

Wholesale Local Access Market Review

WarwickNet welcomes this opportunity to comment on Ofcom's consultation on the Wholesale Local Access Market Review.

Introduction

We specialise in serving business customers but as we deploy our network in new areas we are increasingly seeing interest in our services from residential consumers. We have an extensive presence on many Business Parks and Industrial Estates throughout the Midlands, where we deliver superfast broadband and high-capacity leased lines. We implement a mixture of technologies including Fibre-to-the-Cabinet (FTTC) via SLU, Fibre-to-the-Premises (FTTP) via PIA/Self build, to bring high speed Internet to business customers but are increasingly being asked to provide broadband services to domestic consumers too.

As a small communications provider (CP), we simply do not have the resources to provide a comprehensive response to a major consultation such as the WLA market review but are content that other, larger CPs will make many of the same points which we would make. We differ from most other providers in that we are one of a very small number of CPs which have made extensive use of sub loop unbundling. Our response will therefore concentrate exclusively on our concerns about Ofcom's proposals for SLU.

SLU

We first deployed SLU in 2011 and have now enabled 187 SLU cabinets across the Greater Midlands (Berkshire, Bedfordshire, Northamptonshire, Leicestershire, Derbyshire, Warwickshire and West Midlands). We are currently expanding at circa 30 cabinets a month, with aspirations to exceed 1500 cabinets in the coming 2-3 years. This will equate to a WarwickNet footprint covering over 60,000 premises (both business and residential).

We use SLU because of the fast speed of end customer service delivery (1-2 weeks), and the ever increasing capabilities we are able to achieve over copper (currently up to 100Mbit/s downstream, 40Mbit/s upstream with VDSL2 vectored, and up to 500Mbit/s potentially with G.Fast).

SLU, in both the MPF and SMPF variants, is a key enabler which enables smaller CPs like us to offer high speed broadband services in areas which larger providers have deemed to be economically unviable. Customers of the Openreach SLU services have long complained that the services are too expensive and this led to the DRL/Thales dispute 6 years ago following which Ofcom ordered Openreach to review its prices. The result of that dispute was an increase in a number of SLU prices.

Historically Ofcom has imposed charge controls in relation to LLU and cost orientation obligations for SLU, each of which is designed to guard against the risk of excessive pricing by Openreach. Ofcom now proposes to continue the approach set out in 2011 and 2014 on the basis that SLU largely uses the same network components and processes as LLU with any differences to be objectively justifiable. In short, Ofcom concludes that nothing has changed in the world of SLU and therefore no change is required in the regulatory approach.

As a small CP focused on rolling out high speed broadband to customers, we do not have the time or ability to analyse BT's regulatory accounts to determine whether the costs of SLU services comply

with the cost orientation obligations but we do question some elements of Ofcom’s conclusions about their proposed approach to pricing of SLU.

As Ofcom note at paragraph 9.28: -

“We consider that the proposed charge control on MPF will provide sufficient incentive for BT to reduce the costs of the network components used for SLU.”

At paragraph 9.32 Ofcom notes (our emphasis added) that: -

“In particular, the proposed condition is aimed at promoting competition and securing efficiency and sustainable competition for the maximum benefit of consumers by **ensuring that charges for wholesale services are set at a level that enable telecoms providers to compete downstream**. For those reasons, we also consider that the proposed condition is appropriate in order to promote efficiency and sustainable competition and to provide the greatest possible benefits to customers by enabling competing providers to buy network access at levels that might be expected in a competitive market.”

We do not take issue with Ofcom’s reasoning in theory but we do question whether the reality of BT’s behaviour has (or will in future) matched Ofcom’s expectations. To date the charge controls on LLU have had little or no impact on SLU pricing (see below). SLU process have remained largely unchanged since 2005 so we question what leads Ofcom to conclude that continuing the existing approach will cause BT to behave any differently in relation to pricing of SLU services.

SLU Pricing since 2005

Over the course of the last few years of market reviews, the prices of LLU (both MPF and SMPF) have fallen over time. There have been occasional increases but overall the trend has been downwards. The following tables show the historic charges for LLU MPF.

Rental (LLU MPF)

Feature	Operative date	Until	Charge ex VAT
MPF Rental	01/04/2011	31/03/2012	91.50
MPF Rental	01/04/2012	31/03/2013	87.41
MPF Rental	01/04/2013	30/04/2013	85.04
MPF Rental	01/05/2013	19/12/2013	84.26
MPF Rental	20/12/2013	16/05/2014	83.92
MPF Rental	17/05/2014	30/06/2014	96.37
MPF Rental	01/07/2014	31/03/2015	86.11
MPF Rental (incl. SML2 in tariff)	01/04/2015	31/03/2016	87.48
MPF Rental (incl. SML2 in tariff)	01/04/2016		87.65

The SLU MPF equivalent charge is £93.96 which is the same as it was in 2005. There has been no change whatsoever in the SLU charge for 12 years.

Rental (LLU SMPF)

Feature	Operative date	Until	Standard Rental Charge Per Annum £ Exc VAT
SMPF Rental	01/01/2005	31/03/2010	15.60
SMPF Rental	01/04/2010	14/10/2010	15.63
SMPF Rental	15/10/2010	31/03/2011	15.04
SMPF Rental	01/04/2011	31/03/2012	14.70
SMPF Rental	01/04/2012	31/03/2013	11.92
SMPF Rental	01/04/2013	30/04/2013	10.40
SMPF Rental	01/05/2013	19/12/2013	9.75
SMPF Rental	20/12/2013	30/06/2014	9.89
SMPF Rental	01/07/2014	31/03/2015	5.54
SMPF Rental	01/04/2015	31/03/2016	3.76
SMPF Rental	01/04/2016		2.50

The SLU SMPF equivalent was set at 11.47 in 2005 and, like the SLU MPF rental, remains unchanged 12 years later despite significant reductions in the LLU charges.

Migration (table shows LLU MPF charges but LLU SMPF charges are identical)

Feature	Operative date	Until	Charge £ Exc VAT
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2005	31/08/2009	34.86
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/09/2009	31/03/2010	38.00
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2010	31/03/2011	38.64

MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2011	31/03/2012	39.79
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2012	31/03/2013	33.54
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2013	30/04/2013	30.82
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/05/2013	30/06/2014	30.65
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/07/2014	31/03/2015	30.83
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2015	31/03/2016	30.76
MPF Connection charge - Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)	01/04/2016		30.26

The LLU MPF and SMPF migration charges have increased and decreased over the last twelve years but the prices today are lower than they were in 2005. The equivalent charges for SLU have remained unchanged since the introduction of SLU and both stand at £127.61.

Connection (LLU)

Feature	Operative date	Until	Charge £ Exc VAT
MPF Connection charge - New Provide Standard	15/12/2005	31/08/2009	99.95
MPF Connection charge - New Provide Standard	01/09/2009	31/03/2010	76.00
MPF Connection charge - New Provide Standard	01/04/2010	14/10/2010	75.01
MPF Connection charge - New Provide Standard	15/10/2010	31/03/2011	62.11
MPF Connection charge - New Provide Standard	01/04/2011	31/03/2012	52.79
MPF Connection charge - New Provide Standard	01/04/2012	31/03/2013	51.16
MPF Connection charge - New Provide Standard	01/04/2013	20/03/2014	45.53
MPF Connection charge - New Provide Standard	21/03/2014	30/06/2014	45.43
MPF Connection charge - New Provide Standard	01/07/2014	31/03/2015	46.44
MPF Connection charge - New Provide Standard	01/04/2015	31/03/2016	45.74
MPF Connection charge - New Provide Standard	01/04/2016		44.42

The MPF LLU connection charge has decreased over the last twelve years but the price today is less than half of what it was in 2005. The equivalent charge for SLU MPF has remained unchanged since the introduction of SLU and stands at £127.61. The charge for SLU SMPF was decreased marginally in 2011 and now stands at £115.00.

Cease (LLU)

Feature	Operative date	Until	Charge £ Exc VAT
MPF Cease charge	07/10/2009	31/03/2010	5.04

MPF Cease charge	01/04/2010	31/03/2011	5.22
MPF Cease charge	01/04/2011	31/03/2012	5.37
MPF Cease charge	01/04/2012		0.00
SMPF Cease charge	22/08/2007	31/10/2009	4.90
SMPF Cease charge	01/11/2009	31/03/2010	5.04
SMPF Cease charge	01/04/2010	31/03/2011	5.22
SMPF Cease charge	01/04/2011	31/03/2012	5.37
SMPF Cease charge	01/04/2012		0.00

The LLU MPF and SMPF cease charges were never particularly high but were reduced to zero five years ago. The cease charge for SLU MPF was £100.67 but was increased to £120.21 in 2015. For SLU SMPF the charge was £29 in 2000, it was increased in 2008 to £100.67 and in 2015 increased again to £120.21.

Pricing Disparities

The LLU MPF annual rental charge has both increased and decreased since 2008 and is now around the same level it was in 2012. Ofcom has proposed further reductions through to 2021. The LLU SMPF annual rental has fallen from £15.60 to £2.50. The SLU MPF rental was set at £93.96 in 2005 and has not changed at all in that period. The SLU SMPF rental also remains at the 2005 level - £11.25.

There are similar disparities between the SMPF LLU and SLU variants. The above figures have all been extracted from the Openreach price list. We accept and acknowledge that the LLU and SLU products are not identical but as Ofcom notes in the WLA market consultation, SLU largely shares the same infrastructure and processes as LLU, albeit with a much shorter tail length (SLU is only utilising the shorter 'D-Side' of the circuit). We would therefore have expected the pricing trends to be much more closely aligned than they have been. Whereas LLU prices have in the main reduced, there has been very little change in SLU pricing since 2005 leading us to question whether BT is in fact complying with its cost orientation obligations.

Impact of disparities

Some of the disparities are more serious than others for our business. The cease charge is of particular concern to us, particularly when we are considering serving domestic customers. The high level of cease charges means that we have to accrue for it to mitigate the risk of the customer leaving WarwickNet for a competing service. In the case of residential customers this makes most consumer facing services commercially unviable.

Although our primary focus is on serving business customers, inevitably in some areas our network deployment will also enable us to serve residential customers and we are more than happy to do so but the Openreach SLU pricing makes it very difficult to offer service at a price point which consumers are willing to pay. The underlying Openreach pricing means that realistically no SLU based solution is viable below a price point of around £50 per month. Taking as an example a one year service for a consumer, an SLU provider will have to cover the following costs before any account is taken of network build costs, cabinet backhaul, or profit margin: -

£115 Setup

£120.21 Cease Charge (to be accrued)

£11.47 SMPF rental

£35 Router

Realistically any SLU provider would have to charge £23.47 + VAT per month simply to cover the Openreach charges, realistically to be commercially viable the SLU provider would have to charge more like £50 per month. Given that SLU is supposed to boost competition and deliver maximum benefit for consumers by providing a solution to serving areas which would otherwise go unserved it seems unfortunate that the Openreach pricing of the service leads to pricing which is so far in excess of what is available in LLU or GEA areas. Residential customers in the areas which we serve typically have no other high speed broadband option open to them. We would be delighted to offer them services priced more in line with the market norm found in other parts of the country but are prevented from doing so by the price of the underlying BT services.

Conclusion

In answer to question 9.1 of the consultation therefore we submit that continuing with the status quo without any further investigation is not appropriate. Ofcom has described difficulties with devising a charge control for SLU due to the limited volume of SLU orders. While that may be the case, and we would defer to Ofcom's experience in designing such remedies, we do believe that there is a prima facie case for investigating whether BT has complied with the cost orientation obligations for SLU. SLU shares most components with LLU (as noted in the market review) yet the prices for the various elements of SLU have been largely unchanged for the last twelve years. Ofcom notes in the current market review (as it has done in previous reviews) that BT will have to objectively justify price differences between LLU and SLU products. These can be significant:- the migration charge for SLU MPF is £127.61 while the LLU equivalent is £30.26, the cease charge is £120.221 for SLU MPF while LLU MPF is zero.

We would suggest that Ofcom ought to ask BT to explain such discrepancies between LLU and SLU, particularly why there has been little or no change in most SLU prices since 2005, a period which has seen far greater change in LLU. The current pricing anomalies are holding back competition and, at worst, denying the benefits of high speed broadband or, at best, increasing the cost of such services to residential and business customers.