation to the provision of electronic communications networks and encourages the provision of network access for the purpose of securing efficiency and sustainable competition in downstream markets for electronic communications networks and services, resulting in the maximum benefit for retail consumers.

4.14 We consider that the proposed requirement meets the criteria set out in section 47(2) of the CA03 because it is:

- objectively justifiable, in that it is necessary in order to monitor BT’s activities with regard to the pricing remedies we have proposed for VULA. It also relates to the need to ensure competition develops fairly, to the benefit of consumers, by providing information on BT’s compliance with its fair and reasonable charges obligation with respect to the VULA margin;

- non-discriminatory, in that BT is the only CP on which we propose to impose specific VULA pricing remedies;

- proportionate, in that only information that is no more than necessary to monitor BT’s activities with regard to the pricing remedies we propose is required to be maintained and provided; and

- transparent, in that it is clear in its intention to ensure the appropriate maintenance and provision of information for the purposes set out above.

4.15 For the reasons set out above, we consider that the proposed condition is appropriate to address the competition concerns identified, in line with section 87(1) of the CA03.

Time Related Charges and Special Fault Investigations – approach to pricing

Background

5.1 As part of the July 2013 FAMR Consultation, we considered our approach to the pricing of certain LLU and WLR ancillary services which fall outside the scope of the proposed charge controls for those products, including TRCs and SFIs.[20]

5.2 TRCs, provided across BT's portfolio of products, are services involving work not covered by BT service level agreements.[21] They are generally charged on a per visit and/or per hour basis for an engineer, with prices varying depending on when the work takes place (e.g. business hours or outside normal business).

5.3 SFIs are services requested by CPs for further investigation of faults on the MPF or SMPF line where no fault has been found using the standard Openreach line test. These services are sold in individual modules for both MPF and SMPF, with CPs purchasing a compulsory base module covering the fault investigation and further modules covering repairs (CPs often request more than one module to locate and fix a fault).[22] Current charges for SFIs are on a per module basis, and vary depending on the module (from £15 up to £130).

5.4 We set out our proposals in the July 2013 FAMR Consultation to impose a Basis of charges obligation on TRCs and SFIs. However, in light of the responses to that consultation and further evidence gathered, we have reconsidered our position and now set out our view that a charge control on these services is necessary where these services are provided in all fixed access markets assessed within this review for TRCs and the WLA market for SFIs.

July 2013 FAMR Consultation proposals

5.5 We set out in the July 2013 FAMR Consultation our view that, while TRCs and SFIs were in theory contestable, they were in practice unlikely to be sufficiently constrained by competition as difficulties in determining whether faults were on or off

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[20] Paragraphs 12.84-12.88 and paragraphs 14.49-14.53, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf. The remainder of the charge control proposals were addressed in the separate consultation, Ofcom, *Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*, 11 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf.

[21] Openreach, *Fact sheet: Time Related Charges*, www.openreach.co.uk/orpg/home/products/serviceproducts/timerelatedcharges/timerelatedcharges/downloads/TRCs.pdf.

[22] The modules being: Base, Network, Frame, Internal wiring, Internal equipment, Co-op, and Frame Direct. The choice of further SFI modules depends on the outcome of work undertaken as part of the base module.

[22] The modules being: Base, Network, Frame, Internal wiring, Internal equipment, Co-op, and Frame Direct. The choice of further SFI modules depends on the outcome of work undertaken as part of the base module.

the Openreach network meant that in most cases it was unlikely to be economic for third party CPs to use non-Openreach engineers.

5.6 We therefore proposed Basis of charges obligations for TRCs and SFIs in each of the WLA and WFAEL markets, requiring BT to set charges on a forward looking fully allocated cost ('FAC') basis (allowing for an appropriate return on capital employed), reflecting the average costs in any year.

Stakeholder responses to the July 2013 FAMR Consultation

BT[23]

5.7 BT said that proposing to regulate all TRCs and SFIs was inconsistent with the approach taken in the 2011 LLU WLR Charge Control Review which imposed cost orientation only on those TRC and SFI services which were reasonably necessary for the provision of LLU and WLR. BT stated that the same approach should be adopted in this case, noting that activities which could be performed by an organisation other than Openreach were not 'reasonably necessary' and we had ignored the fact that TRCs and SFIs are in a competitive market.

5.8 BT considered that the vast majority of TRCs either do not involve a fault on the Openreach network or involve a problem on the customer side of the network, and therefore any engineering service provider could be used to resolve the issue. Similarly, BT considered that the majority of SFI work did not necessitate work on the Openreach network. BT considered that CPs can generally anticipate in advance when they can only use an Openreach engineer for TRCs (using Openreach's best practice diagnostic guidelines).

5.9 BT however accepted that it would be difficult in practice to disaggregate TRCs and SFIs to allow regulation to focus on those which were reasonably necessary. It therefore suggested that a "safeguard cap" would be a more practical and proportionate alternative. It also suggested that the safeguard cap should apply to each individual TRC or SFI product, rather than using a weighted approach.[24]

5.10 BT was also concerned about our proposal to use a FAC based cost standard, which it felt was inappropriate for a competitive market. It argued that such an approach would also prevent it from earning an appropriate margin, given the low capital employed for TRC and SFI services, and would undermine any incentive for innovation or efficiency improvements. To the extent we regulate TRCs and SFIs, BT stated that it should be done in a way which enabled it to earn a margin to provide the appropriate economic incentives to invest and innovate. BT also noted that the proposed approach was inconsistent with that taken in other markets (e.g. post) and that it had not changed its pricing approach since the 2011 LLU WLR charge control which concluded that BT's returns from TRCs were reasonable.

[23] Paragraphs 345-379, *BT response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/BT.pdf.
[24] Informal information submission from BT, 22 November 2013.

Sky[25]

5.11 Sky considered that there was almost no competitive constraint for TRCs or SFIs and that BT had the incentive and ability to price the services above the competitive level. Sky stated that it had very little option other than to use an Openreach engineer for initial fault investigations as it may be uneconomic to use non-Openreach engineers if the fault is found to be on Openreach's network.

5.12 Sky agreed that some form of pricing protection was necessary, but disagreed with our proposed Basis of charges approach. Sky argued that this would allow BT to recover current direct and indirect costs without any assessment as to whether such costs are justified, and so would do nothing to incentivise BT to improve its processes and systems. Sky instead suggested a charge control, which would provide such incentives and prevent excessive pricing.

5.13 Finally, Sky said that while using FAC as a cost standard was acceptable, we could go further and move towards a long run incremental cost ('LRIC') approach in line with our proposals in relation to "key migration services" outlined in the 2013 LLU WLR Charge Control Consultation. Sky argued that this was appropriate because, like the "key migration services", TRCs and SFIs involve engineering activity and so should be treated in the same way.

TalkTalk[26]

5.14 TalkTalk argued that the majority of TRCs and SFIs related to individual services and were not contestable as in many cases an Openreach engineer visit was required to ascertain the location of a fault even where the repair work was ultimately not on the Openreach network.

5.15 TalkTalk noted that it used third party (Qube) engineers where it was reasonably clear that the fault did not require repair work on the Openreach network and where it was not likely that using Qube would require an additional Openreach engineer visit, which "added costs and caused significant customer inconvenience". Therefore, TalkTalk argued, where it used Openreach engineers for the remaining TRC and SFI work it did so because it was unavoidable. TalkTalk added that given Qube engineers were cheaper than Openreach, the fact that it used the more expensive Openreach engineers was indicative of BT's market power over those TRC and SFI services.

5.16 TalkTalk preferred a basket charge control remedy in order to provide better cost minimisation incentives and to mitigate against gaming opportunities by BT. However, TalkTalk broadly agreed with our proposal that (over each 12 month period) the prices for TRCs and SFIs should be no more than the actual FAC cost (imposed under a Basis of charges obligation), for the following reasons:

- BT had SMP;

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[25] Paragraphs 2.7-2.10, *Sky response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/Sky.pdf.

[26] Paragraphs 6.32-6.34, *TalkTalk response to the 2013 WLR LLU Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/responses/TalkTalk_Group.pdf, and Paragraphs 5.1-5.8, *TalkTalk further response of 23 December 2013 to the 2013 WLR LLU Consultation,* http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/responses/TalkTalk_Group_Comments_on_BTs_Response.pdf.

- SFI services were wholly un-contestable and TRCs were mostly un-contestable;

- the level of common costs for these services is low, such that the need for price flexibility to achieve allocative cost efficiencies was minimal; and

- costs were well understood and the risk of charges being inadvertently set above or below FAC were small.

5.17 TalkTalk argued that prices should be based on the efficient cost level, which would be much lower than Openreach's – for example, TalkTalk estimated that, on a like-for-like basis, the cost of a Qube engineer was significantly less ([✂]) than an Openreach engineer. TalkTalk said that, contrary to BT's arguments, BT would continue to have an incentive to provide the service as long as prices remained above incremental costs. Since this would be less than FAC, setting prices at FAC would still ensure BT had the incentive to provide services (and to employ additional resources if required). Further, as prices will remain above marginal cost BT would continue to have incentive to innovate (although TalkTalk considered that innovation with respect to TRCs and SFIs has been minimal).

5.18 TalkTalk agreed with BT's view that cost orientation would reduce cost minimisation incentives, but argued that the solution was therefore a charge control rather than no effective regulation or a "safeguard cap". In particular, a "safeguard cap" wrongly suggested that preventing price increases alone ensured that prices were set at a competitive level, when in fact this depended on whether prices were above costs. Further, increasing efficiencies should lead to costs falling over time, meaning that prices under a "safeguard cap" could still become excessive.

Virgin[27]

5.19 Virgin said that the proposal to impose an immediate reduction of prices to FAC departed from our traditional approach of using glide paths and had the potential to be significantly disruptive.

Current prices

5.20 Tables 5.1, 5.2, 5.3 and 5.4 set out the current and most recent previous prices for TRCs and SFIs.[28]

[27] Pp.23-24, *Virgin response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/Virgin_Media.pdf.
[28] Prices correct as of 13 January 2013, see www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=hcaYjIWegP2u2KS8FTdcOBScuIM1Opem5f8dVePnh8UlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D.

Table 5.1: TRC prices – Visits/Hourly charges

TRC product		Normal working day (£)		All other times except Sundays and Public / Bank Holidays (£)		Sundays and Public/ Bank Holidays (£)	
		Previous [29]	Current [30]	Previous	Current	Previous	Current
TRC1	Standard Chargeable Visit (Visit plus up to 1 hours work)	115	120	143.50	150	172	180
TRC2	Additional Hours (or Part thereof)	57	60	85.50	90	114	120
TRC3	Supplementary charges (Per Visit)	N/A	N/A	28.50	30	57	60
TRC4	Supplementary charges (Per Hour or Part thereof)	N/A	N/A	28.50	30	57	60

Table 5.2: TRC prices – store items

TRC product		Per item (£)	
		Previous[31]	Current[32]
TRC5	Internal Pack (For internal work at a normal premises)	6.40	6.70
TRC6	External Pack (For external work at a normal premises)	14.90	15.60
TRC7	Data ext kit (Associated with Broadband Health check)	7.20	7.60
TRC8	SSFP NTE2000 (Broadband front plate)	6.40	6.70
TRC9	Broadband micro filter	5.60	5.90
TRC10	Block Terminal 92A (For Redcare use)	1.40	1.50

Table 5.3: TRC prices – shifts/plant rearrangement

TRC product		Per order (£)	
		Previous[33]	Current[34]
TRC11	Internal and External Shifts	115	120
TRC12	Additional Line shifted	57	60

[29] Previous prices were set on 8 June 2012.
[30] Current prices were set on 1 April 2013.
[31] Previous prices were set on 8 June 2012.
[32] Current prices were set on 1 April 2013.
[33] Previous prices were set on 8 June 2012.
[34] Current prices were set on 1 April 2013.

Table 5.4: SFI2 prices

SFI2 product		Per item (£)	
		Previous[35]	Current[36]
Module 1	**Base**	125	130
Module 2	**Network**	75	80
Module 3	**Frame**	75	70
Module 4	**Internal wiring**	50	40
Module 5	**Internal equipment**	25	20
Module 6	**Co-op**	20	15
Module 7	**Frame direct**	115	120

5.21 The remainder of this section sets out our proposals for further consultation and is structured as follows:

- basis for regulation;
- choice of remedy;
- charge control proposals;
- legal tests; and
- cost accounting for TRCs and SFIs.

Further proposals

Basis for regulation

5.22 In the July 2013 FAMR Consultation we proposed to continue to impose a requirement on BT to provide network access in the form of LLU[37], WLR[38], wholesale ISDN30[39] and wholesale ISDN2[40] services. This proposal included a requirement on BT to provide such ancillary services as may be reasonably necessary for CPs to use these services.[41] Such a service is defined in the relevant SMP conditions as "*an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the*

[35] Previous prices were set between 2010 and 2013 for different modules, see www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=totid5BwFmkf9vLcBITRyZF9loRxWIbIKK6V7YWmlYAlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D.
[36] Current prices were set for modules on 1 April 2013, apart from Frame, Internal wiring and Equipment prices which were set on 8 June 2012. BT has announced that it will increase and reduce charges for certain SFI services from 1 April 2014.
[37] Paragraphs 12.5-12.30, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.
[38] Paragraphs 14.4-14.25, Ibid.
[39] Paragraphs 15.6-15.18, Ibid.
[40] Paragraphs 15.80-15.92, Ibid.
[41] Proposed SMP Condition 2, which continues the requirement currently imposed under SMP Condition FAA9.1.

provision of services via that network and/or service or have the potential to do so". [42] The requirement imposed in the WLA market sets out in the SMP condition certain services that are ancillary to LLU for these purposes, although this list is not exhaustive.[43]

5.23 Given that ancillary services that are reasonably necessary for the provision of services based on LLU, WLR, wholesale ISDN30 and wholesale ISDN2 form part of the network access requirement imposed in the FAMR markets, we have considered the extent to which TRCs and SFIs supplied across these markets are capable of falling within this network access requirement.

5.24 We note that the July 2013 FAMR consultation only referred to regulating TRCs in the WLA and WFAEL markets; however, it is clear that these services are provided in relation to all BT's WLR products across the WFAEL, wholesale ISDN2 and wholesale ISDN30 markets (SFIS are only supplied to support LLU). Therefore, our proposals in relation to TRCs apply to where these are reasonably necessary for CPs to use LLU, WLR, and wholesale ISDN2 and wholesale ISDN30 services. Given that BT uses WLR to refer to its products across the WFAEL, wholesale ISDN2 and wholesale ISDN30 markets, where we refer to WLR in this section this includes wholesale ISDN2 and ISDN30 services, unless otherwise indicated.

Assessment of reasonably necessary

5.25 In its response to the July 2013 FAMR consultation, BT argued that only TRCs and SFIs involving work on its network are reasonably necessary for the provision of services based on LLU and WLR and that the majority of TRCs and SFIs did not involve faults on the Openreach network and therefore any engineering service provider could be used.

5.26 We consider that whether or not TRCs and SFIs are reasonably necessary should not just be based on whether the fault is on or off the Openreach network but whether (from the perspective of purchasing CPs) suppliers other than BT (via Openreach) can supply equivalent economic TRC or SFI services, in a way which exerts a competitive constraint on the TRC and SFI services supplied by Openreach. We have gathered further evidence to understand this, including information on the ordering and diagnostic steps and processes which we set out below.

5.27 The steps and processes used by CPs are broadly similar across TRCs and SFIs. We have set out a more detailed summary in Annex 5, but have summarised some of the key features below:

- The first step involves a customer reporting a problem to their CP, following which the CP carries out remote diagnostics to understand the basic nature of the problem from a customer's perspective, e.g. that the problem is an intermittent dial tone on the voice service.

- The CP will then commence further remote diagnostics, using a combination of their own and Openreach's system line tests. The main function of these tests is

[42] See definitions of "LLU Ancillary Services" and "WLR Ancillary Services" in Annex 11, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/annexes/FAMR_Consultation_annexes.pdf.
[43] Power; Co-Location; Co-Mingling; Site Access; Internal Tie Circuits; External Tie Circuits.

to identify whether there is a fault or not. The tests may, in most cases, also give a broad indication of the location of the problem. However they do not specify with any accuracy whether the problem is either on- or off-net (or both on- and off-net). In particular, TalkTalk's own line test indicates whether the problem is 'in home' or 'external to the home' and, while it can provide more granular sub-descriptions of the potential issue, in most instances these do not specify clearly whether the fault is on or off Openreach's network.[44] Sky relies on Openreach's system line test which indicates whether the problem is 'near or close to the home'.[45]

- Based on the information gathered above, the CP may conduct further in-home checks with the customer to understand whether their home connections are correctly set-up (e.g. whether the router is connected to the phone socket). This step is optional as customers may by-pass it if they do not want to go through the diagnostic checks. If customers consent, CPs may use Openreach's best practice diagnostic guidelines or their own, although the guidelines do not assist in identifying accurately whether the problem is on or off Openreach's network.[46] If the CP is able to resolve the issue then the case is closed, and if not, a CP may despatch an engineer to resolve the problem, with the customers consent.

5.28 While it is the case that non-Openreach suppliers are able to provide certain TRC and SFI services, we are of the view that there are a number of barriers for CPs to use third party engineers to provide such services.

5.29 Firstly, only Openreach engineers can be used to carry out work which occurs on the Openreach network. Such work occurs on the Openreach network from the exchange to the Openreach side of the NTE. We estimate that work on the Openreach network may account for approximately 35% of 2012/13 TRC revenue. We estimate that up to 90% of 2012/13 SFI revenue may occur on the Openreach network, if we assume work carried out on the 'Base' module is carried out on Openreach's network. However, we recognise that the figure may be lower where 'Base' module work is not carried out on Openreach's network - BT has provided information which suggests that demand for SFI modules (excluding the 'base' module) which involves work on the Openreach network accounts for approximately 60% of SFI modules ordered. [47]

5.30 Secondly, if a CP is unable to determine in advance of despatching an engineer as to whether the location of the problem is either on or off the Openreach network, we

[44] TalkTalk response to s.135 notice of 25 October 2013.
[45] Sky response to s.135 notice of 25 October 2013.
[46] The guidelines assist CPs in working out the nature of the problem (e.g. whether it is an intermittent dial-tone or whether a fault may occur on wiring), but do not specify whether the problem occurs on or off Openreach's network.
[47] BT responses to s.135 notice of 25 October 2013 and s.135 notice 13 December 2013. The 35% figure was calculated as follows. BT identified that around 13.5% of total TRC 2012/13 revenue was on-net. However this figure does not take into account so called "volume deals". These account for approximately one-third of TRC revenue and approximately two-thirds of this work is on-net, giving a further 22%. Adding this figure of 22% to the original 13.5% gives an overall figure of 35%. For SFIs, the '60%' figure is based on BT information which suggests that together the demand for network, co-op and frames modules (which cannot be supplied by other operators as they involve work on the Openreach side of the NTE) account for approximately 60% of SFI modules ordered, excluding base modules. The '90%' figure is based on BT information which states that "SFI generates £39m, £36m of which comes from base, network, frame, co-op modules which cannot be supplied by other operators as they involve work on BT side of NTE".

understand that a CP will normally use an Openreach engineer to carry out the work to ensure that the work is completed in a single visit. Only Openreach engineers are allowed to undertake work both on and off its network. If a CP were to use a third party engineer then it would risk repeat visits, i.e. a CP sends out a third party engineer who finds that the fault is on the Openreach network, meaning the customer needs a further visit by an Openreach engineer.[48] This is unattractive to CPs because it will result in them incurring additional cost by paying for an unnecessary visit by a third party engineer. Similarly, while cost may be one driver for this desire to avoid multiple visits, we understand from CPs that customer service and continuity of service are also important reasons for wanting to avoid repeat visits as much as possible.[49] This desire to resolve issues 'first time' is also evident in relation to SFIs, where many CPs pre-authorise all modules to avoid the risk of such repeat visits.[50] We consider the need to avoid repeat visits an important consideration.

5.31 Finally, the evidence suggests that it is difficult for CPs to identify the location of a fault with sufficient accuracy, as the remote diagnostic tests and processes do not categorically specify whether the fault is on or off Openreach's network. While informative, the CP and Openreach line tests and Openreach guidance described above do not produce results which clearly specify that the fault is on or off the network. Similarly, while in-home checks with the customer can be useful, they may not always conclusively ascertain whether the work needed is on or off Openreach's network.[51] Moreover, we understand that there are line test errors which may undermine CPs' confidence in their accuracy. BT suggests that the location accuracy of line tests varies between 4% (for SFIs) and 10% (for TRCs).[52]

5.32 Therefore, we disagree with BT's view that CPs can generally anticipate in advance when they can only use an Openreach engineer for TRCs and SFIs. As explained above, even where the problem is ultimately found to occur off Openreach's network, CPs face difficulties in identifying that this is the case prior to despatching an engineer.

5.33 The barriers we describe above are, in our view, supported by the following:

- we set out below (see paragraphs 5.72-5.82) that TRCs and SFI prices are currently above cost. This suggests that any competitive constraint on the price of these services is weak;

- internal papers supplied by BT would appear to support the view that TRC and SFI services are not subject to a sufficient competitive constraint. BT states "demand for TRC repairs and provision is relatively price inelastic, as work can only be done by Openreach engineers". While BT evidence suggests there may

[48] TalkTalk has indicated that it sends out third party engineers to carry out work, but that Openreach may ultimately be used where the work is found to be on the network side of the NTE.
[49] TalkTalk response to s.135 notice of 25 October 2013 and Sky response to s.135 notice of 25 October 2013.
[50] By consenting to prior authorisation, a CP has given Openreach permission to investigate and repair all necessary work on each order, irrespective of whether the work is on- or off-net. We understand that TalkTalk and Sky prior-authorise all SFI and TRC orders. TalkTalk response to s.135 notice of 25 October 2013 and Sky response to s.135 notice of 25 October 2013.
[51] We note that a relative majority of TRCs ([✂]%) are currently categorised as taking place where the fault is found to be off Openreach's network and so is on customer wiring or equipment which has been left disconnected. This may suggest the in-home remote diagnostics may not always identify the nature of the problem.
[52] BT response to s.135 notice of 25 October 2013.

be some scope for customer switching for SFIs, it also states that “SFI generates £[✂], £[✂] of which comes from base, network, frames and co-op modules, which cannot be supplied by other operators as they require work on the BT side of the NTE” [53]; and

- CP evidence shows that TalkTalk and Sky do not use any third party engineers for TRCs, and TalkTalk’s spend on third party engineers for SFIs is around 4% of its total SFI spend. The fact that TalkTalk has a contract with Qube but does not use third party engineers for TRCs or, in the majority of cases, for SFIs[54] suggests that in the majority of cases TalkTalk does not consider that there are third party suppliers that can supply equivalent economic services.

Conclusion on reasonably necessary

5.34 For the reasons set out above, our provisional view is that we expect the majority of TRC and SFI services to be reasonably necessary in order for CPs to provide downstream services based on LLU and WLR and, therefore, any such services fall within the network access requirement we are proposing to impose on BT.

5.35 One specific category of TRC service (approximately one-third of TRCs) which BT notes in its response[55] are called “volume deals.”[56] We understand that these are purchased in a different way to other TRC services, because they are generally provided following a tendering process. To the extent that CPs consider that there are suppliers other than Openreach that are able to supply these services, these volume deals may fall outside the scope of being reasonably necessary.[57] However, while we have not investigated competitively tendered services in detail, we understand that these services are currently priced at the same level as other TRC services and our analysis below indicates that this is currently above cost. We also understand that around [✂] of all TRC” volume deals” take place on Openreach’s network.[58] This suggests that there are not equivalent economic TRC services sufficient to exert a competitive constraint on the price of Openreach’s TRC volume deals.

5.36 To the extent that TRC and SFI services are not reasonably necessary, these will fall outside of the network access requirement we are proposing to impose in the FAMR markets. While such TRC and SFI services will not be regulated under the proposals for FAMR markets, BT may in practice choose to set the same TRC or SFI price for excluded cases as for those regulated TRC and SFI services. If BT considers that there are TRC and SFI services that are not reasonably necessary, in order to price these services differently to those regulated by the proposed charge controls it must be able to demonstrate that these TRCs and SFIs occur where, from the perspective of purchasing CPs, suppliers other than Openreach are able to supply equivalent

[53] BT response to s.135 notice of 13 December 2013.
[54] It is worth noting that, for the type of SFI for which TalkTalk does use third party engineers (internal wiring), it also sometimes uses Openreach engineers instead, even though Openreach prices are higher.
[55] Paragraph 354, *BT response to the July 2013 FAMR Consultation,* http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/BT.pdf.
[56] These include, for example, the provision of internal wiring on campus sites or multi-tenant buildings.
[57] We understand that BT is of the view that demand is more elastic and that it faces some competition on these (BT response to s.135 notice of 13 December 2013).
[58] BT response to s.135 notice of 13 December 2013.

economic TRC/SFI services. In particular, BT would need to explain how CPs are able to predict with certainty that the issue to be resolved is located off-net.

<u>Nature of concern</u>

5.37 In a competitive market, the pricing of services on the basis of the commercial judgements of individual companies could be expected to deliver cost reflective pricing. However, where competition cannot be expected to provide effective constraints, there is a risk of excessive pricing derived from the dominant provider's ability and incentive to price at an excessive level, inhibiting downstream competition and/or leading to excessive prices for consumers.

5.38 In this case, based on the evidence set out above, we consider pricing regulation is necessary to prevent BT from exploiting its SMP by charging excessively for TRCs and SFIs which form part of the proposed network access requirement imposed in relation to LLU and WLR services. Indeed, as discussed below, there is evidence that BT's current prices exceed its costs.

5.39 The identification of such a risk is a necessary precondition under section 88 of the CA03 to enable us to set an SMP condition. Ex ante regulation may therefore be desirable to prevent excessive pricing and allow for the development of effective competition in downstream markets.[59] Therefore, our provisional view is that some form of pricing remedy is required for such TRC and SFI services to address this risk and we consider below what form of pricing remedy is appropriate.

Choice of remedy

5.40 In considering the appropriate remedy, there are a range of factors we need to consider. As set out above, we consider there to be a risk of excessive pricing in relation to TRCs and SFIs which form part of the proposed network access requirement imposed in relation to LLU and WLR services.[60] Therefore a key objective for any remedy is to limit BT's ability to price excessively (i.e. above the competitive level). This would have the effect of furthering allocative efficiency, which is achieved when prices are aligned with underlying resource costs. This ensures that all consumers who value a product at more than its cost are able to purchase it.

5.41 However, we consider that balancing productive and dynamic efficiency incentives is also relevant, as was further emphasised in consultation responses (see summary above). Productive efficiency means that the costs of production are minimised, and in the case of TRCs, we consider there to be two aspects to this incentive: ensuring the hourly costs are efficient (while still maintaining an appropriate service level[61]), and ensuring that the engineer completes the task promptly (i.e. that the number of hours taken is efficient). Similarly, for SFIs, both ensuring that the module cost is efficient and ensuring the engineer has the incentive to complete the task promptly (i.e. using the minimum number of modules/not carrying out unnecessary modules[62]) are relevant.

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[59] Paragraphs 12.71-12.72, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

[60] For shorthand we refer to these as TRC and SFI services in the remainder of this section.

[61] I.e. that productive efficiency is not achieved by simply cutting service availability and levels.

[62] Particularly given the prevalence of pre-authorisation of modules, as discussed in footnote 50).

5.42 Dynamic efficiency refers to the improvements in efficiency that occur over time, as innovation and investment result in the development of new services, improvements in quality/reliability, and lower costs. We consider there are two distinctions relevant for TRCs and SFIs: improvements to the services themselves (e.g. line test accuracy), and additional related services/value-added services. As set out above, BT has argued that investment incentives are particularly important for TRCs and SFIs, and has raised the role of an appropriate rate of return in these incentives (discussed further below). This, however, will need to be traded off against protecting customers from excessively high prices (and promoting allocative efficiency) and incentivising productive efficiency gains.

5.43 Any remedy imposed must also be proportionate and transparent.

Remedy options

5.44 We consider that there are two potential options to address the pricing concerns we have identified for TRCs and SFIs:

- Basis of charges; or
- Charge control.

5.45 We now set out an analysis of these options in light of consultation responses. In doing so, we abstract from the detailed implementation issues (including, for example, the specific approach to returns which was raised as a concern by BT). This is because we do not consider that these detailed points fundamentally affect the analysis for identifying our proposed high level remedy. Rather, we consider these points as part of the detailed implementation below.

Basis of charges

5.46 As set out in the July 2013 FAMR Consultation, a Basis of charges obligation would effectively limit BT's pricing freedom so that TRC and SFI charges reflect costs (i.e. achieving allocative efficiency). However, having considered consultation responses, we no longer consider that a Basis of charges obligation is appropriate for TRC and SFI services.

5.47 While a Basis of charges obligation ensures that BT is always able to recover its incurred costs, it does so irrespective of whether they are efficiently incurred or otherwise, meaning it would have limited incentives to minimise unit[63] costs. Both Sky and TalkTalk raised significant concerns with this proposal for these reasons (as set out above). However, by constraining prices to reflect costs, it may reduce somewhat the incentive to inflate the number of hours/modules required as BT would only ever recover its costs (although this incentive will depend in part on the measure of cost used).

5.48 Further, having analysed cost, revenue and volume data received from BT since the consultation, we have significant concerns around its implications for a Basis of charges obligation. Firstly, analysis of the aggregate TRC and SFI data received from BT since the consultation suggests that FAC has varied significantly (particularly when considered on a unit basis using the associated volumes) during the last review period. Therefore we are concerned that a Basis of charges approach could

[63] Units are, broadly speaking, hours for TRCs and modules for SFIs.

potentially lead to significant price fluctuations over this review period given it allows prices to reflect fluctuations of reported costs on an annual basis, creating pricing uncertainty among CPs. Secondly, the issues we have with BT's aggregate cost data (discussed further below, see paragraph 5.64 onwards) raises concerns around the reliability of the data for a Basis of charges obligation and the potential for significant (and perhaps unexplained) fluctuations. The potential for cost reallocation could exacerbate this concern further, and potentially create incentives for gaming by BT, as argued by TalkTalk, allowing over-recovery of costs (e.g. by reallocating costs from charge controlled services (such as WLR and LLU) to TRCs and/or SFIs once the charge controls have been set).[64] Such variability would also reduce the transparency of the obligation and the degree of certainty provided to stakeholders, as the cost levels are known only with a lag to Openreach's customers and competitors.

5.49 Therefore in light of consultation responses and further analysis of data received from BT, we consider that the lack of productive efficiency incentives and the risk of significant fluctuations due to the interactions with cost allocation (including the uncertainty and risk of gaming this may create) are likely to outweigh the allocative efficiency benefits we had previously identified with this approach. We consider this to be the case for both TRCs and SFIs. Therefore we no longer consider a Basis of charges obligation to be appropriate for TRCs or SFIs.

Charge control

5.50 A charge control provides a means of safeguarding consumers and downstream markets from excessive pricing by constraining prices and limiting any increases during the review period. It also drives efficiency in the regulated firm (which in turn creates efficient pricing signals for the whole industry), thereby imitating the effect of a competitive market. Incentives to increase efficiency arise because if the firm can reduce its costs below the level expected when the cap was set then the firm retains the increased profits, at least for the period the control is in place. This ability to earn profits in excess of the cost of capital can drive innovation and investment, thereby also providing incentives for dynamic efficiency.

5.51 We acknowledge that these incentives mean prices can diverge from costs over the life of a price cap (i.e. if the costs of price-capped services deviate from the trajectory of prices or charges established by the control), potentially undermining allocative efficiency. However, in establishing price caps, regulators are able to ensure that allocative efficiency objectives are also met through the review mechanism and periodic setting of new controls. Therefore we consider that the trade-off between dynamic and allocative efficiency can be managed, such that the benefits of dynamic efficiency outweigh the potential for allocative inefficiency within part of the review period.

5.52 We recognise that the problems with BT's cost data, including the apparent volatility in costs, discussed further in paragraph 5.64 onwards, also mean that it is difficult to set the level of any charge control. However, we also consider that a charge control

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[64] For the LLU and WLR (WFAEL) charge controls, we have proposed using BT's 2011/12 methodology for cost allocations rather than the different methodology BT used in the 2012/13 RFS (see the discussion of the cost standard in paragraphs 5.57-5.59). To be consistent, any Basis of charges approach would need to continue to use the 2011/12 methodology for allocating costs. In the interests of transparency, cost data may need to be published on the basis of the 2011/12 methodology.

would provide certainty and transparency for stakeholders with regard to charges over the course of this review period (which may not be the case under a Basis of charges obligation, as discussed above).

5.53 We note that Sky and TalkTalk expressed preferences for a charge control due to the incentives it creates, as summarised above. BT also argued for a charge control (based on current prices).

5.54 For these reasons, we consider that imposing a charge control would more appropriately address the excessive pricing risk we have identified for both TRCs and SFIs than would a Basis of charges obligation. This is on the basis that it would constrain the risk of excessive pricing by setting maximum charges in advance and provide more pricing certainty than a Basis of charges obligation for the reasons set out above. We also note that it will better provide efficiency incentives which might otherwise be lower given BT's SMP, both in terms of minimising costs (as it can keep any gains within the review period) and reducing somewhat the incentive to inflate the number of hours/modules required (as BT only receives the regulated price, although this incentive will be partly affected by the basis for the charge control). We therefore provisionally propose to impose a charge control on BT for TRCs and SFIs. We discuss the details of the charge control below.

Charge control proposals

5.55 There are a range of ways we can set a charge control, for example at the level of existing prices (often referred to as a safeguard cap, as proposed by BT), or based on detailed modelling and forecasting of demand, revenue and costs. However, it is important that our charge control design is proportionate to the concern we are seeking to address – namely, our aim in controlling TRC and SFI charges is to protect consumers from the risk of excessive pricing arising out of the SMP we have provisionally identified BT as having in the fixed access markets.

5.56 In order to inform the level at which to set the TRC and SFI charge controls, it is useful to consider the current financial performance of both sets of services. Before we set out this analysis (including the extent to which TRCs and SFIs are currently recovering costs, based on existing prices), we discuss:

- the appropriate cost standard for TRCs and SFIs, including the role of a "margin"; and

- the available data we have used for our analysis.

Cost standard for analysis

5.57 We consider that FAC remains an appropriate cost standard, for the reasons set out in the July 2013 FAMR Consultation. In particular, we consider it appropriate that BT should be able to recover more than just its incremental costs of providing TRCs and SFIs. Using FAC will allow the recovery of directly allocated costs, most obviously those involved with the engineer's time (including travelling time and associated costs such as taxes, holidays and employer pension contributions) and will also allow recovery of a reasonable allocation of more indirect costs, such as costs associated with vehicles, service centre costs, training, and general overheads, including allowing for an appropriate return on capital employed. The costs of provision need to allow for a normal profit to be earned, consistent with achieving an appropriate return on capital employed.[65]

5.58 Sky argued that, while using FAC was acceptable, we could go further and move towards a LRIC approach in line with our proposals for "key migration services"[66] (on the basis that they both involve engineering activity and so should be treated in the same way). However, as set out in our Cost Orientation Review, the presence of large common costs for services provided over BT's network mean a mark-up over LRIC for individual services is usually seen as necessary for sustainability so as not to undermine overall cost recovery (this is discussed further below). Where services are priced at (or even potentially below) LRIC, it is typically because wider considerations (such as policy, competition and/or efficiency arguments) justify such an approach.[67] This is the case for migration services such as GEA migration, which directly affect consumer switching costs and therefore the strength of retail competition (as set out in paragraph 11.158 of the July 2013 FAMR Consultation).[68] Given such considerations do not seem relevant here, and the other incentive reasons in favour of a mark-up over incremental costs presented below, we consider LRIC is not appropriate for TRCs or SFIs.

5.59 In considering costs however, we need to ensure we remain consistent with the cost allocations used in the LLU and WLR (WFAEL) charge controls, which could otherwise leave costs under- or over-recovered from TRCs and SFIs if not approached on a consistent basis (due to the reallocation of costs between these related services). We have proposed to update the base year cost data in our LLU and WLR (WFAEL) charge control modelling by using the cost data in BT's 2012/13 RFS (where this is appropriate following further scrutiny) but to use the allocation methodologies presented in BT's 2011/12 RFS (which are the allocation bases upon which we consulted in July 2013).[69] In light of this, our analysis of TRCs and SFIs is also based on 2012/13 costs using the 2011/12 methodology (including cost allocations).

Appropriate margin

5.60 BT has questioned its ability to earn a sufficient margin under a FAC-based approach to TRCs and SFIs (within the context of the proposed FAC-based Basis of charges obligation), arguing that it would earn a small margin at this level due to the low capital employed in these services. It argued that this will undermine its incentives to provide the services and to do so at a suitable quality, and as such argued that we should allow an additional margin in excess of FAC to reflect this.

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[65] Paragraph 12.74, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN 30,* 3 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdfhttp://www.stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

[66] I.e. those services which allow migration of customers from one CP to another.

[67] See, for example, footnote 57, Ofcom, *Cost Orientation Review*, 5 June 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/cost-orientation/summary/Cost_orientation.pdf.

[68] http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

[69] See Section 7 of *Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*, 19 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-llu-wlr-charge-controls/summary/famr-2013.pdf.

5.61 There are a range of measures which can be used to assess returns, but our typical approach to assessing a reasonable rate of return for BT is based on a return on capital employed at its weighted average cost of capital ('WACC'). [70] In a competitive market, while annual returns in any given year may be above or below the cost of capital, over the longer term one would not expect average returns to be materially above or below this level.[71]

5.62 In order to achieve this at an aggregate level, individual products/services can be priced such that they cover their incremental costs, and potentially also include a mark-up over and above this to contribute to the recovery of common costs, including a return on capital employed (reflecting the mean capital employed for that particular service). Different products and services can make differing contributions to common costs, and therefore the overall return achieved by BT, for a variety of reasons, which include efficiency and competition considerations.[72]

5.63 Within this context, we agree that only allowing a firm to recover its marginal costs for an individual product or service can have negative incentives for its provision and quality, as the firm will be financially indifferent between providing the service and not (as for each extra unit, it only receives the costs of providing that unit[73]). However, in the event the firm is earning in excess of marginal costs, it will no longer be indifferent[74] as for each unit it sells, it is receiving a contribution to the wider recovery of its common costs (and conversely, for each unit it stops selling, it will also lose that contribution). As such, we do not consider that TRCs and SFIs require an additional mark-up in excess of FAC to maintain these incentives, given that the respective FAC estimates include an allocation of common costs (including a return on any capital employed in their provision).[75][76] We thus do not consider this argument

[70] A company's cost of capital can be thought of as the minimum rate of return which investors require in order to invest in that company. While WACC is used to assess returns for BT, we note that we have adopted a different approach in other services such as post where we considered an Earnings Before Interest and Tax ('EBIT') margin for assessing Royal Mail's reasonable commercial rate of return. The reasons for this different approach to assessing returns at the firm-level is due to the different circumstances of each – for the rationale underlying the decision in post, see Section 5, Ofcom, *Securing the Universal Postal Service – Decision on the new regulatory framework*, 27 March 2012, http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf. At an individual product level, different products contribute to cost recovery (including the overall EBIT margin) to varying degrees for post, just as different products contribute to BT's cost recovery (including the overall WACC) to varying degrees. As such, we do not consider that the presence of this alternative approach raises consistency concerns (as argued by BT) in relation to our approach to BT's rate of return generally, or for our approach to TRCs and SFIs specifically.

[71] See, for example, paragraph A2.67, Ofcom, *Review of BT's Network Charge Controls*, 15 September 2009, http://stakeholders.ofcom.org.uk/binaries/consultations/review_bt_ncc/statement/nccstatement.pdf.

[72] For example, mobile and fixed termination rates are based on incremental costs (i.e. LRIC) with no mark-up for common costs, because regulatory objectives and market conditions support such an approach.

[73] Conversely, for each unit lost, the firm's lost revenue is equal to its cost savings from no longer providing that unit, and so it is indifferent to the fact that it has lost that unit.

[74] This point was also made by TalkTalk, as summarised in paragraph 5.17.

[75] We considered similar issues in relation to excess construction charges('ECCs'), where we observed high margins in excess of costs and stated that, on the basis that Openreach deploys minimal capital expenditure in the provision of ECCs, no margin above the recovery of incremental costs and a contribution to overheads (including an appropriate return on any capital employed in the provision of ECCs) is justified. See Section 22 of Ofcom, *Business Connectivity Market Review*, 28 March 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/statement/Sections17-24.pdf.

around FAC any further here, and so our analysis of financial performance is based upon BT's revenues relative to its reported FAC (i.e. with no additional adjustment).[77]

Data

5.64 In order to inform our proposals, we sought annual cost, revenue and volume data from BT for the period 2009/10 to 2012/13, for both TRCs and SFIs. Following subsequent analysis of this data, we have significant concerns with the reliability of this data, and in any event note that BT has a great deal of discretion over how it calculates costs which it appears to have exercised.

5.65 Having considered both the TRC and SFI aggregate data over this time period, we have identified various (and in some cases, counter-intuitive) trends in both BT's cost and revenue data, which BT has been unable to fully explain. For example, labour-related operating costs decreased in absolute terms between 2011/12 and 2012/13 (using the same 2011/12 methodology) for both TRCs and SFIs, despite volumes increasing. BT has not been able to fully explain this outcome for either TRCs or SFIs (and we note that one reason put forward by BT in relation to this reduction in labour costs for SFIs was a previous misallocation of costs to SFIs[78]). Therefore we have concerns with the ability to draw conclusions on trends from this data, and also the underlying absolute figures as a result.

5.66 We also have additional specific concerns in relation to TRCs. Firstly, we are particularly concerned with BT's approach to calculating its TRC costs. BT informed us that TRC costs appeared lower than it expected in 2012/13 when initially generated for the 2012/13 RFS. BT stated that it was unable to identify reasons to explain this outcome, and explained that it had sought to derive what in its view was a more 'appropriate' level of costs by reallocating costs from a range of services (including WLR, wholesale access, Traditional Interface Symmetric Broadband Origination ('TISBO'), Wholesale Broadband Access ('WBA'), Alternative Interface Symmetric Broadband Origination ('AISBO') and ISDN) to the extent necessary so that in light of its revenues, TRCs would be achieving a [✂]% margin in 2012/13. The margin used was based on an internal business case by Openreach's Copper product management team which forecast TRC margins to be between [✂]-[✂]% for 2013/14.[79] While we are not using this data specifically in our analysis (as we are using 2012/13 data using the 2011/12 methodology), we consider that these issues cast doubt on the reliability and consistency of BT's TRC cost data.

5.67 Secondly, we note in relation to TRCs that there were some counter-intuitive changes in BT's average revenue per hour (i.e. total TRC hourly revenue divided by TRC billed hours, excluding bid/volume-related TRCs). Using the data BT provided for TRCs excluding volume deals[80], its average hourly revenue decreased from £[✂] in 2011/12 to £[✂] in 2012/13. This would tend to suggest BT's average TRC price

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[76] Our analysis of the data provided by BT indicates that it has a poor understanding of the aggregate costs associated with these services. Indeed, prior to 2012/13 BT had been earning revenues for TRCs and SFIs below its FAC (as per the respective year's RFS) and so it is not clear why it now asserts that a return in excess of FAC is required to provide the appropriate investment and efficiency incentives.

[77] We discuss the general incentives under our proposed approach in paragraph 5.115 onwards.

[78] BT response to s.135 notice of 22 November 2013.

[79] Ibid.

[80] BT response to s.135 notice of 25 October 2013.

fell in 2012/13, yet we note that, based on the Openreach price list[81], all but one price point for TRCs were higher in 2012/13 compared to the 2011/12 charges. BT was unable to explain this trend in its average revenue data.[82]

5.68 Thirdly, BT stated that the total TRC hours provided were based on billed hours, but that these are likely to be significantly smaller than the engineering hours actually expended on TRCs (and also in any event excluded hours related to volume/bid work, and included an estimate for hours relating to TRCs which do not go through the Atlantis billing systems (accounting for approximately [✂]% of TRC revenue).[83]

5.69 In relation to SFIs, we also only have two years of directly comparable SFI2 cost and revenue data, given its introduction in March 2010 and the subsequent year of parallel provision with the older SFI product (BT is unable to split the data between the two).[84] As such it is not possible to observe trends in this data.

5.70 In light of the above we have significant concerns with the reliability of BT's aggregate financial data (especially for TRCs). Therefore, while we consider this data provides an indicative view of the current financial position of TRCs and SFIs, we do not consider that we can fully rely on this data to provide a precise view in absolute terms. It is within this context that we have considered BT's data (and supplemented it with additional information) in order to set out our proposed approach to each charge control below.

5.71 We now set out our analysis of TRCs and SFIs separately, including the financial performance of each, and present our charge control proposals for each.

Charge control proposals for TRCs

Current financial performance

5.72 In considering revenues and costs for TRCs, we acknowledge that TRCs are provided across BT's portfolio of products and not just for LLU or WLR services (e.g. they are also provided for Ethernet). However, as set out in the July 2013 FAMR Consultation, TRCs do not differ depending on whether they are purchased for WLR or LLU, and BT also currently sets the same price across all TRCs irrespective of the access product purchased (i.e. WLR, LLU or Ethernet). Therefore, for the purposes of assessing the current financial performance of TRCs, we consider the aggregate data across all TRCs, as we do not consider there to be a need to make a distinction between the wholesale products they are provided for.[85]

5.73 On the basis of the aggregate data we have received from BT, it appears that revenues are currently above costs for TRCs. In particular, 2012/13 revenues were significantly in excess of FAC (approximately £[✂], which is equivalent to a mark up

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[81] Openreach price list for Time Related Charges, available here http://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=hcaYjIWegP2u2KS8FTdcOBScuIM1Opem5f8dVePnh8UlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D
[82] BT response to s.135 notice of 22 November 2013.
[83] Ibid.
[84] BT response to s.135 notice of 25 October 2013.
[85] While we use the data for all TRCs for our analysis (given we would not expect costs or prices to vary significantly according to the wholesale product they are provided for), we note that here we are only imposing a charge control for those TRCs related to LLU and WLR products.

of [✂]% of FAC; prices would need to fall by [✂]% to bring them into line with costs).[86]

5.74 We recognise that costs in some previous years appear to have exceeded revenues – for example in 2011/12 revenues appear to be less than costs. However, this appears to be at least in part a consequence of a large rise in estimated costs in 2011/12 compared to 2010/11 (of approximately [✂]%, despite an apparent decline in TRC hours). Therefore we have serious concerns around whether this truly reflects increased costs, and note that BT was also unable to explain this occurrence in relation to labour-specific costs.[87] In any event, we consider that whether costs exceeded revenues in earlier years is of limited importance given BT was free to set prices as it saw fit (subject to its cost orientation obligation) and there was a large increase in revenues in 2012/13. Rather, the key issue for us is whether current prices are likely to be cost reflective, and based on the information we have available we consider that this is unlikely.

5.75 As discussed above, we do not consider that the aggregate data from BT provides a sufficiently reliable indication of the extent to which prices exceed FAC for the purposes of setting a charge control. We have therefore used the granular data we have available to estimate the underlying hourly TRC costs for 2012/13. We have based our FAC estimate on the hourly breakdown of engineering rates for TRCs[88] (using information sourced from Openreach's management accounts and information received from BT[89]), which we have then uplifted to allow for an estimate of overhead costs.[90] On this basis, we have estimated an indicative TRC hourly cost, both as an average hour and a basic (i.e. excluding overtime) hour.

Table 5.5: Estimated hourly TRC costs 2012/13

	Average hourly cost (i.e. including overtime) (£)	Basic hourly cost (i.e. excluding overtime) (£)
Labour costs	[✂]	[✂]
General overheads (based on [✂]% uplift to labour costs)	[✂]	[✂]
Total	[✂]	[✂]

[86] BT response to s.135 notice of 22 November 2013. 2012/13 costs using the methodology from the 2011/12 RFS. Revenues were £[✂] and total FAC was £[✂]. We further note that BT was only able to reconcile these costs with revenues by changing the cost allocation for the 2012/13 RFS in a way that we consider to be inappropriate (as discussed above). By making this allocation change, there remains an (albeit smaller) excess of revenues over FAC for 2012/13 even under BT's revised cost data. Revenues were £[✂] on this basis and costs were £[✂], which implies a mark up of [✂]% of FAC.

[87] BT response to s.135 notice of 22 November 2013.

[88] We note the cost of an engineer's hour here is broadly consistent with that we have used previously (e.g. the cost provided in relation to the recent single jumpering dispute).

[89] BT response to s.135 notice of 22 November 2013.

[90] We have uplifted the engineering rates by [✂]% for overhead costs. This is based on Ofcom analysis of the RFS. BT argued it should be [✂]%, but this was based on the 2012/13 RFS methodology which, as discussed in paragraphs 5.57-5.59, we are not using for the LLU and WLR (WFAEL) charge controls, and so for consistency of approach we have adjusted the overhead allocation percentage using the *Report Requested by Ofcom on the year ended 31 March 2013* (www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2013/index.htm).

5.76 Using this data, we have made two comparisons to help inform the extent to which prices exceed cost. Firstly, we have compared our estimated average hourly cost (£[✂]) to the average revenue per billed TRC hour, as both implicitly reflect overtime and travel time etc. As set out above, the average revenue per billed TRC hour in 2012/13 was £[✂][91], which implies prices would need to fall by approximately 40% to bring them into line with our estimate of costs.

5.77 Secondly, we have compared our basic hourly cost estimate to the standard hourly price charged by BT (£57) in 2012/13[92] (i.e. "Additional Hours" on a normal working day, as per the price list) in order to avoid comparison issues around travel time, overtime etc. This indicates that prices would need to fall by approximately 12% to bring them into line with our estimate of costs.

5.78 Therefore, in light of the evidence available, we consider revenues are likely to be in excess of costs for TRCs, and that a price reduction from current levels is necessary.

5.79 We consider that this view is consistent with internal pricing documents received from BT, which set out that the 2012/13 and 2013/14 TRC prices were set in excess of its FAC estimates at the time of the respective price changes:

a) In relation to the 2012/13 prices, BT set prices of £58 visit charge and £57 per hour. Its relevant internal pricing paper included FAC estimates of £[✂] and £[✂] for the visit charge, and £[✂] and £[✂] for the hourly charge.[93]

b) In relation to the 2013/14 prices, BT set prices of £60 visit charge and £60 per hour. Its relevant internal pricing paper included FAC estimates of £[✂] for the visit charge, and £[✂] for the hourly charge.[94]

5.80 We consider this information supports our provisional conclusion that TRC prices are likely to be in excess of costs.[95]

5.81 We note that BT referred to the 2012 LLU WLR Charge Control Statement where we stated that BT's overall returns for TRCs were in line with our normal expectations for Openreach services (suggesting that they are not overcharging).[96] BT argued that it has not changed its pricing approach since then, and so for consistency we should maintain the same approach. Firstly, we note that the previous review did not go into a significant amount of detail in relation to the TRC data (and less than we have done now). Secondly, at the time the charge control was set the 2009/10, the EBIT margin

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[91] BT response to s.135 notice of 25 October 2013.
[92] While this price was not in place for all of 2012/13, it was introduced on 8 June 2012 and so for simplicity we have used (and referred to) this price as the 2012/13 price given it was in place for the majority of that financial year.
[93] Internal pricing review paper, BT response to s.135 notice of 6 January 2014.
[94] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.
[95] While this data provides a useful directional view of prices relative to costs, we do not consider these cost figures to be sufficiently robust or reliable for the purposes of setting a charge control, not least as they appear to be subject to similar issues as with BT's aggregate cost data discussed above (see paragraph 5.64 onwards). For example, there are two different FAC estimates for both the hourly cost and the visit cost within the relevant BT internal pricing paper. The variability in the FAC estimates between the two papers is also surprising, particularly as the pricing papers are only ten months apart. Indeed, BT commented that the change in costs "[✂]." Internal pricing review paper, BT response to s.135 notice of 13 December 2013.
[96] See paragraph 4.337, Ofcom, *Charge control review for LLU and WLR services – statement*, 7 March 2012, http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc-2011/statement/statementMarch12.pdf.

for TRCs ([✂]%) was similar to the EBIT margin for Openreach as a whole ([✂]%). However, TRCs are a capital light service (as stated by BT) and as such in a competitive market we would typically expect the EBIT margin to be lower for TRCs than for Openreach as a whole (which is much more capital intensive). In light of this, and having considered TRCs afresh as part of this review (including the more detailed data information received from BT), we consider such a comparison based on EBIT margins would have been generous to BT and no longer consider such a high EBIT margin on TRCs to be appropriate. Therefore, we consider it appropriate to seek to reduce the returns to a level that better reflects costs (which include a return on capital employed ('ROCE') to the extent relevant).

5.82 We recognise that this represents a policy change from the previous review, and also acknowledge that regulatory consistency is important, but in this case we consider that concerns around such consistency are outweighed by the importance of ensuring customers are not overcharged.

Charge control proposals

5.83 As discussed above, we consider BT is currently earning revenues in excess of costs for TRCs, and as a result consumers are experiencing harm. In light of this view, we do not consider BT's proposed safeguard cap at current price levels to be appropriate, since it would allow BT to continue setting a price that exceeds the underlying costs.

5.84 As a result, we have sought an alternative approach to setting a charge control for TRCs which will result in a price reduction from current levels. In order to address the consumer harm, it is necessary for us to identify how large the reduction in prices should be. However, given the data issues, we consider that proposing a level will ultimately require an exercise of regulatory judgement (in line with our objectives).

5.85 Based on the hourly data and analysis set out above, we consider that 2012/13 charges for TRCs are likely to be between 12% and 40% in excess of costs and so consider a rate reduction within this range is likely to be reasonable.

5.86 However, we need to determine an appropriate reduction within these bounds. The 40% upper bound is based on BT's reported volumes which not only do BT state are likely to be too low, but which also contribute to counterintuitive average TRC revenue trends over time (discussed above in paragraph 5.64 onwards). Additionally, a 40% reduction to the 2012/13 "Additional Hour" TRC rate (£57)[97] would also result in a charge (£34.20) which is substantially below our estimates of the 2012/13 hourly costs (£[✂]).[98] Therefore we do not place significant weight on this figure.

5.87 On the other hand, while the 12% lower bound is based upon the comparison of a more bottom-up cost estimate and an actual price point, it relies on prices and costs in 2012/13. Since then, in April 2013, there has been a further price increase across all TRCs (of approximately 4% for a "Standard Chargeable Visit" and 5% for an

[97] In this calculation we apply the 40% reduction to the 2012/13 price (rather than the current price) purely for the purpose of comparing with our hourly cost figure (which also relates to 2012/13). However, the same conclusion holds even applied to the latest TRC hourly charge of £60.
[98] Indeed, such a charge is [✂] the hourly labour cost (excluding overtime) of £[✂] and thus includes [✂] general overheads.

"Additional Hour").[99] While costs may well have also increased in this time (see the indexation discussion below), it is questionable if costs have risen by as much as this price increase. Therefore current charges could be further in excess of costs now than they were in 2012/13.

5.88 We note the midpoint of this 12-40% range is 26%. However, a rate reduction at this level would implicitly place equal weight on both the upper and lower bounds which we do not consider appropriate, as we consider the 40% upper bound is less reliable for the reasons set out above (see paragraph 5.86). Rather, we consider that the issues around the upper bound would tend to suggest a reduction towards the lower end of our range.

5.89 To further inform our judgement about the level of price reductions, we have considered what observations can be drawn from current (i.e. 2013/14) prices and adjusted cost estimates. To do this, we have uplifted our hourly cost estimate (£[✂]) by our proposed indexation rate of 0.2% (as set out below, see paragraph 5.109 onwards), which gives an estimate of the hourly TRC cost for 2013/14 of £[✂]. When we compare this with the 2013/14 "Additional Hour" prevailing price (£60), it would suggest a price reduction of approximately 16% from current levels is required.[100]

5.90 Therefore in light of this information, and the need to set out a proposed rate reduction within the identified 12-40% range (despite the data issues), we have exercised our judgement and consider a 16% reduction to 2013/14 prices is likely to be reasonable. We note that this 16% will still ensure "Additional Hour" charges (and indeed all TRCs) make a significant contribution to common costs.

5.91 Therefore it is on this basis that we propose to reduce all current TRC charges by 16%, although we would welcome further evidence and views from stakeholders on this.

5.92 We propose to apply this reduction to each and every 2013/14 TRC charge[101] (and round to the nearest penny), since charges outside of the normal working day are multiples of the respective "normal working day" rates. In relation to those TRC charges which include a visit charge as well as an hourly rate (e.g. "Standard Chargeable Visit), this reduction effectively applies equally to both elements as the price reduction is applied to the total price. This is on the basis that BT also appears to have previously applied its rate increases to the combined charge[102], and also

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[99] See Openreach price list: www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=hcaYjIWegP2u2KS8FTdcOBScuIM1Opem5f8dVePnh8UlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D.

[100] Note, we are consulting on a range for the indexation of -0.1% to +2.8%, which if applied to our cost estimate gives a range for 2013/14 hourly TRC cost estimates of £[✂] to £[✂], with a corresponding range for the price reduction of 14-16%.

[101] In light of the information we have used to inform this figure (i.e. prices and cost estimates relevant for 2013/14), we propose to apply this reduction to current (i.e. 2013/14) prices.

[102] E.g. in its 2013 price changes for TRCs, BT set out an average [✂]% price increase to its TRC Standard Chargeable Visit total rate ([✂]). Internal pricing review paper, BT response to s.135 notice of 13 December 2013.

maintains the current structure of prices where BT appears to have set the visit charge at the same level as the hourly rate (currently £60).[103]

5.93 We normally have a preference for "glide paths"[104], rather than one-off adjustments (particularly where the controls replace similar existing controls). Glide paths involve setting the control so that there is a gradual convergence of prices from the current level to the target level by the end of the charge control period. We generally have a preference for a glide path for two reasons[105] – to provide stronger cost reduction (i.e. productive efficiency) incentives, by allowing the firm to retain the benefits of cost reductions made under a previous charge control for longer[106], and to promote a stable and predictable regulatory regime (as noted by Virgin Media). However, we do not consider there to be sufficiently strong reasons to justify such an approach here and so intend to make this one-off change at the start of the control period (rather than set a glide path). This is in order to immediately reduce the consumer harm from prices in excess of cost, particularly because it does not seem that BT's high margin is necessarily the result of previous efficiency gains (given the issues with its cost data and recent price increases, discussed in paragraphs 5.64-5.70) and these services were not previously subject to a charge control.[107] Further, we consider the disruption of this one-off change is likely to be limited given the comparatively low revenue from TRCs (compared to WLA as a whole) relative to the benefits of reducing prices. For these reasons, we consider a one-off adjustment to TRCs to be appropriate and consider this to be consistent with the reasoning for glide paths relative to one-off adjustments in setting the LLU and WLR (WFAEL) charge controls (and with our approach elsewhere[108]).

5.94 We have not set our proposed charge control by reference to volumes, given the uncertainty and variability in the volume data provided by BT (as discussed above). Moreover, for services where a large part of the cost base relates to engineering

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[103] I.e. as a "Standard Chargeable Visit" consists of the visit component and up to one hour's work, we consider that the visit component charge is equal to the total "Standard Chargeable Visit" price (currently £120) minus the hourly rate (i.e. the price of an "Additional Hour", which is currently equal to £60). This is confirmed in BT's internal pricing papers. (BT response to s.135 notice of 13 December 2013).

[104] See Section 3 of Ofcom, *Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*, 11 July 2013 http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf for a full discussion of our general position on glide paths.

[105] As set out in paragraph 8.52 onwards of Ofcom, *Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls consultation*, 19 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-llu-wlr-charge-controls/summary/famr-2013.pdf.

[106] I.e. a firm's incentives to innovate/reduce costs during a charge control will be dampened if we claw back its gains from doing so straight away in the next review period.

[107] This is consistent with where we have previously considered one-off reductions under certain circumstances, see for example paragraph 3.96 of Ofcom, *Charge control review for LLU and WLR services – consultation*, 31 March 2011, http://stakeholders.ofcom.org.uk/binaries/consultations/wlr-cc-2011/summary/wlr-cc-2011.pdf.

[108] Such as, for example, ECCs where we made a one-off adjustment largely on the basis that the high margins observed were not as a result of efficiency gains. See Section 22 of Ofcom, *Business Connectivity Market Review*, 28 March 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/statement/Sections17-24.pdf.

costs, the LRIC:FAC ratio tends to be close to 1.[109] This suggests that TRCs do not benefit from significant economies of scale, and so we consider that the costs are unlikely to significantly vary as a result of volume changes. Therefore we consider our proposed charge control to be appropriate even in the event of volume changes.

Internal Network Termination Equipment shifts and external shifts or rearrangement of line-plant from distribution point

5.95 We note that aside from the charges set out above, Openreach's price list includes specific prices for internal Network Termination Equipment ('NTE') shifts and external shifts or rearrangement of line-plant from the distribution point. We understand from BT that these prices are for copper lines and cover internal shifts of the master socket and external shift of a dropwire from a pole to the property. BT stated that these prices are directly linked to the TRC rates, but are fixed (e.g. a standalone NTE shift will be priced at £120 whether it takes one or three hours to complete).[110] Indeed, we note the charges for these services are equivalent to the 'Standard Chargeable Visit' and 'Additional Hours' prices.

5.96 To the extent these services are reasonably necessary, we would expect these prices to follow the same charge reductions as we are proposing for the hourly TRC charges, given the link between the two types (i.e. BT itself has stated that the charges are directly linked to the TRC rates). Therefore we propose to reduce the charges for these services by between 12% and 40%, with a base case of 16%, for the reasons set out above.

Store items

5.97 While the above applies for hourly charges for reasonably necessary TRCs, we note BT also charges separately for store items used when supplying a TRC service (e.g. broadband micro filters). Where such store items are supplied as part of a TRC supplied by BT pursuant to the network access obligation, we would also consider these items to be "reasonably necessary" for the supply of LLU and WLR services. Given this, we consider that the same risk of excessive pricing arises. However, we note that store items represent a small proportion (less than [✂]%[111]) of total TRC revenues, and therefore any regulatory intervention to protect consumers from excessive pricing needs to be proportionate. This is particularly true given it is not clear how the underlying costs of these items is likely to vary.

5.98 In light of this, and to provide a safeguard against excessive prices, we consider that it is sufficient for the fair and reasonable charges condition[112] to apply to store items supplied as part of a TRC service supplied by BT pursuant to the network access obligation. Should CPs be concerned with their level or relative pricing, they can challenge BT's charges (and, absent commercial agreement, raise a dispute with us).

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[109] See, for example, in relation to MPF and SMPF single migrations, where a large part of the costs relate to engineer time and the LRIC:FAC ratios were approximately 97% in 2011/12. See P.55, BT, *2012 RFS*, www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2012/RFS_2012.pdf.
[110] Informal information submission from BT, 19 December 2013.
[111] BT response to s.135 notice of 22 November 2013.
[112] The July 2013 FAMR Consultation proposed imposing a Requirement to provide network access on reasonable request in both the WLA and WFAEL markets. The relevant Condition requires that charges are fair and reasonable where no charge control or Basis of charges obligation applies.

Charge control proposals for SFIs

Current financial performance

5.99 As discussed above, we have concerns about the reliability of BT's aggregate financial data on SFI costs, revenues and volumes. Accordingly we have only used this information to provide an indicative view of costs relative to revenue. Unlike the case with TRCs, based on the comparable data we have available, BT revenues do not appear to be significantly in excess of FAC for SFIs (in 2012/13 total FAC was £[✂] and total revenues were £[✂]).[113]

5.100 As an additional cross-check of this view, we have sought to consider 2012/13 SFI2 charges relative to an estimate of the module costs. However, the average duration (and therefore labour time) of each module is an important input into the module costs, and we understand from BT that it is currently conducting a sample study regarding the activities required to undertake tasks for SFI2 modules.[114] Therefore we consider that any cost analysis on the basis of our current understanding of module durations is potentially outdated and misleading. Given BT is expecting to complete this study in January 2014, we will instead conduct this cross-check of SFI charges against module cost estimates in advance of the statement. This will ensure it does not affect our current proposals (set out below), should we maintain them in the statement.

5.101 While the limited data we have available appears to suggest total revenues were not significantly in excess of total FAC for SFIs in 2012/13, SFI charges have changed since 2012/13. Given some modules have increased in price and others have decreased, the net effect of the latest price changes on total revenue/cost recovery is uncertain. Although we note BT stated that this change would better align the SFI prices with costs, its expectations of this change was to increase revenue (by up to £[✂] in 2013/14) and the EBIT margin achieved (from [✂]% to [✂]%).[115] We also note that on a module basis, it is not clear that individual price changes have necessarily been driven by a change in underlying module-specific costs, as BT stated "[✂]".[116]

Charge control proposals

5.102 While it is less clear that revenues are currently substantially above costs in relation to SFIs, what is clear is that there is a definite link between TRCs and SFIs, both in terms of inputs (i.e. both are predominantly labour-based) and, historically, in the pricing of the two by BT. In particular, given the main input into an SFI module appears to be engineering resource, a key driver in SFI module costs would appear to be the time taken for each module to be completed. Indeed, we note that pricing papers from BT suggest [✂].[117] Therefore engineer time is a key component of the costs for SFI modules, and in this regard BT confirmed that its calculation of the labour rate for SFIs is in line with its calculation of the direct labour cost for TRCs.[118]

[113] Using the 2011/12 cost allocation methodology. BT response to s.135 notice of 25 October 2013.
[114] BT response to draft s.135 notice of 13 December 2013.
[115] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.
[116] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.
[117] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.
[118] BT response to s.135 notice of 22 November 2013.

5.103 Further, BT appears to consider pricing for SFIs and TRCs together under the umbrella of "field force products", which are priced using a combination of a visit component and an hourly rate.[119] Indeed, BT previously explicitly linked the two sets of charges (i.e. SFI charges were based on (and directly linked to) the TRC hourly and visit charges according to the typical time required to complete the respective module[120]), and in recent reviews of prices in February and December 2012, it explicitly considered maintaining this link. However, it has since modified its approach to instead set what are in BT's view "market based prices which reflect the increase in costs but do not directly mirror the TRC hour and visit rates".[121] Rather than appearing to be due to a breakdown of this relationship between TRCs and SFIs, part of the rationale for this modification was a concern about [✂][122][✂].

5.104 Therefore we consider that the charges for SFIs should be aligned with the proposed TRC prices (and in particular, the underlying hourly TRC rate). More specifically, we propose that module charges should equal the "Additional Hour" charge on a normal working day, multiplied by the average duration of each module (rounded to the nearest penny). For example, where an SFI module takes on average one hour to complete, we would expect its charge to be in line with the TRC charge for one "Additional Hour" in a normal working day.

5.105 Where a visit charge is included in the module, we propose that this should also reflect the visit charge element in the TRC "Standard Chargeable Visit" on a normal working day (as discussed above, the TRC visit component is equal to the "Standard Chargeable Visit" charge minus the "Additional Hour" charge on a normal working day). As the visit component of a "Standard Chargeable Visit" includes half an hour of travel time as well as travel costs[123], the average duration used for the calculation of any hourly component of an SFI module charge should reflect this to the extent relevant.

5.106 We consider this approach will help ensure that reasonably necessary SFIs are charged at levels which better reflect the underlying costs, in line with TRC prices.

5.107 While we are setting the maximum hourly (and visit) rate in an SFI module, BT will have discretion over the average module duration that ultimately informs the module price (in recognition that this may reasonably change over the review period). We accept this approach potentially gives BT a high degree of flexibility over SFI prices (due to the link with the time typically taken to complete each module), and so we also propose to maintain the requirement for fair and reasonable charges on SFIs, to protect against potentially anti-competitive or abusive use of this flexibility (e.g. we would expect BT, if required, to be able to justify any changes to the durations used in the SFI price calculations).

5.108 As with TRCs, we have not set out our proposed charge control with reference to volumes, but we consider the same arguments in relation to economies of scale apply as with TRCs (see paragraph 5.94) given labour is also a significant proportion of the costs of SFIs. As such, we consider our proposed charge control to be reasonable, even in the event of volume changes.

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[119] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.

[120] E.g. an SFI module which took 0.5 hours to complete was previously charged at half the "Additional Hour" TRC rate on a normal working day (BT presentation to Ofcom on 15 December 2011).

[121] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.

[122] [✂]

[123] Internal pricing review paper, BT response to s.135 notice of 13 December 2013.

Indexation

5.109 Having proposed a set of charges for TRCs and SFIs at the start of the charge control period, we have considered whether (and, if so, how) they should be adjusted during the review period (i.e. how they should be indexed).

5.110 We do not consider that it is proportionate to seek to forecast in detail how the SFI and TRC costs will change over the review period. Given the data uncertainty and extent to which we have exercised judgement in setting the proposed 2014/15 charge controls, detailed forecasting of SFI and TRC costs is unlikely to significantly improve the accuracy of our charge controls. Rather, we propose to adopt a simpler approach which is consistent with our LLU and WLR (WFAEL) charge control proposals.

5.111 We note that labour costs form a significant proportion of both TRC and SFI costs (approximately [✂] based on our bottom-up hourly cost estimate). We would typically expect these costs to increase over time in line with general wage inflation, as reflected in our proposals for the LLU and WLR (WFAEL) charge controls.[124] Therefore we consider it appropriate to allow charges for TRCs and SFIs to increase, to reflect this likely cost inflation, and to do so in a way consistent with the LLU and WLR (WFAEL) charge controls. As such, we consider that one option is to index these charges by the same wage inflation rate used in the LLU and WLR (WFAEL) charge controls (currently proposed to be 2.8% per year of the review period). This would mean charges could increase by up to 2.8% per year.

5.112 We accept that not all costs are labour-based, and so there could be an alternative approach which only applied this wage inflation rate to the labour elements and applied an alternative indexation to the other cost elements (potentially also, as considered appropriate, incorporating efficiency parameters as per the LLU and WLR (WFAEL) charge controls). We note that approximately [✂] of our bottom-up estimate of TRC costs are labour based, while [✂] are not and so could potentially be subject to an annual efficiency factor. Therefore, applying the estimated annual wage inflation rate to the former (i.e. [✂] of costs), and the annual LLU and WLR (WFAEL) charge controls efficiency factor to the latter (i.e. the remaining [✂] of costs, and using the upper bound of the proposed range of 4-6%[125]), would give a potential lower bound for the index of -0.1% per year. In other words, charges would need to decrease by 0.1% per year.

5.113 Therefore, we propose a range for indexation for TRC and SFI charges of -0.1% to +2.8% per year. Our current preference is to index the TRC and SFI charges by a combination of the wage inflation rate and efficiency assumption used in the WLR and LLU charge control, weighted according to the relative proportion of labour and non-labour costs respectively (as described above). This is in recognition of the fact that not all TRC and SFI costs are labour-based. We propose under this option to ultimately use the 2.8% labour wage inflation proposed, alongside the final efficiency factor used in the LLU and WLR (WFAEL) charge controls which is still to be

[124] See, for example, paragraph 6.122 of Ofcom, *Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*, 11 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf.

[125] The final efficiency factor to be used within this range is still to be determined. See paragraph 6.117 of Ofcom, *Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*, 11 July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/llu-wlr-cc-13/summary/LLU_WLR_CC_2014.pdf.

determined. As an indication, based on the midpoint of the efficiency range currently proposed (i.e. 5% efficiency assumption), this would give a proposed indexation of +0.2% per year. In other words, under our proposed TRC and SFI charge control, prices could increase by up to 0.2% per annum.

5.114 We also propose applying this index to each TRC charge, and therefore subsequently to each SFI charge. We usually have a preference for a basket approach, as it is often desirable for BT to have some pricing flexibility over individual service/product prices. However, in order to demonstrate compliance with an overall basket, BT would need to provide volume or revenue weightings and it has indicated that this is difficult for both TRCs and SFIs. This would make it difficult for BT to demonstrate compliance in the event it varied individual charges by differing amounts. As a result, we propose to apply the indexation to each and every TRC and SFI charge. We also note that BT envisaged its proposed safeguard cap applying to every TRC and SFI charge in the price list, on the basis of simplicity and the potential difficulty of demonstrating compliance under a more elaborate framework.[126] Therefore our proposal will allow each TRC and SFI charge to increase by up to the index per year.

Incentives for service provision and quality

5.115 As set out above, BT argued it would make a very small margin under a FAC-based cost orientation obligation for TRCs and SFIs which will undermine its incentives to provide the services/provide them at a suitable quality. However, we consider that our proposed charge control approach does not undermine these incentives for a variety of reasons.

5.116 Firstly, BT is ultimately obligated to provide TRCs and SFIs to the extent they are “reasonably necessary” and this obligation arises as a result of its (provisional) SMP in the fixed access markets under review. Cessation of supply of these services is not possible.[127]

5.117 Secondly, as set out above, our proposal still means the price of TRCs and SFIs includes a contribution to common costs as well as incremental costs. Therefore BT is not indifferent between whether it provides TRCs and SFIs or not, as it forgoes more than just marginal costs for each unit lost (as discussed above).

5.118 Thirdly, setting charges at the start of the review period means BT is able to earn and keep a return in excess of that observed at the start of the control if it can reduce its costs (this is not the case under cost orientation obligation which was proposed in the July 2013 FAMR Consultation, which is the context in which BT’s arguments were made). Therefore this should maintain incentives to improve the procedures and technical methods used, particularly to the extent they reduce hourly TRC and SFI costs (i.e. efficiency gains).

5.119 Finally, we also note that the link between BT’s proposal for TRCs and quality/innovation is less clear than it presented (summarised in paragraph 5.10), given its high existing margin for TRCs. This is because rather than incentivising improved quality/innovation, maintaining the existing high margin could equally negatively distort BT’s incentives by incentivising it to treat TRCs like a ‘cash cow’ and encourage over-provision at the expense of other engineering work which

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[126] Informal information submission from BT, 22 November 2013.
[127] This pricing regulation will not apply to those TRCs or SFIs which are not “reasonably necessary.”

attracts a lower return (e.g. increased job duration for TRCs since these are charged by the hour). As such, it could also dampen the efficiency incentives.

5.120 For these reasons, we do not consider our proposed approach will undermine the incentives for service provision and/or improved service quality. We also do not consider that it will necessarily undermine incentives to innovate for value-added type services as, to the extent they are not reasonably necessary for the provision of LLU- or WLR-based services, they are not covered by this regulation and as such could be charged for separately if there is a value to the CP. For example, it is not obvious that BT's example of the installation of set-top boxes as an additional on-site service[128] would necessarily fall under the "reasonably necessary" criteria for LLU or WLR. Moreover, we consider that our charge control proposals will also remove the incentives for BT to change its services in ways that simply increase the costs of provision without meeting a specific demand from its customers (i.e. CPs), which might otherwise occur (particularly under a Basis of charges obligation).

Proposed charge controls

5.121 In light of the above, we propose a charge control for TRCs which are reasonably necessary, with 2013/14 charges as follows:

Table 5.6: Proposed charge controls for TRCs

TRC name	Normal working day		All other times except Sundays & Public/Bank Holidays		Sundays and Public/Bank Holidays	
	Proposed range* (£)	Base case** (£)	Proposed range* (£)	Base case** (£)	Proposed range* (£)	Base case** (£)
Standard Chargeable Visit (Visit plus up to 1 hours work)	72.00 - 105.60	100.80	90.00 – 132.00	126.00	108.00 – 158.40	151.20
Additional Hours (or Part thereof)	36.00 – 52.80	50.40	54.00 – 79.20	75.60	72.00 – 105.60	100.80
Supplementary charges (Per Visit)	N/A	N/A	18.00 – 26.40	25.20	36.00 - 52.80	50.40
Supplementary charges (Per Hour or Part thereof)	N/A	N/A	18.00 – 26.40	25.20	36.00 – 52.80	50.40

TRC name	Per order	
	Proposed range* (£)	Base case** (£)
Internal and External Shifts	72.00 – 105.60	100.80
Additional Line shifted	36.00 – 52.80	50.40

** Based on proposed 12-40% reduction to 2013/14 prices*
*** Based on proposed 16% reduction to 2013/14 prices*

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[128] Paragraph 378, *BT response to the July 2013 FAMR Consultation*, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/responses/BT.pdf.

Prices rounded to the nearest penny

5.122 We propose to index each of these charges by between -0.1% and +2.8% per year, with a base case of +0.2% per year.

5.123 We also propose a charge control for SFIs which are reasonably necessary which explicitly links these charges to the TRC charge control as follows.

5.124 For a module which includes engineer time and a visit charge (e.g. Base module and Frame Direct module), prices should equal:

a) the TRC visit component charge in the respective year (as described above); plus

b) the additional engineering time charge, calculated by the typical time required to complete the module (allowing for any engineering time already included in the visit component charge) multiplied by the "Additional Hours" TRC rate in a normal working day for the respective year;

c) this total should then be rounded to the nearest penny.

5.125 For all other modules which do not recoup the visit charge, prices should equal the typical time required to complete the module multiplied by the "Additional Hours" TRC rate in a normal working day for the respective year, rounded to the nearest penny.

5.126 The proposed visit and hourly charge components for each SFI module are set out in Table 5.7 below. We propose to index each of these by between -0.1% and +2.8% per year, with a base case of +0.2% per year (as per TRCs).

Table 5.7: Proposed visit and hourly cost components for each SFI module in 2012/13

	Proposed price range (£)	Base case (£)
Visit component	36.00 – 52.80	50.40
Hourly component (per hour)	36.00 - 52.80	50.40

Consultation questions

5.1 Do you agree with the charge control proposals for TRCs? Please provide reasons in support of your views.

5.2 Do you agree with the charge control proposals for SFIs? Please provide reasons in support of your views.

Legal tests

5.127 For the reasons set out below, we are satisfied that the proposed charge control conditions for BT on TRCs and SFIs proposed in relation to LLU and WLR services meet the tests set out in the CA03.

5.128 Section 87(9)(a) of the CA03 authorises the setting of SMP services conditions imposing on the dominant provider such price controls as Ofcom may direct in relation to matters connected with the provision of network access to the relevant network, or with the availability of relevant facilities. In setting such conditions, we must be satisfied that the conditions about network access pricing set out in section 88 are also satisfied.

5.129 We consider that the proposed charge control conditions would satisfy the requirements of section 88(1) as our market analysis indicates that there is a risk of adverse effects arising from price distortion in that BT has the ability and incentive to fix and maintain its prices at an excessively high level. Moreover, the proposed conditions promote efficiency and sustainable competition and provide the greatest possible benefits to end users by enabling competing providers to buy network access and supporting ancillary services at levels that reflect costs. The extent of investment of BT has been taken into account as set out in section 88(2), as the obligation provides for a mark-up for an appropriate return on capital employed.

5.130 We have also considered our duties under section 3 and all the Community requirements set out in section 4 of the CA03. In particular, the condition is aimed at promoting competition and securing efficient and sustainable competition for the maximum benefit of consumers by ensuring that charges for wholesale services are set to reflect cost. The proposed conditions would be appropriate in order to promote efficiency and sustainable competition and provide the greatest possible benefits to end users by enabling competing providers to buy network access and supporting ancillary services that reflect costs. At the same time, we consider that the proposed condition is also consistent with the purpose of securing efficient investment.

5.131 Section 47(2) of the CA03 requires conditions to be objectively justifiable, non-discriminatory, proportionate and transparent. In our provisional view, the proposed conditions are:

- objectively justifiable, in that the conditions are required to address the risk that TRC and SFI charges are likely to be priced at an excessive level in the absence of such a condition;
- not unduly discriminatory, as we have provisionally found that BT is the only operator with SMP in the relevant market of the UK excluding the Hull Area and in the case of KCOM we are not proposing to require it to provide LLU or WLR as a specific access remedy;
- proportionate, as it would ensure, but do no more than ensure, that BT is unable to exploit its market power, while at the same time allowing BT a fair rate of return that it would expect in competitive markets; and
- transparent, in that it is clear in its intention, in particular to ensure that BT should set charges for each of LLU and WLR TRCs and SFIs as set out in this section.

Cost accounting for TRCs and SFIs

5.132 In our July 2013 FAMR Consultation, we set out our proposals that cost accounting requirements should apply to BT.[129] These conditions have now been superseded by those being consulted on in the Regulatory Financial Reporting review published in

[129] Paragraphs 10.333 to 10.348, Ofcom, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

December 2013.[130] The July 2013 FAMR Consultation also set out our policy on what we expect to include in the cost accounting Direction for TRCs and SFIs.[131]

5.133 While we will be consulting separately on the Direction specifying the cost accounting requirement (pursuant to our revised proposed cost accounting condition) as part of our annual update of BT and KCOM's regulatory and financial reporting, we here describe our policy as to what we expect to include in the cost accounting Direction for TRC and SFI charge controlled services.

5.134 As set out in the Regulatory Financial Reporting Consultation[132], by explicitly linking Regulatory Financial Reporting to the SMP remedies being imposed, we can ensure Regulatory Financial Reporting is both justified and proportionate. At a simple level Regulatory Financial Reporting must supply us with the information to enable us to discharge our regulatory duties.

5.135 We therefore require the information necessary to monitor the effectiveness of the charge control remedies we propose for TRCs and SFIs, to ensure that the remedies continue to address the competition problems identified, and to enable our timely intervention should such intervention ultimately be necessary.

5.136 Further, it is important that BT records information necessary for the purposes of monitoring TRC and SFI charge controls at the time that relevant transactions occur, on an ongoing basis.

5.137 As discussed above, the proposed charge controls for TRCs have been set on the basis of a range of estimates of cost (relative to prices), including Direct Labour Costs uplifted by an estimated percentage for indirect costs, with indexation for the review period. The prices for SFIs, as also set out above, are proposed to be aligned with TRC charges, e.g. based on the hourly TRC charge applied to the estimated time taken to complete an average module. For the purposes of monitoring the effectiveness of our remedy, we propose that BT must continue to provide to us the direct and indirect volume, revenue and cost information requested by us and supplied to us in the course of this consultation as set out in Annex 6 under the "Management Accounts information" tab. A subset of this information will be published in order to provide stakeholders with reassurance about compliance with our proposed charge control proposals for TRCs and SFIs and information to make better informed contributions to the development of the regulatory framework.

5.138 As we have not been able to set TRC and SFI charges on the explicit basis of actual FAC, due to the data concerns and lack of information available to us in the required timescale, we therefore propose that BT should provide us with the information set out in Annex 6 under the "FAC RFS information" tab. This information will not be published in the context of Regulatory Financial Reporting.

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[130] *Regulatory Financial Reporting: A review*, 20 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/bt-transparency/summary/BTRFS.pdf.

[131] Paragraphs 12.100 to 12.103 and Paragraph 14.78, *Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30*, July 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-reviews/summary/fixed-access-markets.pdf.

[132] Ofcom, *Regulatory Financial Reporting: A review*, 20 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/bt-transparency/summary/BTRFS.pdf.

Consultation questions

5.3	*Do you agree with our proposed approach to cost accounting for TRCs and SFIs? Please provide reasons in support of your views.*

Annex 1

Responding to this consultation

How to respond

A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 17 February 2014**.

A1.2 Ofcom strongly prefers to receive responses using the online web form at http://stakeholders.ofcom.org.uk/consultations/famr-2014/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email wla2014.review@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Mr David du Parc Braham
Floor 4
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3417

A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact David du Parc Braham on 020 7981 3856.

Confidentiality

A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/accoun/disclaimer/

Next steps

A1.11 Following the end of the consultation period, Ofcom intends to publish a statement on all of the issues covered by the Fixed Access Market Reviews in spring 2014.

A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.

A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.

A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	☐	Name/contact details/job title	☐
Whole response	☐	Organisation	☐
Part of the response	☐	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name   Signed (if hard copy)

Annex 4

Consultation questions

Notification periods

3.1	*Do you agree with our proposal to reduce from 90 days to 28 days the notification period that BT and KCOM are required to give in respect of reductions to the WLR rental charge? Please provide reasons in support of your views.*

VULA margin compliance

4.1	*Do you agree with our proposals for BT to provide information on the VULA margin every six months and on request? Please provide reasons in support of your views.*

Time Related Charges and Special Fault Investigations

5.1	*Do you agree with the charge control proposals for TRCs? Please provide reasons in support of your views.*

5.2	*Do you agree with the charge control proposals for SFIs? Please provide reasons in support of your views.*

5.3	*Do you agree with our proposed approach to cost accounting for TRCs and SFIs? Please provide reasons in support of your views.*

Annex 5

TRC/SFI ordering steps and processes

Step 1: Remote diagnostics – customer reports problem.

A5.1 The customer reports a problem. They may explain whether it is data or voice related, and also the nature of the service problem (e.g. an intermittent dial tone).

Step 2: Remote diagnostics - Openreach and CP line tests.

A5.2 CPs currently use a combination of their own system line tests with Openreach's line test to identify whether there is a fault or not and to assist customer service agents identify where they need to concentrate diagnostics with the customer (see next step below). We summarise these below:

- Openreach line test: The main purpose of the line test is to determine whether there may be a fault on the line, but it will also give a broad indication of where a fault may be located. It may specify that a fault is "near or within a customer's premise" (in which case an engineer may be required (and thus a TRC may be incurred) – see below).[133] If the line tests as 'ok'[134], then a SFI or TRC may ultimately be ordered for further investigation of the customer's issues.

- CP line tests: TalkTalk operates its own system test to identify the potential type of problem and location of a suspected fault.[135] The system test will show a fail and identify a hard line fault and specify that the problem is potentially 'external to the customer home' (though this may still indicate that the fault is potentially within the end-user premise). Alternatively, the system test will show a fail, but identify an 'indeterminate or no line fault' which specifies that it is a potential "in-home problem". Finally, the system test may show a line test pass which specifies that it is a potential "in-home" problem. While TalkTalk's line test can provide more granular sub-descriptions of the potential issue than those described above, in most instances the testing does not provide the capability of ascertaining with accuracy whether the fault is on or off the Openreach network. TalkTalk largely relies on its own test to determine whether it uses Openreach or third party engineers.

Step 3: Remote diagnostics – In-home checks.

A5.3 The purpose of this step is for CPs to check with the customer that their home connections are correctly set-up. For example, to ensure that broadband equipment (e.g. router) is connected to the telephone socket and the customer's wireless connectivity with the router is connected. CPs may use Openreach's best practice

[133] If the line tests as 'not ok' it may also indicate whether the fault in question is caused by Openreach on its network, in which case this is resolved under the Openreach service level agreement (i.e. not resulting in a TRC or SFI2) and the fault process ends.
[134] In this scenario, the result of the line test will be a pass ('LTOK') and the test indicates the line is working okay to SIN 349 standard at the NTE.
[135] Sky currently does not operate such a line test. However, it does have its own line test to determine whether the broadband service is 'stable' and what speed is being provided to the end-user.

diagnostic guidelines, although the guidelines do not assist in identifying with accuracy whether the problem is on- or off-net. The CP may carry out multiple checks by escalating to support team with more advanced technical skills.[136] This stage is optional as customers may by-pass it at their request if they do not want to go through the diagnostic checks.

Step 4: Validation. CPs will decide whether to book and despatch an engineer.

A5.4 Where a fault is identified at the in-home set up point and resolved by the support team and customer, then the fault is resolved and the fault process ends.

A5.5 Where the in-home checks have not resolved the issue, customers may consent to an engineering visit. Where the TalkTalk line test results identify a hard line fault external to the customers home it will use an Openreach engineer to carry out a TRC or SFI. If the test results have beyond doubt identified an off-net problem it will use a third party engineer to try and resolve the issue. Sky, on the other hand, will always use Openreach engineers to carry out a TRC if the BT line test indicates a fault near to or at the customer premise (and therefore incur TRCs), or to carry out an SFI where the BT line tests as ok but problems persist.

Step 5: Engineer visit.

A5.6 At this point the engineer will visit the home to undertake the work. It is worth noting that for SFIs the initial home visit is compulsory in order to undertake an initial assessment of the cause of the broadband problems (the Base Module), but this investigative work may later result in other optional modules being ordered depending on the nature of the problem.

[136] For example, Sky passes potential faults from a ‘Tier 1’ to ‘Tier 2’ agent before deciding whether to order an SFI.

Annex 6

Cost accounting templates

A6.1 Please see:

http://stakeholders.ofcom.org.uk/binaries/consultations/famr-2014/annexes/Annex_6.xlsx.

Annex 7

Draft legal instrument

NOTIFICATION OF PROPOSALS UNDER SECTION 48A OF THE COMMUNICATIONS ACT 2003

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

Background

1. On 3 July 2013, OFCOM published a consultation document entitled "*Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30 – Consultation on the proposed markets, market power determinations and market remedies*" (the "**FAMR Consultation**"). Part I of Annex 11 to the FAMR Consultation set out the notification under sections 48A and 80A of the Act in which OFCOM proposed to:

   - identify certain markets;
   - make market power determinations; and
   - set SMP services conditions,

   (the "**FAMR Notification**").

2. In relation to BT, OFCOM proposed in the FAMR Notification that BT will have significant market power in the following markets over the period of the review undertaken in the FAMR Consultation:

   a. The supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area;

   b. Wholesale fixed analogue exchange line services in the United Kingdom excluding the Hull Area;

   c. Wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area; and

d. Wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area.

3. As a result of the proposed market power determinations in the markets listed above at paragraph 2, OFCOM proposed in the FAMR Notification to set a number of SMP services conditions on BT in each of those markets.

4. In relation to KCOM, OFCOM proposed in the FAMR Notification that KCOM has significant market power in the following markets over the period of the review undertaken in the FAMR Consultation:

a. The supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the Hull area;

b. Wholesale fixed analogue exchange line services in the Hull area;

c. Wholesale ISDN30 exchange line services in the Hull area; and

d. Wholesale ISDN2 exchange line services in the Hull area.

5. As a result of the proposed market power determinations in the markets listed above at paragraph 4, OFCOM proposed in the FAMR Notification to set a number of SMP services conditions on KCOM in each of those markets.

6. OFCOM explained in the FAMR Consultation that its proposals for charge controls on BT in the markets referred to at paragraphs 2(a) and 2(b) above would be set out in a separate notification. On 11 July 2013, OFCOM published a document entitled "*Fixed access market reviews: Approach to setting LLU and WLR Charge Controls*" (the "**LLU and WLR Charge Control Consultation**"). Annex 17 of the LLU and WLR Charge Control Consultation set out the notification under sections 48A of the Act in which OFCOM proposed to set the charge controls in respect of the markets referred to at paragraphs 2(a) and 2(b) above (the "**LLU and WLR Charge Control Notification**"). These proposals were made by reference to the proposed market power determinations in the FAMR Notification and, as such, were to be treated as supplementary to the FAMR Notification.

7. The period within which representations could be made to OFCOM about its proposals in both the FAMR Consultation and the LLU and WLR Charge Control Consultation ended on 25 September 2013. OFCOM received representations from

several respondents to the proposals set out in the FAMR Consultation and the LLU and WLR Charge Control Consultation.

8. In light of OFCOM's consideration of those representations, OFCOM published a further consultation document entitled "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*" on 19 December 2013 (the "**FAMR Further Consultation**"). Part 1 of Annex 15 of the FAMR Further Consultation set out the notification under section 48A of the Act in which OFCOM proposed new charge control conditions in respect of the markets referred to at paragraphs 2(a) and 2(b) above (the "**FAMR Further Notification**"). The FAMR Further Notification explained that the charge control conditions proposed therein in relation to the markets referred to at paragraphs 2(a) and 2(b) above should replace those proposed in the LLU and WLR Charge Control Notification and that those set out in relation to the markets referred to at 2(c) and 2(d) above should amend those proposed in the LLU and WLR Charge Control Notification.

9. However, OFCOM confirmed in the FAMR Further Consultation that, in light of other representations to the FAMR Consultation, it would publish a separate consultation in January 2014 containing further proposals to those contained in the FAMR Notification, the LLU and WLR Charge Control Notification and the FAMR Further Notification.

10. In this notification, OFCOM sets out its further proposals in relation to certain of the SMP services conditions proposed to be set in respect of BT and KCOM in the markets set out at paragraphs 2 and 4 above.

Summary of additional proposals in this notification

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

    a. certain amendments to SMP services condition 1 (*Network access on reasonable request*);

    b. certain amendments to SMP services condition 6 (*Basis of charges*);

    c. certain amendments to SMP services condition 7A (*LLU charge control*);

    d. certain amendments to SMP services condition 7C (*WLR charge control*);

e. certain amendments to SMP services condition 7D (*Wholesale ISDN30 services charge control*);

f. certain amendments to SMP services condition 7E (*Wholesale ISDN2 services charge control*); and

g. certain amendments to SMP services condition 9 (*Notification of charges and terms and conditions*).

12. OFCOM proposes, in relation to the proposed SMP services conditions to be set for KCOM, certain amendments to SMP services condition 5 (*Notification of charges and terms and conditions*).

Proposed amendment to SMP services condition 1 – Network access on reasonable request

13. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the markets for the supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area to set the SMP services condition on BT as set out in proposed condition 1 in Schedule 1 of the FAMR Notification, as amended by Schedule 1 to this notification, pursuant to its powers under section 87(5)(a) of the Act.

14. Consequently, the FAMR Notification should be read accordingly. It is proposed that, save for condition 1.5, this condition will take effect from the date of any notification under section 48(1) of the Act adopting the proposals set out in this notification. It is proposed that condition 1.5 will take effect from such date as OFCOM may determine is appropriate in all the circumstances.

15. The effect of, and the reasons for making, the amendments set out above at paragraph 13 are set out in the consultation document accompanying this notification.

Proposed amendment to SMP services condition 6 – Basis of charges

16. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the markets for (i) the supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area, and (ii) wholesale fixed analogue exchange line access in

the United Kingdom excluding the Hull Area, to amend the SMP services condition on BT as set out in proposed condition 6 in Schedule 1 of the FAMR Notification, pursuant to its powers under section 87(9) of the Act, by:

a. removing proposed SMP services condition 6.1;

b. removing proposed SMP services condition 6.6; and

c. making the necessary consequential changes to the numbering of the remaining conditions.

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

18. The effect of, and the reasons for making, the amendments set out above at paragraph 16 are set out in the consultation document accompanying this notification.

Proposed amendments to SMP services condition 7A – LLU charge control

19. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for the supply of copper-loop based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area, to set the SMP price control conditions on BT as set out in proposed condition 7A in Schedule 1 to Part 1 of the FAMR Further Notification, as amended by Schedule 2 to this notification, pursuant to its powers under section 87(9) of the Act.[137]

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

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

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[137] A consolidated version of proposed SMP services conditions 7A, 7C, 7D and 7E (consolidated with the conditions proposed in the FAMR Further Notification) is provided at Annex 8 of this consultation.

Proposed amendments to SMP services condition 7C – WLR charge control

22. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale fixed analogue exchange line access in the United Kingdom excluding the Hull Area, to set the SMP price control conditions on BT as set out in proposed condition 7C in Schedule 2 to Part 1 of the FAMR Further Notification, as amended by Schedule 3 to this notification pursuant to its powers under section 87(9) of the Act.

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

24. The effect of, and the reasons for making, the amended proposal set out above at paragraph 22 above are set out in the consultation document accompanying this notification.

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

25. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area, to set the SMP price control conditions on BT as set out in proposed condition 7D in Schedule 1 of the FAMR Notification (as amended by Schedule 3 to Part 1 of the FAMR Further Notification), as amended by Schedule 4 to this notification pursuant to its powers under section 87(9) of the Act.

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

27. The effect of, and the reasons for making, the amended proposal set out above at paragraph 25 above are set out in the consultation document accompanying this notification.

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

28. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale ISDN2 exchange line services in the

United Kingdom excluding the Hull Area, to set the SMP price control conditions on BT as set out in proposed condition 7E in Schedule 1 of the FAMR Notification (as amended by Schedule 4 to Part 1 of the FAMR Further Notification), as amended by Schedule 5 to this notification pursuant to its powers under section 87(9) of the Act.

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

30. The effect of, and the reasons for making, the amended proposal set out above at paragraph 28 above are set out in the consultation document accompanying this notification.

Proposed amendments to SMP services condition 9 – Notification of charges and terms and conditions

31. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale fixed analogue exchange line access in the United Kingdom excluding the Hull Area to set the SMP services condition on BT as set out in proposed condition 9.4B in Schedule 1 of the FAMR Notification, as amended by Schedule 6 to this notification, pursuant to its powers under section 87(6)(b) and (d) of the Act.

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

33. The effect of, and the reasons for making, the amended proposal set out above at paragraph 31 above are set out in the consultation document accompanying this notification.

Proposed amendments to SMP services condition 5 – Notification of charges and terms and conditions

34. OFCOM hereby gives notice of its proposals, in accordance with section 48A of the Act, in relation to the market for wholesale fixed analogue exchange line access in the Hull Area to set the SMP services condition on KCOM as set out in proposed condition 5.4B in Schedule 2 of the FAMR Notification, as amended by Schedule 7 to this notification, pursuant to its powers under section 87(6)(b) and (d) of the Act.

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

36. The effect of, and the reasons for making, the amended proposal set out above at paragraph 34 above are set out in the consultation document accompanying this notification.

Ofcom's duties and legal tests

37. OFCOM considers that the proposals set out in this notification comply with all applicable legal tests, including the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.

38. In making the proposals referred to in this notification, OFCOM has:

a. considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act;

b. taken due account of all applicable recommendations issued by the European Commission in accordance with section 4A of the Act; and

c. taken utmost account of any relevant opinion, recommendation, guidance advice or regulatory practice adopted by BEREC in accordance with Article 3(3) of Regulation (EC) No 1211/2009.

Making representations

39. Representations may be made to OFCOM about any of the proposals set out in this notification and the accompanying consultation by no later than 17 February 2014.

40. A copy of this notification and the accompanying consultation document has been sent to the Secretary of State in accordance with section 48C(1) of the Act.

Interpretation

41. For the purposes of interpreting this notification:

a) except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them below in paragraph 42, and otherwise any word or expression shall have the same meaning as it has in the Act;

b) headings and titles shall be disregarded;

c) expressions cognate with those referred to in this notification shall be construed accordingly; and

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

42. In this notification:

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

b) "**BT**" means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;

c) "**Hull Area**" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

d) "**KCOM**" means KCOM Group plc, whose registered company number is 2150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;

e) "**OFCOM**" means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (c. 11); and

f) "**United Kingdom**" has the meaning given to it in the Interpretation Act 1978 (c. 30).

43. Schedules 1 to 7 form part of this notification.

Signed

D. Clarkson.

David Clarkson

Competition Policy Director

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

16 January 2014

Schedule 1: Proposed amendments to SMP services condition 1

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

(a) replacing proposed condition 1.3 with the revised condition 1.3 below[138];

(b) adding proposed condition 1.5 below;

(a) adding the proposed defined terms set out in Part 1 below to Part 2 of Schedule 1 to the FAMR Notification; and

(c) making the necessary consequential changes to the numbering of the remaining conditions.

1.3 In any case where any of conditions 6 or 7 apply (<u>with the exception of condition 7A.3)</u>, the provision of network access by the Dominant Provider in accordance with this condition must:

(a) take place as soon as reasonably practicable after receiving the request from a Third Party; and

(b) be on:

(i) fair and reasonable terms and conditions (excluding charges); and

(ii) such terms and conditions (excluding charges) as Ofcom may from time to time direct.

<u>For the avoidance of doubt, condition 1.2 above shall apply to the provision of network access by the Dominant Provider in the specific form of Special Fault</u>

[138] In order to provide transparency as to the differences between condition 1.3 proposed in the FAMR Notification and that proposed in this notification, we have provided a comparison (with the use of underlining and strikethrough) of the two conditions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the condition proposed in the FAMR Notification.

Investigation Service, Special Fault Investigation – Base Module and/or Special Fault Investigation – Frame Direct Module.

1.5 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format (including in any such presentational form or arrangement (including as to the level of disaggregation) as Ofcom may direct from time to time), no later than [one month] after the end of each Relevant Period, the data necessary for OFCOM to monitor compliance of the Dominant Provider with Condition 1.2 above in respect of Virtual Unbundled Local Access. This data must include the information set out at (a) to (e) below in respect of the preceding Relevant Period and/or such other period as Ofcom may direct from time to time.

(a) All costs incurred by the Retail Divisions in supplying VULA-Based Broadband Packages to end-users;

(b) The number of end-users subscribing to each distinct VULA-Based Broadband Package from the Retail Divisions;

(c) All revenues generated by the Retail Divisions from supplying VULA-Based Broadband Packages to end-users;

(d) The Churn Rate (in respect of each Relevant Quarter during the applicable Relevant Period) relating to the Retail Divisions' supply of:

i. SMPF-Based Broadband Packages to end-users; and

ii. VULA-Based Broadband Packages to end-users; and

(e) Such other data as OFCOM may direct from time to time.

"**Churn Rate**" means, for the purposes of:

(i) condition 1.5(d)(i), the number of Relevant Users that, during the applicable Relevant Quarter, stopped subscribing to a SMPF-Based Broadband Package (excluding Relevant Users that stop subscribing to a SMPF-Based Broadband Package by virtue of their subscribing to an alternative SMPF-Based Broadband Package during that Relevant Quarter) expressed as a percentage of the total number of Relevant Users; and

(ii) condition 1.5(d)(ii), the number of Relevant Users that, during the applicable Relevant Quarter, stopped subscribing to a VULA-Based Broadband Package (excluding Relevant Users that stop subscribing to a VULA-Based Broadband Package by virtue of their subscribing to an alternative VULA-Based Broadband Package during that Relevant Quarter) expressed as a percentage of the total number of Relevant Users;

"**enterprise**" shall have the meaning given to it in the Enterprise Act 2002 (c.40);

"**Relevant Period**" means the following periods of six months beginning either (as applicable) on:

(i) 1 April and ending on 30 September; or

(ii) 1 October and ending on 31 March;

"**Relevant Quarter**" means:

(i) for a Relevant Period beginning on 1 April and ending on 30 September, the following periods of three months during that Relevant Period, beginning either (as applicable) on:

a. 1 April and ending on 30 June; or

b. 1 July and ending on 30 September; and

(ii) for a Relevant Period beginning on 1 October and ending on 31 March, the following periods of three months during that Relevant Period, beginning either (as applicable) on:

a. 1 October and ending on 31 December; or

b. 1 January and ending on 31 March; and;

"**Relevant Users**" means, for the purposes of:

(i) condition 1.5(d)(i), those end-users that (immediately prior to the start of the applicable Relevant Quarter) were subscribing to a SMPF-Based Broadband Package; and

(ii) condition 1.5(d)(ii), those end-users that (immediately prior to the start of the Relevant Quarter) were subscribing to a VULA-Based Broadband Package;

"**Retail Divisions**" means the enterprise of the Dominant Provider known as 'BT Consumer' as at the date of the entry into force of this condition or such other enterprise or enterprises that may replace or succeed BT Consumer from time to time;

"**SMPF-Based Broadband Packages**" means any product, service, bundle of products or services (including, but not limited to, telephony and television services (including content)) offered by the Dominant Provider to end-users which includes the provision of a broadband connection, where the Dominant Provider uses Shared Access in order to provide that broadband connection;

"**VULA-Based Broadband Packages**" means any product, service or bundle of products or services (including, but not limited to, telephony and television services (including content)) offered by the Dominant Provider to end-users which includes the provision of a broadband connection, where the Dominant Provider uses Virtual Unbundled Local Access in order to provide that broadband connection;

Schedule 2: Proposed amendments to SMP services condition 7A

Proposed SMP services condition 7A set out in Schedule 1 to Part 1 of the FAMR Further Notification shall be amended by:

(a) adding paragraphs (m) to (x) set out in Part 1 below after condition 7A.1(l);

(b) adding paragraphs (h) to (m) set out in Part 2 below after condition 7A.2(g);

(c) adding condition 7A.3 set out in Part 3 below after condition 7A.2;

(d) adding paragraph 7A.7(b) set out in Part 4 below after condition 7A.6(a) (which shall be renumbered, as part of these proposals, to condition 7A.7(a));

(e) creating sub-paragraphs in conditions 7A.6(b) and 7A.6(c) (which shall be renumbered, as part of these proposals, to conditions 7A.7(c) and 7A.7(d) respectively) by inserting ": (i)" after the words "For each of the categories of products and/or services specified in";

(f) adding paragraph 7A.7(c)(ii) set out in Part 5 below after the new sub-paragraph 7A.7(c)(i);

(g) adding paragraph 7A.7(d)(ii) set out in Part 6 below after the new sub-paragraph 7A.7(d)(i);

(h) adding paragraph 7A.7(f) set out in Part 7 below after condition 7A.6(d) (which shall be renumbered, as part of these proposals, to condition 7A.7(e));

(i) adding the proposed defined terms set out in Part 8 below to proposed condition 7A.14 (which shall be renumbered, as part of these proposals, to condition 7A.15);

(j) creating a sub-paragraph in condition 7A.14(d) (which shall be renumbered, as part of these proposals, to condition 7A.15(f)) by inserting ": (i)" after "“**Charge Controlled Service**” means";

(k) adding paragraphs 7A.15(f)(ii), (iii) and (iv) set out in Part 9 below after the new sub-paragraph 7A.15(f)(i);

(l) making the necessary consequential changes to the numbering of the remaining conditions and cross-references.

Part 1

(m) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(i) applies;

(n) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(ii) applies;

(o) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(h)(iii) applies;

(p) the charge for an Additional Hour when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(i) applies;

(q) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(ii) applies;

(r) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(i)(iii) applies;

(s) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(j)(i) applies;

(t) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a

Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(j)(ii) applies;

(u) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(k)(i) applies;

(v) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(k)(ii) applies;

(w) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(l) applies; and

(x) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(m) applies;

Part 2

(h) for a Standard Chargeable Visit, in the First Relevant Year, the amount of;

i. £[72.00 to 105.60] when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[108.00 to 158.40] when that service is provided on a Non-Working Day; and

iii. £[90.00 to 132.00] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(i) for an Additional Hour, in the First Relevant Year, the amount of:

i. £[36.00 to 52.80] per hour when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[72.00 to 105.60] per hour when that service is provided on a Non-Working Day; and

iii. £[54.00 to 79.20] per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

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

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

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

i. £[36.00 to 52.80] per hour when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(l) for Internal and External Shifts, the amount of £[72.00 to 105.60] in the First Relevant Year;

(m) for Additional Line Shifted, the amount of £[36.00 to 52.80] in the First Relevant Year;

<u>Part 3</u>

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

Engineer Time x *Hourly Charge*

Where:

Engineer Time has the meaning ascribed to it in condition 7A.15(l) below.

Hourly Charge has the meaning ascribed to it in condition 7A.15(o) below.

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

(Engineer Time + 0.5) x *Hourly Charge*

Where:

Engineer Time has the meaning ascribed to it in condition 7A.15(l) below

Hourly Charge has the meaning ascribed to it in condition 7A.15(o) below.

Part 4

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

$$CP_t = X$$

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

X means:

- for the category of products and/or services specified in condition 7A.1(m) [-0.1% to 2.8%] percentage points;
- for the category of products and/or services specified in condition 7A.1(n) [-0.1% to 2.8%] percentage points;
- for the category of products and/or services specified in condition 7A.1(o) [-0.1% to 2.8%] percentage points;
- for the category of products and/or services specified in condition 7A.1(p) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(q) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(r) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(s) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(t) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(u) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(v) [-0.1% to 2.8%] percentage points;

- for the category of products and/or services specified in condition 7A.1(w) [-0.1% to 2.8%] percentage points; and

- for the category of products and/or services specified in condition 7A.1(x) [-0.1% to 2.8%] percentage points.

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

Part 5

ii. conditions 7A.1(m) to 7A.1(x), in the case of Deficiency either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7A.7(f) below.

Part 6

ii. conditions 7A.1(m) to 7A.1(x), in the case of Excess in either the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall also be determined in accordance with condition 7A.7(f) below.

Part 7

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

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7A.1(m) to 7A.1(x) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7A.4 or 7A.5, as applicable;

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

Part 8

(a) "**Additional Hour**" means the provision of the service 'Additional Hours (or Part thereof)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(b) "**Additional Line Shifted**" means the provision of the service 'Additional Line shifted' (which shall be construed as having the same meaning as provided by the

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

(l) "**Engineer Time**" means in relation to a Special Fault Investigation Service, Special Fault Investigation – Base Module or a Special Fault Investigation – Frame Direct Module (as applicable), the amount of time reasonably determined by BT as being required by an engineer in order to complete the corresponding Special Fault Investigation Service, Special Fault Investigation – Base Module or Special Fault Investigation – Frame Direct Module during the Relevant Year (expressed in hours and with any minutes expressed as a decimal);

(o) "**Hourly Charge**" shall, for the purposes of a Relevant Year, be the same as the amount charged by the Dominant Provider during that Relevant Year for providing an Additional Hour within the hours of 8am to 5pm on a Working Day;

(q) "**Internal and External Shifts**" means the provision of the service 'Internal and External Shifts' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(r) "**Local Loop Unbundling Services**" means network access to Metallic Path Facilities or Shared Access;

(oo) "**Non-Working Day**" means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);

(ttt) "**Special Fault Investigation – Base Module**" shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SFI2) - Base module and/or SMPF Special Fault Investigation 2 (SFI2) - Base module (as applicable);

(uuu) "**Special Fault Investigation – Frame Direct Module**" shall be construed as having the same meaning as SMPF Special Fault Investigation 2 (SFI2) - Frame direct module and/or MPF Special Fault Investigation 2 (SFI2) - Frame direct module (as applicable);

(vvv) "**Special Fault Investigation Service**" means any of the following services (as applicable):

a. SMPF Special Fault Investigation 2 (SFI2) - Coop module;

b. SMPF Special Fault Investigation 2 (SFI2) - Frame module;

c. SMPF Special Fault Investigation 2 (SFI2) - Internal equip module;

d. SMPF Special Fault Investigation 2 (SFI2) - Internal Wiring module;

e. SMPF Special Fault Investigation 2 (SFI2) - Network module;

f. MPF Special Fault Investigation 2 (SFI2) - Coop module;

g. MPF Special Fault Investigation 2 (SFI2) - Frame module;

h. MPF Special Fault Investigation 2 (SFI2) - Internal equip module;

i. MPF Special Fault Investigation 2 (SFI2) - Internal Wiring module; and

j. MPF Special Fault Investigation 2 (SFI2) - Network module;

(www) "**Standard Chargeable Visit**" means the provision of the service 'Standard Chargeable Visit (Visit plus up to 1 hours work)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(xxx) "**Supplementary Charges (Per Hour)**" means the provision of the service 'Supplementary charges (Per Hour or Part thereof)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(yyy) "**Supplementary Charges (Per Visit)**" means the provision of the service 'Supplementary charges (Per Visit)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Local Loop Unbundling Services;

(dddd) "**Working Day**" means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

Part 9

ii. any Special Fault Investigation Service;

iii. any Special Fault Investigation – Base Module; and

iv. any Special Fault Investigation – Frame Direct Module;

Schedule 3: Proposed amendments to SMP services condition 7C

Proposed SMP services condition 7C set out in Schedule 2 to Part 1 of the FAMR Further Notification shall be amended by:

(a) adding paragraphs (d) to (o) set out in Part 1 below after condition 7C.1(c);

(b) adding paragraphs (e) to (j) set out in Part 2 below after condition 7C.2(d);

(c) inserting the words "(a) to 7C.1(c) and 7C.1(p)" after "Subject to conditions 7C.6(b) to 7C.6(d) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in Condition 7C.1" in condition 7C.6(a);

(d) adding paragraph 7A.6(b) set out in Part 3 below after condition 7C.6(a);

(e) creating sub-paragraphs in conditions 7C.6(b) and 7C.6(c) (which shall be renumbered, as part of these proposals, as conditions 7C.6(c) and (d) respectively) by inserting ": (i) conditions 7C.1(a), 7C.1(b), 7C.1(c) and 7C.1(p)," after the words "For each of the categories of products and/or services specified in";

(f) adding paragraph 7C.6(c)(ii) set out in Part 4 below after the new sub-paragraph 7C.6(c)(i);

(g) adding paragraph 7C.7(d)(ii) set out in Part 5 below after the new sub-paragraph 7C.6(d)(i);

(h) adding paragraph 7C.6(f) set out in Part 6 below after condition 7C.6(d) (which shall be renumbered, as part of these proposals, to conditions 7C.6(e));

(i) adding the proposed defined terms set out in Part 7 below to proposed condition 7C.11;

(j) making the necessary consequential changes to the numbering of the remaining conditions and cross-references.

Part 1

(d) the charge for Standard Chargeable Visit when that service is provided within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(e)(i) applies;

(e) the charge for Standard Chargeable Visit when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(e)(ii) applies;

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

(g) the charge for an Additional Hour when that service is provided within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(i) applies;

(h) the charge for an Additional Hour when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(ii) applies;

(i) the charge for an Additional Hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(f)(iii) applies;

(j) the charge for Supplementary Charges (Per Visit) when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7CA.2(g)(i) applies;

(k) the charge for Supplementary Charges (Per Visit) when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7CA.2(g)(ii) applies;

(l) the charge for Supplementary Charges (Per Hour) when that service is provided on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(h)(i) applies;

(m) the charge for Supplementary Charges (Per Hour) when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(h)(ii) applies;

(n) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(i) applies;

(o) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7C.2(j) applies,

Part 2

(e) for a Standard Chargeable Visit, in the First Relevant Year, the amount of;

i. £[72.00 to 105.60] when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[108.00 to 158.40] when that service is provided on a Non-Working Day; and

iii. £[90.00 to 132.00] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

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

i. £[36.00 to 52.80] when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[72.00 to 105.60] when that service is provided on a Non-Working Day; and

iii. £[54.00 to 79.20] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

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

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

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

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(i) for Internal and External Shifts, the amount of £[72.00 to 105.60] in the First Relevant Year;

(j) for Additional Line Shifted, the amount of £[36.00 to 52.80] in the First Relevant Year;

Part 3

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

$$CP_t = X$$

Where:

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

X means:

1. for the category of products and/or services specified in condition 7C.1(d) [-0.1% to 2.8%] percentage points;

2. for the category of products and/or services specified in condition 7C.1(e) [-0.1% to 2.8%] percentage points;

3. for the category of products and/or services specified in condition 7C.1(f) [-0.1% to 2.8%] percentage points;

4. for the category of products and/or services specified in condition 7C.1(g) [-0.1% to 2.8%] percentage points;

5. for the category of products and/or services specified in condition 7C.1(h) [-0.1% to 2.8%] percentage points;

6. for the category of products and/or services specified in condition 7C.1(i) [-0.1% to 2.8%] percentage points;

7. for the category of products and/or services specified in condition 7C.1(j) [-0.1% to 2.8%] percentage points;

8. for the category of products and/or services specified in condition 7C.1(k) [-0.1% to 2.8%] percentage points;

9. for the category of products and/or services specified in condition 7C.1(l) [-0.1% to 2.8%] percentage points;

10. for the category of products and/or services specified in condition 7C.1(m) [-0.1% to 2.8%] percentage points;

11. for the category of products and/or services specified in condition 7C.1(n) [-0.1% to 2.8%] percentage points; and

12. for the category of products and/or services specified in condition 7C.1(o) [-0.1% to 2.8%] percentage points.

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

<u>Part 4</u>

ii. conditions 7C.1(d) to 7C.1(o), in the case of Deficiency either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(f) below.

Part 5

ii. conditions 7C.1(d) to 7C.1(o), in the case of Excess in either the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7C.6(f) below.

Part 6

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

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

Where:

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

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

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

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

<u>Part 7</u>

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

(b) "**Additional Line Shifted**" means the provision of the service 'Additional Line shifted' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;

(p) "**Internal and External Shifts**" means, the provision of the service 'Internal and External Shifts' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;

(s) "**Non-Working Day**" means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);

(ee) "**Standard Chargeable Visit**" means the provision of the service 'Standard Chargeable Visit (Visit plus up to 1 hours work)' (which shall be construed as having the same meaning as, as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;

(ff) "**Supplementary Charges (Per Hour)**" means the provision of the service 'Supplementary charges (Per Hour or Part thereof)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of Wholesale Analogue Line Rental;

(gg) "**Supplementary Charges (Per Visit)**" means the provision of the service 'Supplementary charges (Per Visit)' (which shall be construed as having the same meaning as, as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use Wholesale Analogue Line Rental;

(pp) "**Working Day**" means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

Schedule 4: Proposed amendments to SMP services condition 7D

Proposed SMP services condition 7D set out in Schedule 1 of the FAMR Notification (as amended by Schedule 3 to Part 1 of the FAMR Further Notification) shall be amended by:

(a) replacing the words “determined in accordance with condition 7D.3 in each of the three categories of services specified in conditions 7D.2(a) to (c) below” in condition 7D.2 with “determined in accordance with condition 7D.4 and 7D.5, as applicable”;

(b) adding paragraphs (d) to (o) set out in Part 1 below after condition 7D.2(c);

(c) adding condition 7D.3 set out in Part 2 below after condition 7D.2;

(d) adding condition 7D.5 set out in Part 3 below after condition 7D.3 (which shall be renumbered, as part of these proposals, to condition 7D.4);

(e) adding paragraph 7D.6(b) set out in Part 4 below after condition 7D.4(a) (which shall be renumbered, as part of these proposals, to condition 7D.6(a));

(f) creating sub-paragraphs in conditions 7D.4(b) and 7D.4(c) (which shall be renumbered, as part of these proposals, to conditions 7D.6(c) and 7D.6(d) respectively) by inserting “: (i)” after the words “For each of the categories of products and/or services specified in”;

(g) adding paragraph 7D.6(c)(ii) set out in Part 5 below after the new sub-paragraph 7D.6(c)(i);

(h) adding paragraph 7D.6(d)(ii) set out in Part 6 below after the new sub-paragraph 7D.6(d)(i);

(i) adding paragraph 7D.6(f) set out in Part 7 below after condition 7D.4(d) (which shall be renumbered, as part of these proposals, to conditions 7D.6(e));

(j) replacing the words “pursuant to condition 7D.3, the calculated Percentage Change relating to each of the three categories category of services specified in conditions 7D.2 (a) to (c)” in condition 7D.6(a) (which shall be renumbered, as part of these proposals, as condition 7D.8(a)) with the words “pursuant to condition 7D.4 and 7D.5, as applicable, the calculated Percentage Change relating to each category of services specified in conditions 7D.2 (a) to (o);

(k) replacing the words “the Percentage Change as set out in 7D.3” in condition 7D.6(b) (which shall be renumbered, as part of these proposals, as condition 7D.8(b)) with the words “the Percentage Change as set out in 7D.4 and 7D.5 above”;

(l) replacing the words “in the Basket” in condition 7D.6(d) (which shall be renumbered, as part of these proposals, as condition 7D.8(d)) with the words “for which conditions 7D.4 and/or 7D.5 apply, as applicable,”;

(m) adding the proposed defined terms set out in Part 8 below to proposed condition 7D.9 (which shall be renumbered, as part of these proposals, to condition 7D.11);

(n) replacing the reference to “condition 7D.3” in the definition of Percentage Change, with a reference to “conditions 7D.4 and 7D.5, as applicable”;

(o) making the necessary consequential changes to the numbering of the remaining conditions and cross-references.

Part 1

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

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

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

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

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

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

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

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

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

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

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

(o) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7D.3(f) applies,

<u>Part 2</u>

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

(a) for a Standard Chargeable Visit, the amount of:

i. £[72.00 to 105.60] when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[108.00 to 158.40] when that service is provided on a Non-

Working Day; and

iii. £[90.00 to 132.00] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(b) for an Additional Hour, the amount of:

i. £[36.00 to 52.80] per hour when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[72.00 to 105.60] per hour when that service is provided on a Non-Working Day; and

iii. £[54.00 to 79.20] per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(c) for Supplementary Charges (Per Visit), the amount of:

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(d) for Supplementary Charges (Per Hour), the amount of:

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(e) for Internal and External Shifts, the amount of £[72.00 to 105.60] in the First Relevant Year;

(f) for Additional Line Shifted, the amount of £[36.00 to 52.80] in the First Relevant Year.

Part 3

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

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

Where:

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

t refers to the Relevant Year;

t-1 refers to the Prior Year;

$\bar{p}_t$ shall be calculated by employing the formula set out in condition 7D.4 above for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service *i* shall be treated as references to charges for the specific product and/or service in the single charge category in question; and

$\bar{p}_{t-1}$ shall be calculated by employing the formula set out in condition 7D.4 above for the Prior Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service *i* shall be treated as references to charges for the specific product and/or service in the single charge category in question.

Part 4

(b) Subject to conditions 7D.6(c), 7D.6(d) and 7D.6(f) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in condition 7D.2(d) to 7D.2(o) shall be calculated by employing the following formula:

$$CP_t = X$$

Where:

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

X means:

a. for the category of products and/or services specified in condition 7D.2(d) [-0.1% to 2.8%] percentage points;

b. for the category of products and/or services specified in condition 7D.2(e) [-0.1% to 2.8%] percentage points;

c. for the category of products and/or services specified in condition 7D.2(f) [-0.1% to 2.8%] percentage points;

d. for the category of products and/or services specified in condition 7D.2(g) [-0.1% to 2.8%] percentage points;

e. for the category of products and/or services specified in condition 7D.2(h) [-0.1% to 2.8%] percentage points;

f. for the category of products and/or services specified in condition 7D.2(i) [-0.1% to 2.8%] percentage points;

g. for the category of products and/or services specified in condition 7D.2(j) [-0.1% to 2.8%] percentage points;

h. for the category of products and/or services specified in condition 7D.2(k) [-0.1% to 2.8%] percentage points;

i. for the category of products and/or services specified in condition 7D.2(l) [-0.1% to 2.8%] percentage points;

j. for the category of products and/or services specified in condition 7D.2(m) [-0.1% to 2.8%] percentage points;

k. for the category of products and/or services specified in condition 7D.2(n) [-0.1% to 2.8%] percentage points;

l. for the category of products and/or services specified in condition 7D.2(o) [-0.1% to 2.8%] percentage points;

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

Part 5

ii. conditions 7D.2(d) to (o), in the case of Deficiency either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7D.6(f) below.

Part 6

ii. conditions 7D.2(d) to (o), in the case of Excess either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7D.6(f) below.

Part 7

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

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7D.2 (d) to (o) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7D.4 or 7D.5 above, as applicable; and

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

Part 8

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

(b) "**Additional Line Shifted**" means the provision of the service 'Additional Line shifted' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

(l) "**Internal and External Shifts**" means, the provision of the service 'Internal and External Shifts' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

(m) "**Non-Working Day**" means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);

(r) "**Standard Chargeable Visit**" means the provision of the service 'Standard Chargeable Visit (Visit plus up to 1 hours work)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

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

(t) "**Supplementary Charges (Per Visit)**" means the provision of the service 'Supplementary charges (Per Visit)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN30 Services;

(v) "**Working Day**" means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

Schedule 5: Proposed amendments to SMP services condition 7E

Proposed SMP services condition 7E set out in Schedule 1 of the FAMR Notification (as amended by Schedule 4 to Part 1 of the FAMR Further Notification) shall be amended by:

(a) adding “and 7E.5, as applicable” after the words “determined in accordance with condition 7E.4” in condition 7E.2;

(b) creating a sub-paragraph in condition 7E.2 by inserting “: (a)” after the words “The Dominant Provider must take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with condition 7E.4 and 7E.5, as applicable) in”;

(c) adding paragraphs (b) to (m) set out in Part 1 below after the new sub-paragraph 7E.2(a);

(d) adding condition 7E.3 set out in Part 2 below after condition 7E.2;

(e) adding condition 7E.5 set out in Part 3 below after condition 7E.3 (which shall be renumbered, as part of these proposals, to condition 7E.4);

(f) adding paragraph 7E.6(b) set out in Part 4 below after condition 7E.4(a) (which shall be renumbered, as part of these proposals, to condition 7E.6(a));

(g) replacing references to “condition 7E.2” in conditions 7E.3, 7E.4(b), (c) and (d) (which shall be renumbered, as part of these proposals, to conditions 7E.4, 7E.6(c), (d) and (e) respectively) with references to “condition 7E.2(a)”;

(h) creating sub-paragraphs in conditions 7E.4(b) and 7E.4(c) (which shall be renumbered, as part of these proposals, to conditions 7E.6(c) and 7E.6(d) respectively) by inserting “(i)” after the words “For the products and/or services specified in”;

(i) adding paragraph 7E.6(c)(ii) set out in Part 5 below after the new sub-paragraph 7E.6(c)(i);

(j) adding paragraph 7E.6(d)(ii) set out in Part 6 below after the new sub-paragraph 7E.6(d)(i);

(k) adding paragraph 7E.6(f) set out in Part 7 below after condition 7E.4(d) (which shall be renumbered, as part of these proposals, to conditions 7E.6(e));

(l) replacing the words “pursuant to condition 7E.3, the calculated Percentage Change relating to each of the services specified in condition 7E.2” in condition 7E.6(a) (which shall be renumbered, as part of these proposals, as condition 7E.8(a)) with the words “pursuant to condition 7E.4 and 7E.5, as applicable, the calculated Percentage Change relating to each category of services specified in conditions 7E.2 (a) to (m)”;

(m) replacing “the Percentage Change as set out in 7E.4” in condition 7E.6(b) (which shall be renumbered, as part of these proposals, as condition 7E.8(b)) with the words “the Percentage Change as set out in 7E.4 and 7E.5 above”;

(n) replacing the words “in the Basket” in condition 7E.6(d) (which shall be renumbered, as part of these proposals, as condition 7E.8(d)) with the words “for which conditions 7E.4 and/or 7E.5 apply, as applicable,”;

(o) adding the proposed defined terms set out in Part 8 below to proposed condition 7E.9 (which shall be renumbered, as part of these proposals, to condition 7E.11);

(p) replacing the reference to “condition 7E.3” in the definition of Percentage Change, with a reference to “conditions 7E.4 and 7D.5, as applicable”;

(q) making the necessary consequential changes to the numbering of the remaining conditions and cross-references.

Part 1

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

(c) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(a)(ii) applies;

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

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

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

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

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

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

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

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

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

(m) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7E.3(f) applies,

Part 2

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

(a) for a Standard Chargeable Visit, the amount of:

i. £[72.00 to 105.60] when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[108.00 to 158.40] when that service is provided on a Non-Working Day; and

iii. £[90.00 to 132.00] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(b) for an Additional Hour, the amount of:

i. £[36.00 to 52.80] per hour when that service is provided within the hours of 8am to 5pm on a Working Day;

ii. £[72.00 to 105.60] per hour when that service is provided on a Non-Working Day; and

iii. £[54.00 to 79.20] per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(c) for Supplementary Charges (Per Visit), the amount of:

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(d) for Supplementary Charges (Per Hour), the amount of:

i. £[36.00 to 52.80] when that service is provided on a Non-Working Day; and

ii. £[18.00 to 26.40] when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day.

(e) for Internal and External Shifts, the amount of £[72.00 to 105.60] in the First Relevant Year;

(f) for Additional Line Shifted, the amount of £[36.00 to 52.80] in the First Relevant Year.

Part 3

7E.5 The Percentage Change for the purposes of each of the products and/or services specified (each of which is referred to in this condition as a “single charge category”) in conditions 7E.2(b) to 7E.2(m) shall be calculated, for the purposes of complying with condition 7E.2, by employing the following formula:

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

Where:

$C_{t,}$ is the Percentage Change in charges for the specific product and/or service in the single charge category in question for the Relevant Year t;

t refers to the Relevant Year;

t-1 refers to the Prior Year;

$\bar{p}_t$ shall be calculated by employing the formula set out in condition 7E.4 above for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for the specific product and/or service in the single charge category in question; and

$\bar{p}_{t-1}$ shall be calculated by employing the formula set out in condition 7E.4 above for the Prior Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service *i* shall be treated as references to charges for the specific product and/or service in the single charge category in question.

Part 4

(b) Subject to conditions 7E.6(c), 7E.6(d) and 7E.6(f) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in condition 7E.2(b) to 7E.2(m) shall be calculated by employing the following formula:

$$CP_t = X$$

Where:

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

X means:

i. for the category of products and/or services specified in condition 7E.2(b) [-0.1% to 2.8%] percentage points;

ii. for the category of products and/or services specified in condition 7E.2(c) [-0.1% to 2.8%] percentage points;

iii. for the category of products and/or services specified in condition 7E.2(d) [-0.1% to 2.8%] percentage points;

iv. for the category of products and/or services specified in condition 7E.2(e) [-0.1% to 2.8%] percentage points;

v. for the category of products and/or services specified in condition 7E.2(f) [-0.1% to 2.8%] percentage points;

vi. for the category of products and/or services specified in condition 7E.2(g) [-0.1% to 2.8%] percentage points;

vii. for the category of products and/or services specified in condition 7E.2(h) [-0.1% to 2.8%] percentage points;

viii. for the category of products and/or services specified in condition 7E.2(i) [-0.1% to 2.8%] percentage points;

ix. for the category of products and/or services specified in condition 7E.2(j) [-0.1% to 2.8%] percentage points;

x. for the category of products and/or services specified in condition 7E.2(k) [-0.1% to 2.8%] percentage points;

xi. for the category of products and/or services specified in condition 7E.2(l) [-0.1% to 2.8%] percentage points; and

xii. for the category of products and/or services specified in condition 7E.2(m) [-0.1% to 2.8%] percentage points.

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

Part 5

ii. conditions 7E.2(b) to (m), in the case of Deficiency either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7E.6(f) below.

Part 6

ii. conditions 7E.2(b) to (m), in the case of Excess either in the First Relevant Year or the Second Relevant Year, then the Controlling Percentage for the following Relevant Year shall be determined in accordance with condition 7E.6(f) below.

Part 7

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

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7E.2 (b) to (m) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7E.4 or 7E.5 above, as applicable; and

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

Part 8

(a) "**Additional Hour**" means the provision of the service 'Additional Hours (or Part thereof)' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

(b) "**Additional Line Shifted**" means the provision of the service 'Additional Line shifted' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

(l) "**Internal and External Shifts**" means, the provision of the service 'Internal and External Shifts' (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

(m) "**Non-Working Day**" means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);

(r) “**Standard Chargeable Visit**” means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

(s) “**Supplementary Charges (Per Hour)**” means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

(t) “**Supplementary Charges (Per Visit)**” means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of ISDN2 Services;

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

Schedule 6: Proposed amendments to SMP services condition 9

Proposed SMP services condition 9 set out in Schedule 1 to the FAMR Notification shall be amended by replacing condition 9.4B with the condition set out below[139].

9.4B An Access Charge Change Notice must -

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

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

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

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

[139] In order to provide transparency as to the differences between condition 9.4B proposed in the FAMR Notification and that proposed in this notification, we have provided a comparison (with the use of underlining and strikethrough) of the two conditions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the condition proposed in the FAMR Notification.

Schedule 7: Proposed amendments to SMP services condition 5

Proposed SMP services condition 5 set out in Schedule 2 to the FAMR Notification shall be amended by replacing condition 5.4B with the condition set out below[140].

5.4B An Access Charge Change Notice must -

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

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

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

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

[140] In order to provide transparency as to the differences between condition 5.4B proposed in the FAMR Notification and that proposed in this notification, we have provided a comparison (with the use of underlining and strikethrough) of the two conditions. Underlining and strikethrough highlights those changes which we propose to make in this notification against the condition proposed in the FAMR Notification.

Annex 8

Consolidated draft SMP conditions 7A, 7C, 7D and 7E

A8.1 In order to assist stakeholders in their review of proposed SMP conditions 7A, 7C, 7D and 7E, this annex provides a consolidated version of these proposed conditions. In particular, it reflects the SMP conditions contained in the July 2013 FAMR Consultation, as amended by:

- Ofcom's consultation entitled "*Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*", dated 19 December 2013; and
- this consultation.

A8.2 This consolidated text is provided for illustrative purposes only, and does not form part of the legal notification contained in Annex 7 to this consultation.

A8.3 The annex can be found here:

http://stakeholders.ofcom.org.uk/binaries/consultations/famr-2014/annexes/annex-8.pdf.

Annex 9

Sources of evidence

Introduction

A9.1 We have noted throughout this consultation the evidence we have relied upon in relation to our findings for this consultation and how we have relied upon that evidence. This Annex lists the main sources of evidence used. We also list all respondents to the July 2013 FAMR Consultation and the section 135 notices sent in relation to the matters considered in this consultation document.

A9.2 While the Annex lists the main evidence upon which we have relied, the list is for convenience only and is not intended to be exhaustive.

List of respondents to the July 2013 FAMR Consultation

A9.3 We published the consultation on 3 July 2013 setting out our proposals for market definition, SMP assessment and remedies. This can be found at the following link: http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/

A9.4 13 stakeholders provided written responses to the consultation:

- British Sky Broadcasting Group plc;
- British Telecommunications plc;
- Cable and Wireless Worldwide plc/Vodafone;
- Colt Technology Services;
- Geo Networks Ltd.
- EE Limited;
- The Federation of Communication Services;
- KCOM Group plc;
- SCS Telecom;
- TalkTalk Telecom Group plc;
- Verizon UK Limited;
- Virgin Media Limited; and
- [✂]

A9.5 We have published the non-confidential versions of the responses from all the stakeholders listed above. These can be found on our website: http://stakeholders.ofcom.org.uk/consultations/fixed-access-market-reviews/?showResponses=true

Other OFCOM documents

A9.6 *Better Policy-Making: Ofcom's approach to impact assessment,* 21 July 2005, http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

A9.7 *Review of BT's Network Charge Controls*, 15 September 2009, http://stakeholders.ofcom.org.uk/binaries/consultations/review_bt_ncc/statement/nccstatement.pdf

A9.8 *Review of the wholesale local access market: Statement on market definition, market power determinations and remedies*, 7 October 2010, http://stakeholders.ofcom.org.uk/binaries/consultations/wla/statement/WLA_statement.pdf.

A9.9 *Securing the Universal Postal Service – Decision on the new regulatory framework*, 27 March 2012 http://stakeholders.ofcom.org.uk/binaries/consultations/review-of-regulatory-conditions/statement/statement.pdf

A9.10 *Business Connectivity Market Review*, 28 March 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/business-connectivity/statement/Sections17-24.pdf

A9.11 *Cost Orientation Review*, 5 June 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/cost-orientation/summary/Cost_orientation.pdf

A9.12 *Fixed access market reviews: approach to setting LLU and WLR charge controls,* published on 11 July 2013, http://stakeholders.ofcom.org.uk/consultations/llu-wlr-cc-13/ and responses here: http://stakeholders.ofcom.org.uk/consultations/llu-wlr-cc-13/?showResponses=true

A9.13 *Fixed access market reviews: Openreach quality of service and approach to setting LLU and WLR Charge Controls*, 9 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/fixed-access-market-llu-wlr-charge-controls/summary/famr-2013.pdf

A9.14 *Regulatory Financial Reporting: A review*, 20 December 2013, http://stakeholders.ofcom.org.uk/binaries/consultations/bt-transparency/summary/BTRFS.pdf

Information-gathering using statutory powers (s135)

A9.15 In relation to the matters considered in this consultation, we have issued a series of notices under section 135 of the CA03 requiring various CPs to provide specified information as set out in the notice. These information requests are listed below:

9.15.1 Information request of 25 October 2013 regarding the uses of ISDN 2, volumes, costs and revenues for TRCs and SFI2s, contestability of TRCs and SFI2s, and the ordering and diagnostic process steps involved in TRCs and SFIs. Request sent to and response received from: BT.

9.15.2 Information request of 25 October 2013 regarding diagnostic processes, and TRC and SFI2 ordering processes, costs, prices, usages and service quality. Request sent to and response received from:

- o TalkTalk
- o Sky

9.15.3 Information request of 22 November 2013 regarding cost, revenue and volume data for TRCs and SFIs. Request sent to and response received from: BT.

9.15.4 Information request of 13 December 2013 regarding TRC and SFI2 volumes and costs, and price changes made to TRCs and SFI2s. Request sent to and response received from: BT.

9.15.5 Information request of 6 January 2014 regarding TRC and SFI2 volumes and costs, and price changes made to TRCs and SFI2s. Request sent to and response received from: BT

UK Legislation

A9.16 The Competition Act 1998, www.legislation.gov.uk/ukpga/1998/41/contents

A9.17 The Enterprise Act 2002, www.legislation.gov.uk/ukpga/2002/40/contents

A9.18 The Communications Act 2003, as amended, www.legislation.gov.uk/ukpga/2003/21/contents

Websites

A9.19 BT

- *BT 2012 RFS* www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2012/RFS_2012.pdf
- *Report Requested by Ofcom on the year ended 31 March 2013* www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2013/index.htm

A9.20 Openreach (www.openreach.co.uk)

- Fact sheet: Time Related Charges, www.openreach.co.uk/orpg/home/products/serviceproducts/timerelatedcharges/timerelatedcharges/downloads/TRCs.pdf
- TRC pricing: www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=hcaYjIWegP2u2KS8FTdcOBScuIM1Opem5f8dVePnh8UlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D

- Full MPF price list (for SFI prices):
  www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=totid5BwFmkf9vLcBITRyZF9loRxWIbIKK6V7YWmlYAlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIlSgtIFAKw%3D%3D

Annex 10

Glossary

Access Network: the part of the network that connects directly to customers from the local telephone exchange.

Alternative Interface Symmetric Broadband Origination (AISBO): a form of symmetric broadband origination providing symmetric capacity between two sites.

BT: British Telecommunications plc.

Charge control: a control which sets the maximum price that a communication provider can charge for a particular product or service. Most charge controls are imposed for a defined period.

Common costs: costs which are shared by all the services supplied by a firm.

Communications provider (CP): a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

Cost orientation: the principle that the price charged for the provision of a service should reflect the underlying costs incurred in providing that service.

End user: the final consumer of a product or service.

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.

Hull Area: the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and KCOM plc (formerly Kingston Communications (Hull) plc).

ISDN2: a digital telephone line service that supports telephony and switched data services. ISDN2 provides the calling or data capacity equivalent to two analogue telephone lines

ISDN30: a digital telephone service that provides up to the equivalent of 30 analogue lines over a common digital bearer circuit. These lines provide digital voice telephony, data services and a wide range of ancillary services.

Local Loop: the access network connection between the customer‘s premises and the local serving exchange, usually comprised of two copper wires twisted together.

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.

Long Run Incremental Costs (LRIC): the long run avoidable cost of an operator carrying a particular increment of traffic. The increment in question is treated as the final traffic increment on the network.

Metallic Path Facility (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.

Network Termination Equipment (NTE): an element of a CP's access network. It terminates the access network and bridges the access network with the end user's network.

Ofcom: The Office of Communications.

Openreach: the access division of BT established by Undertakings in 2005.

Regulatory financial statements (RFS): the financial statements that BT is required by Ofcom to prepare, have audited and publish.

Retail price index (RPI): a measure of inflation published monthly by the Office for National Statistics. It measures the change in the cost of a basket of retail goods and services.

Return on capital employed (ROCE): the ratio of accounting profit to capital employed.

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.

Significant Market Power (SMP): the Significant Market Power test is set out in European Directives. It is used by National Regulatory Authorities (NRAs) such as Ofcom to identify those communications providers who must meet additional obligations under the relevant Directive.

Special Fault Investigations (SFIs): services requested by CPs for further investigation of faults on the MPF or SMPF line where no fault has been found using the standard Openreach line test.

Traditional Interface Symmetric Broadband Origination (TISBO): a form of symmetric broadband origination service providing symmetric capacity from a customer's premises to an appropriate point of aggregation in the network hierarchy.

Time Related Charges: services involving work not covered by BT service level agreements.

Virtual Unbundled Local Access (VULA): it provides a connection from the nearest 'local' aggregation point to the customer premise.

Weighted average cost of capital (WACC): the rate that a company is expected to pay on average to all its security holders to finance its assets.

Wholesale Broadband Access: is between the WLA market and the retail market for the provision of fixed telecommunications services to end users

Wholesale Fixed Analogue Exchange Lines (WFAEL): the provision of wholesale analogue voice services using BT or KCOM's existing voice infrastructure

Wholesale Local Access (WLA): covers fixed telecommunications infrastructure, specifically the physical connection between end users' premises and a local exchange.

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.