

Modifications under sections 45(10)(e) and 48(1) of the Communications Act 2003 of SMP conditions contained in Ofcom's Notification of 28 March 2018

Background

- 1.1 In a Notification under sections 48(1), 49 and 79(4) of the Communications Act 2003 made on 28 March 2018 (the "Notification"), the Office of Communications ("Ofcom") identified, in accordance with section 79 of the Act, the market for the supply of wholesale local access at a fixed location in the United Kingdom excluding the Hull Area for the purposes of making a determination that BT had significant market power in relation to the identified market.
- 1.2 Ofcom set, pursuant to section 45 of the Act, SMP Condition 7A (LLU charge controls) set out in Schedule 1 of the Notification. The condition applies to BT in relation to the identified market.
- 1.3 Ofcom's reasons for making the decisions above were contained in the explanatory statement accompanying the Notification.
- 1.4 A copy of the Notification was sent to the Secretary of State, the European Commission and BEREC in accordance with sections 48C(1) and 81(1), 48C(2) and 81(2), and 48C(3) and 81(3) of the Act respectively.
- 1.5 Ofcom has become aware of a computational error in the top-down copper access model it used to determine the level of the charge ceiling. At Annex 17 to the explanatory statement accompanying the Notification, Ofcom stated that it had assumed different pay and non-pay operating cost inflation rates for the three years of the control. However, at the time when the final charge ceilings were generated for publication, the top-down model's pay and non-pay inflation rates had not been updated to allow these different inflation assumptions to apply in each year.
- 1.6 Correcting this error has the effect of increasing the level of the charge ceiling for BT's Metallic Path Facility (MPF) rental services and certain LLU ancillary services by around 1% over the period of the charge control.

Decision to modify SMP condition 7A

- 1.7 As a result, Ofcom considers it necessary to modify the conditions set in the Notification to correct the relevant charge ceilings and related provisions in SMP Condition 7A, which apply to BT. The modified Condition 7A is set out in the Schedule to this notification and is made under the powers set out in section 45(10)(e) and

section 48(1) of the Act. Changes to the previous version of SMP Condition 7A are shown in italics: omitted words are struck through (e.g. "~~example~~") and added words are underlined (e.g. "example").

1.8 These modifications shall take effect from 30 May 2018.

Ofcom's duties and legal tests

1.9 Ofcom considers that the modifications set out in this notification meet the test contained in section 47(2) of the Act in that they are objectively justifiable, not unduly discriminatory, proportionate and transparent.

1.10 Ofcom considers that these modifications will not have any significant impact on the relevant market (and other markets for any of the services, facilities, apparatus or directories in relation to which Ofcom have functions) and therefore the process in section 48A of the Act does not apply.

1.11 As required by section 86(4) of the Act, Ofcom is satisfied that there has not been any material change in the markets identified since the SMP condition which Ofcom is modifying was set.

1.12 A copy of this notification has been sent to the Secretary of State, the European Commission and BEREC under section 48C of the Act.

Interpretation

1.13 For the purpose of interpreting this notification:

- except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 1.13 below, and otherwise any word or expression has the same meaning as it has in the Act;
- headings and titles shall be disregarded;
- expressions cognate with those referred to in this notification shall be construed accordingly; and
- the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament.

1.14 In this notification:

- "**Act**" means the Communications Act 2003 (2003 c. 21);
- "**BT**" means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- "**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 Communication (Hull) plc, (now known as KCOM);
- "**Notification**" means the notification described in paragraph 1.1 above;

- **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11); and
- **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (1978 c. 30).

1.15 The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in black ink, appearing to read 'Brian Potterill', with a long horizontal flourish extending to the right.

Brian Potterill

Competition Policy Director, Ofcom

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

22 May 2018

Schedule: Modified condition 7A (LLU charge control)

Condition 7 – Charge controls Condition 7A – LLU charge control

7A.1 The Dominant Provider shall take all reasonable steps to secure that, at the end of each of the Second Relevant Period Within Year 1, the Second Relevant Year and the Third Relevant Year, the Percentage Change (determined in accordance with Condition 7A.3) in:

- (a) the aggregate of charges for Tie Cables;
- (b) the aggregate of charges for Hard Cease Services;
- (c) the aggregate of charges for MPF New Provide Services;
- (d) the aggregate of charges for Co-Mingling New Provide and Rental Services;

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

7A.1A Subject to Condition 7A.1B, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 7A.4) in:

- (a) the charge for MPF SML1 Rental, except for the First Relevant Year in relation to which the average charge ceilings specified in Condition 7A.2(a) apply-ies in each Relevant Period Within Year 1;
- (b) the charge for MPF Single Migration, except for the First Relevant Year in relation to which the charge ceilings specified in Condition 7A.2(b) apply-ies in each Relevant Period Within Year 1;

(c) the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceilings specified in Condition 7A.2(c) apply ~~ies~~ in each Relevant Period Within Year 1;

(d) the charge for MPF Standard Line Test, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 7A.2(d) applies,

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

7A.1B For each of the products and/or services specified in Condition 7A.1A, where the average charge for the relevant product and/or service in the Second Relevant Period Within Year 1, or in the case of MPF Standard Line Test, in the First Relevant Year_z is lower than the amount set out in Condition 7A.2(a)(ii), 7A.2(b)(ii), 7A.2(c)(ii) ~~and to~~ 7A.2(d), as applicable, the Dominant Provider shall take all reasonable steps to secure that:

(a) at the end of the Second Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)$$

(b) at the end of the Third Relevant Year, the average charge for the relevant product and/or service is not more than the amount calculated by employing the following formula:

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)$$

Where:

Year 2 charge ceiling is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant product and/or service in the Second Relevant Period Within Year 1, or in the case of MPF Standard Line Test, the First Relevant Year_z is

lower than the amount set out in Condition 7A.2(a)(ii), 7A.2(b)(ii), 7A.2(c)(ii) ~~or~~ 7A.2(d), as applicable;

Year 3 charge ceiling is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant product and/or service in the Second Relevant Period Within Year 1, or in the case of MPF Standard Line Test, the First Relevant Year, is lower than the amount set out in Condition 7A.2(a)(ii), 7A.2(b)(ii), 7A.2(c)(ii) ~~or~~ 7A.2(d), as applicable;

\bar{p}_i is the amount set out in Condition 7A.2(a)(ii), 7A.2(b)(ii), 7A.2(c)(ii) ~~or~~ 7A.2(d), as applicable;

CPI_2 is CPI for the Second Relevant Year;

CPI_3 is CPI for the Third Relevant Year;

X_2 is as set out in Condition 7A.6(a) for the Second Relevant Year;

X_3 is as set out in Condition 7A.6(a) for the Third Relevant Year.

The average charge for the relevant product and/or service in the First Relevant Year or in the Second Relevant Period Within Year 1, as applicable, in the Second Relevant Year and in the Third Relevant Year shall be calculated by employing the formula set out in Condition 7A.3 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.

Where they relate to MPF Standard Line Test, the formula's references to $w_{i,j,t}$ shall be treated as references to the proportion of the First Relevant Year in which each charge, $p_{i,j,t}$ is in effect, and shall be calculated by the number of days during which the charge is in effect and dividing by 365.

7A.2 The Dominant Provider shall:

- (a) for MPF SML1 Rental, take all reasonable steps to secure that:
- i.* on average by the end of the First Relevant ~~Year~~ Period Within Year 1, it does not charge more than the amount of £85.46;
 - ii.* on average by the end of Second Relevant Period Within Year 1, it does not charge more than the amount of £85.74;

~~w~~Where:

- the average charge in ~~that year~~ each Relevant Period Within Year 1 shall be calculated by employing the formula set out in Condition 7A.3 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider; ~~and~~
- ~~its the formula's~~ references to individual service *i* shall be treated as references to charges for MPF SML1 Rental;
- where they relate to the First Relevant Period Within Year 1, the formula's references to number *m* shall be treated as references to the number of time periods for which there are distinct charges during the First Relevant Period Within Year 1;
- where they relate to the First Relevant Period Within Year 1, the formula's references to $w_{i,j,t}$ shall be treated as references to the proportion of the First Relevant Period Within Year 1 in which each charge, $p_{i,j,t}$ is in effect, and shall be calculated by the number of days during which the charge is in effect and dividing by 61;
- where they relate to the First Relevant Period Within Year 1, the formula's references to $p_{i,j,t}$ shall be treated as references to the charge for the specified period, *j*, during the First Relevant Period Within Year 1, *t*, for MPF SML1 Rental;

(b) for MPF Single Migration, not charge more than the amount of:

- i.* £26.55 in the First Relevant ~~Year~~ Period Within Year 1;
- ii.* £26.73 in the Second Relevant Period Within Year 1;

(c) for MPF Bulk Migration, not charge more than the amount of:

- i.* £19.07 in the First Relevant ~~Year~~ Period Within Year 1;
- ii.* £19.19 in the Second Relevant Period Within Year 1;

(d) for MPF Standard Line Test, not charge more than the amount of £4.05 in the First Relevant Year;

(e) for MPF Cease, not charge more than the amount of £0 in each Relevant Year; and

(f) for SMPF Cease, not charge more than the amount of £0 in each Relevant Year.

7A.3 The Percentage Change for the purposes of each of the categories of products and/or services (each of which is known as a “Basket”) specified in Conditions 7A.1(a) to 7A.1(d) shall be calculated, for the purposes of complying with Condition 7A.1, by employing the following formula:

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

Where:

C_t is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year or Second Relevant Period Within Year 1, t , as applicable;

n is the number of individual services in the Basket;

i is a number from 1 to n for each of the n individual services in the Basket;

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

t is the Relevant Year, except in relation to the First Relevant Year where t is the Second Relevant Period Within Year 1;

$t-1$ is the Prior Year, except where Relevant Year t is the Second Relevant Year, in which case $t-1$ is the Second Relevant Period Within Year 1;

$\bar{p}_{i,t}$ is the Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Relevant Year (except in relation to the First Relevant Year where the applicable period is the Second Relevant Period Within Year 1), excluding any discounts offered by the Dominant Provider:

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

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

Where:

m is the number of time periods for which there are distinct charges during the Relevant Year or the Second Relevant Period Within Year 1, as applicable;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

$w_{i,j,t}$ is the proportion of the Relevant Year, or Second Relevant Period Within Year 1, as applicable, in which each charge, $p_{i,j,t}$ is in effect, calculated by the number of days during which the charge is in effect and dividing:

- 1) for the Second Relevant Period Within Year 1 First Relevant Year, by ~~304~~ 365;
- 2) for the Second Relevant Year, by 366; and
- 3) for the Third Relevant Year, by 365.

$p_{i,j,t}$ is the charge for the specified period, j , during the Relevant Year or Second Relevant Period Within Year 1, t, as applicable, for the individual service, i ;

$\bar{p}_{i,t-1}$ is, for the purposes of calculating the Percentage Change for the Second Relevant Period Within Year 1 First Relevant Year, the Initial Charge for the individual service i that forms part of the Basket ~~during the Prior Year~~, excluding any discounts offered by the Dominant Provider. For the purposes of calculating the Percentage Change for the Second Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Second Relevant Period Within Year 1, excluding any discounts offered by the Dominant Provider. For the purposes of calculating the Percentage Change for the ~~Second Relevant Year and the~~ Third Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider;

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

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

Where:

m is the number of time periods for which there are distinct charges during the Prior Year or the Second Relevant Period Within Year 1, as applicable;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

$w_{i,j,t-1}$ is the proportion of the Prior Year, or Second Relevant Period Within Year 1, as applicable, in which each charge, $p_{i,j,t-1}$, is in effect, calculated by the number of days during which the charge is in effect and dividing:

- 1) for the Second Relevant Period Within Year 1 First Relevant Year, by 365;
- 2) for the Second Relevant Year, by ~~304~~ 365;
- 3) for the Third Relevant Year, by 366;

$p_{i,j,t-1}$ is the charge for the individual period, j , during the Prior Year or Second Relevant Period Within Year 1, t-1, as applicable, for the individual service, i .

7A.4 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 Condition 7A.1A shall be calculated, for the purposes of complying with Condition 7A.1A, by employing the following formula:

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

Where:

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

t is the Relevant Year;

t-1 is the Prior Year, except in the case of MPF SML1 Rental, MPF Single Migration and MPF Bulk Migration in the Second Relevant Year, where t-1 is the Second Relevant Period Within Year 1;

\bar{p}_t shall be calculated by employing the formula set out in Condition 7A.3 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service *i* shall be treated as references to charges for the specific product and/or service in the single charge category in question; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition 7A.3 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. For the purposes of calculating the Percentage Change for the Second Relevant Year for MPF Standard Line Test, $p_{i,j,t-1}$ is the Prior Year Weighted Average Charge made by the Dominant Provider for that service during the First Relevant Year, excluding any discounts offered by the Dominant Provider, and the formula's references to $w_{i,j,t-1}$ shall be treated as references to the proportion of the First Relevant Year in which each charge, $p_{i,j,t-1}$ is in effect, and shall be calculated by the number of days during which the charge is in effect and dividing by 365.

- 7A.5** In the case of each of the categories of products and/or services that form part of a Basket specified in Conditions 7A.1(a) to 7A.1(d) respectively, the Dominant Provider shall also take all reasonable steps to secure that, at the end of each Relevant Year or the end of the Second Relevant Period Within Year 1, as applicable, the Percentage Change in discrete charges for each and every product and/or service falling within the Basket in question is no more than the Controlling Percentage increased by 7.5 percentage points.

For the purposes of this Condition 7A.5:

- (a) the Controlling Percentage is the Controlling Percentage (as determined in accordance with Condition 7A.6) for the Basket within which the product and/or service falls to which the discrete charges relate; and
- (b) the Percentage Change shall be calculated by employing the formula set out in Condition 7A.4 and:

- the formula's ~~its~~ references to a single charge category shall be treated as references to charges for the specific product and/or service falling within the Basket in question;
- the formula's references to the Relevant Year t shall be treated as references to the Second Relevant Period Within Year 1, the Second Relevant Year or the Third Relevant Year, as applicable;
- the formula's references to the Prior Year t-1 shall be treated as references to the Prior Year, except in the case of the Second Relevant Year, where t-1 shall be treated as the Second Relevant Period Within Year 1.

7A.6 (a) Subject to Conditions 7A.6(b) to 7A.6(e) below, the Controlling Percentage in relation to any Relevant Year or the Second Relevant Period Within Year 1, as applicable, for each of the categories of products and/or services specified in Conditions 7A.1 and 7A.1A shall be calculated by employing the following formula:

$$CP_t = CPI_t + X_t$$

Where:

CP_t is the Controlling Percentage for Relevant Year or Second Relevant Period Within Year 1, t, as applicable;

CPI_t is:

- for the Second Relevant Period Within Year 1, the period of 12 months ending on 31 October immediately before the beginning of the Second Relevant Period Within Year 1;

- for any subsequent Relevant Year, the CPI for that the Relevant Year, t ;

X_t means:

- for the category of products and/or services specified in Condition 7A.1(a):
 - i. in the Second Relevant Period Within Year 1 First Relevant Year: 0.1
~~-0.3~~ percentage points;
 - ii. in the Second Relevant Year: -1.4 ~~-1.6~~ percentage points;
 - iii. in the Third Relevant Year: -3 ~~-3.1~~ percentage points;
- for the category of products and/or services specified in Condition 7A.1(b):
 - i. in the Second Relevant Period Within Year 1 First Relevant Year: -19.7
~~-20.3~~ percentage points;
 - ii. in the Second Relevant Year: -11.7 ~~-12~~ percentage points;
 - iii. in the Third Relevant Year: -3.7 ~~-4.1~~ percentage points;
- for the category of products and/or services specified in Condition 7A.1(c):
 - i. in the Second Relevant Period Within Year 1 First Relevant Year: -12.8
~~-13.4~~ percentage points;
 - ii. in the Second Relevant Year: -8 ~~-8.3~~ percentage points;
 - iii. in the Third Relevant Year: -2.5 ~~-2.8~~ percentage points;
- for the category of products and/or services specified in Condition 7A.1(d):
 - i. in the Second Relevant Period Within Year 1 First Relevant Year: 32.5
~~31.3~~ percentage points;
 - ii. in the Second Relevant Year: 13.6 ~~13~~ percentage points;
 - iii. in the Third Relevant Year: -4.6 ~~-4.5~~ percentage points;
- for the category of products and/or services specified in Condition 7A.1A(a):
 - i. in the Second Relevant Year: -2.3 ~~-2.4~~ percentage points;
 - ii. in the Third Relevant Year: -2 ~~-2.1~~ percentage points;
- for the category of products and/or services specified in Condition 7A.1A(b):

- i. in the Second Relevant Year: ~~-8.5~~ ~~-8.8~~ percentage points;
 - ii. in the Third Relevant Year: ~~-2.5~~ ~~-2.8~~ percentage points;
 - for the category of products and/or services specified in Condition 7A.1A(c):
 - i. in the Second Relevant Year: ~~-6.9~~ ~~-7.2~~ percentage points;
 - ii. in the Third Relevant Year: ~~-2.4~~ ~~-2.7~~ percentage points;
 - for the category of products and/or services specified in Condition 7A.1A(d):
 - i. in the Second Relevant Year: 0 percentage points;
 - ii. in the Third Relevant Year: 0 percentage points;
- (b) For each of the categories of products and/or services specified in Conditions 7A.1 and 7A.1A, and unless Condition 7A.1B applies, where the Percentage Change at the end of either the First Relevant Year (or in the case of the categories of products and/or services specified in Condition 7A.1, MPF SML1 Rental, MPF Single Migration and MPF Bulk Migration, the Second Relevant Period Within Year 1) or the Second Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 7A.6(d);
- (c) For each of the categories of products and/or services specified in Conditions 7A.1 and 7A.1A, and unless Condition 7A.1B applies, where the Percentage Change at the end of either the First Relevant Year (or in the case of the categories of products and/or services specified in Condition 7A.1, MPF SML1 Rental, MPF Single Migration and MPF Bulk Migration, the Second Relevant Period Within Year 1) or the Second Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 7A.6(d);
- (d) For each of the categories of products and/or services specified in Condition 7A.1 and 7A.1A, and unless Condition 7A.1B applies, in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

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

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 the Second Relevant Period Within Year 1, as applicable) 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 or the Second Relevant Period Within Year 1, as applicable (in the case of Deficiency or Excess in the First Relevant Year or the Second Relevant Period Within Year 1, as applicable) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in Conditions 7A.1 and 7A.1A during the First Relevant Year or the Second Relevant Period Within Year 1, as applicable (in the case of Deficiency or Excess in the First Relevant Year or the Second Relevant Period Within Year 1, as applicable) 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.3 or 7A.4, as applicable;

X_t is as set out in Condition 7A.6(a); and

CPI_t is:

- for the Second Relevant Period Within Year 1, the period of 12 months ending on 31 October immediately before the beginning of the Second Relevant Period Within Year 1;
- for any subsequent Relevant Year, the CPI for that ~~the~~ Relevant Year, t.

- (e) For each of the categories of products and/or services specified in Conditions 7A.1 and 7A.1A, and unless Condition 7A.1B applies, where the Percentage Change in any Relevant Year or the Second Relevant Period Within Year 1, as applicable, is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

7A.7 The Dominant Provider shall secure that during each Relevant Year:

- (a) the charge made by it for SMPF Remove Jumper Order Singleton Charge is the same as the charge made by it for MPF Remove Jumper Order Singleton Charge;
- (b) the charge made by it for SMPF Remove Jumper Order Bulk Charge is the same as the charge made by it for MPF Remove Jumper Order Bulk Charge; and
- (c) the charge made by it for MPF Amend is the same as the charge made by it for MPF Cancellation.

For the avoidance of doubt, nothing in this Condition 7A.7 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at Conditions 7A.7(a) to 7A.7(c) provided the requirements set out in this Condition 7A.7 and Conditions 7A.1 and 7A.1A are complied with.

7A.8 Where:

- (a) the Dominant Provider makes a material change (other than to a Charge) to any Charge Controlled Service for which a Charge is charged (for the avoidance of doubt, a Charge is charged including where a Charge of £0 is applied);
- (b) the Dominant Provider makes a change to the date on which its financial year ends;
or

- (c) there is a material change in the basis of the Consumer Prices Index,

Conditions 7A.1 to 7A.7 shall have effect subject to such reasonable adjustment to take account of the change as OFCOM may direct. For the purposes of this Condition 7A.8, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new product and/or service wholly or substantially in substitution for that existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

7A.9 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for OFCOM to monitor compliance of the Dominant Provider with this Condition 7A. The data must include:

- (a) pursuant to Conditions 7A.3 and 7A.4, as applicable, the calculated Percentage Change relating to each category of products and services listed in Conditions 7A.1 and 7A.1A;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 7A.3 and 7A.4, including for each specific service and/or product in a Basket;
- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year *(and where applicable, during the First Relevant Period Within Year 1 and the Second Relevant Period Within Year 1)*, including the dates and time periods during which they were in force;
- (d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which Conditions 7A.3 and 7A.4 apply and calculations thereof;
- (e) *the average charges for all of the services for which Conditions 7A.1B and 7A.2(a) apply and calculations thereof;*

(f) other data necessary for monitoring compliance with the charge control; and

(g) such data as OFCOM may from time to time direct.

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

7A.10 Conditions 7A.1 to 7A.9 shall not apply to such extent as OFCOM may direct.

7A.11 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this Condition 7A.

7A.12 In this Condition 7A:

(a) **“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in Conditions 7A.1 or 7A.1A during the Relevant Year;

(b) **“Basket”** shall be construed in accordance with Condition 7A.3;

(c) **“Charge Controlled Service”** means a service or Basket of services listed in Conditions 7A.1, 7A.1A or 7A.2;

(d) **“Co-Mingling New Provide and Rental Services”** means all of the products and/or services listed in Part 5 of the Annex to this Condition 7A;

(e) **“Controlling Percentage”** is to be determined in accordance with Condition 7A.6;

(f) **“Deficiency”** shall be construed in accordance with Condition 7A.6(b);

- (g) **“Excess”** shall be construed in accordance with Condition 7A.6(c);
- (h) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year (or the Second Relevant Period Within Year 1, as applicable) from providing the services and/or products listed in Conditions 7A.1 and 7A.1A and (b) the revenue the Dominant Provider would have earned in the Relevant Year (or the Second Relevant Period Within Year 1, as applicable) from providing the services and/or products listed in Conditions 7A.1 and 7A.1A if it had complied with Conditions 7A.1 or 7A.1A as applicable;
- (i) **“Hard Cease Services”** means all of the products and/or services listed in Part 2 of the Annex to this Condition 7A;
- (j) **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with Condition 7A.3, the charge by the Dominant Provider for the individual service, *i*, in the relevant Basket as set out in the column entitled ‘Initial Charge’ in the relevant Part of the Annex to this Condition 7A;
- (ja) **“First Relevant Period Within Year 1”** means the period from 1 April 2018 to 31 May 2018;*
- (k) **“MPF Bulk Migration”** shall be construed as having the same meaning as ‘MPF Mass Migration charge - Normal hours’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (l) **“MPF Cease”** shall be construed as having the same meaning as ‘MPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (m) **“MPF New Provide Services”** means all of the products and/or services listed in Part 3 of the Annex to this Condition 7A;

- (n) **“MPF Remove Jumper Order Bulk Charge”** shall be construed as having the same meaning as the service described in row 2 of the table in Part 2 of the Annex to Condition 7A;
- (o) **“MPF Remove Jumper Order Singleton Charge”** shall be construed as having the same meaning as the service described in row 1 of the table in Part 2 of the Annex to Condition 7A;
- (p) **“MPF Single Migration”** shall be construed as having the same meaning as “MPF Connection charge – Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)” as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (q) **“MPF Standard Line Test”** shall be construed as having the same meaning as ‘MPF Standard line test’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (r) **“MPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row 6 of the table in Part 3 of the Annex to this Condition 7A;
- (s) **“MPF Tie Pair Modification (Multiple Re-termination)”** shall be construed as having the same meaning as the service described in row 7 of the table in Part 3 of the Annex to this Condition 7A;
- (t) **“Percentage Change”** has the meaning given to it in Condition 7A.3 and 7A.4, as applicable;
- (ta) “Prior Financial Year” means the period of twelve months ending on 31 March immediately preceding the Relevant Year or the Second Relevant Period Within Year 1, as applicable;*
- (u) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 7A.3;

(ua) “Relevant Period Within Year 1” means each of the First Relevant Period Within Year 1 and the Second Relevant Period Within Year 1;

(v) “Relevant Year Weighted Average Charge” is to be determined in accordance with the relevant formula in Condition 7A.3;

(va) “Second Relevant Period Within Year 1” means the period from 1 June 2018 to 31 March 2019;

(w) “SMPF Cease” shall be construed as having the same meaning as ‘SMPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

(x) “SMPF Remove Jumper Order Bulk Charge” shall be construed as having the same meaning as the service described in row 4 of the table in Part 2 of the Annex to this Condition 7A;

(y) “SMPF Remove Jumper Order Singleton Charge” shall be construed as having the same meaning as the service described in row 3 of the table in Part 2 of the Annex to this Condition 7A;

(z) “Tie Cables” means all of the products and/or services listed in Part 1 of the Annex to this Condition 7A; and

(aa) “Total Revenue” means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services and/or products subject to this Condition 7A, excluding any discounts offered by the Dominant Provider.

Annex to Condition 7A

Products and/or services subject to charge control pursuant to Conditions

7A.1(a), 7A.1(b), 7A.1(c) and 7A.1(d)

Part 1

Meaning of Tie Cables

For the purposes of Condition 7A, the expression “**Tie Cables**” shall be construed as including only the following forty eight products and/or services, subject to such changes as OFCOM may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these forty eight products and/or services for another:

Item	Initial Charge
1. Handover Distribution Frame charge per 100 pair tie cable	£17.89
2. Handover Distribution Frame Extension to provide additional 1500 tie pair capacity for MCU1	£223.76
3. Additional Handover Distribution Frame to provide additional 4800 tie pair capacity for B-BUSS7	£1,688.20
4. Standalone Handover Distribution Frame (HDF) 9	£1,839.19
5. Standalone Handover Distribution Frame (HDF) 18	£1,210
6. Internal Tie Cable (2) Jointing Fixed Charge per External Tie Cable	£159.11
7. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Connection	£150.75
8. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Annual Rental	£18.43
9. Internal Tie Cable (2) – Connection	£140.32
10. Internal Tie Cable (2) – Annual Rental	£13.46

11.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Connection	£408.36
12.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Annual Rental	£77.31
13.	21CN-32 pair standard Internal Tie Cable-HDF connected – Connection	£244.91
14.	21CN-32 pair standard Internal Tie Cable-HDF connected – Annual Rental	£34.51
15.	21CN-64 pair standard Internal Tie Cable-HDF connected – Connection	£312.36
16.	21CN-64 pair standard Internal Tie Cable-HDF connected – Annual Rental	£43.99
17.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Connection	£144.72
18.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£31.78
19.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Connection	£186.29
20.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£41.09
21.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Connection	£229.97
22.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£66.76
23.	LLU Internal Tie Cable Cease of 1-10 Cables (per Point of Presence)	£335.93
24.	LLU Internal Tie Cable Cease of 11-20 Cables (per Point of Presence)	£551.74
25.	LLU Internal Tie Cable Cease of 21-30 Cables (per Point of Presence)	£613.50
26.	LLU Internal Tie Cable Cease of 31-40 Cables (per Point of Presence)	£673.62
27.	LLU Internal Tie Cable Cease of 41-50 Cables (per Point of Presence)	£735.36
28.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per cable	£886.67
29.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per extra 100 pair	£279.70

30.	BT Provided External 100 Pair cable @ 100 metres – Connection charge per extra 100 metres	£138.43
31.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per cable	£95.22
32.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£92.57
33.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100m	£78.51
34.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable	£1,450.31
35.	BT Provided external 500 Pair cable @ 100 metres – Connection charge per cable per extra 100m	£138.43
36.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable per extra 100 pairs	£279.70
37.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per cable	£152.76
38.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per extra 100m	£146.35
39.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£98.77
40.	Hand-over Distribution Frame option per 100 pair Frame capacity	£110.46
41.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per cable	£785.86
42.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£269.05
43.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per cable	£22.31
44.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.26

45.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per cable	£1,117.37
46.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£269.05
47.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per cable	£30.93
48.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.26

Part 2

Meaning of Hard Cease Services

For the purposes of Condition 7A, the expression “**Hard Cease Services**” shall be construed as including only the following four products and/or services, subject to such changes as OFCOM may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these four products and/or services for another:

	Item	Initial Charge
1.	MPF MDF Remove Jumper Order Singleton Charge	£25.08
2.	MPF MDF Remove Jumper Order Bulk Charge	£14.07
3.	SMPF MDF Remove Jumper Order Singleton Charge	£25.08
4.	SMPF MDF Remove Jumper Order Bulk Charge	£14.07

Part 3

Meaning of MPF New Provide Services

For the purposes of Condition 7A, the expression “**MPF New Provide Services**” shall be construed as including only the following seven products and/or services, subject to such changes as OFCOM may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these five products and/or services for another:

	Item	Initial Charge
1.	MPF Working Line Takeover (WLTO)	£34.71
2.	MPF Connection Charge Stopped Line Provide	£34.71
3.	MPF Working Line Takeover (WLTO) Re-using existing LIJ	£12.73
4.	MPF Connection Charge Stopped Line Provide Re-using existing LIJ	£12.73
5.	MPF Connection charge – New Provide Standard	£44.42
6.	MPF Tie Pair Modification (3 working day lead time Re-termination)	£34.40
7.	MPF Tie Pair Modification (Multiple Re-termination)	£25.87

Part 4

Meaning of Co-Mingling New Provide and Rental Services

For the purposes of Condition 7A, the expression “**Co-Mingling New Provide and Rental Services**” shall be construed as including only the following thirty three products and/or services, subject to any such changes as OFCOM may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these thirty three products and/or services for another:

Item	Initial Charge
1. Distant location full survey	£1,208.37
2. Missed joint survey or testing appointment	£22.36
3. Co-location order rejection - no space available	£281.94
4. Co-location full survey	£6,225.30
5. Site visit charge to be allocated to all orders not in conjunction with the installation of a base product	£353.55
6. Co-Mingling order rejection - no space or insufficient space available	£577.33
7. APO Cancellation Charge	£374.44
8. Co-Mingling set up fee (per sq metre)	£298.95
9. Comingling Shared Point of Presence Administration Fee	£283.43
10. Cooling per kw	£1,921.47
11. FCP (Powerbase) AC only base unit 600mm (w) x 600mm (d) to include lighting and cable management	£2,342.77
12. FCP (Powerbase) AC only base unit 800mm (w) x 600mm (d) to include lighting and cable management	£2,764.12

13.	FCP (Powerbase) AC only base unit 600mm (w) x 800mm (d) to include lighting and cable management	£2,534.61
14.	FCP (Powerbase) AC only base unit 800mm (w) x 800mm (d) to include lighting and cable management	£3,028.38
15.	HDF sub rack (per sub rack 3x 100 pair capacity)	£33.64
16.	HDF cabinet 800mm (w) x 600mm (d) for FCP	£1,168.24
17.	HDF cabinet 800mm (w) x 800mm (d) for FCP	£1,413.91
18.	Rack Space Unit (RSU) for FCP to include lighting and cable management	£477.53
19.	MCB customisation at initial build for FCP	£33.00
20.	Cabinet doors per pair for FCP only (where provided as an upgrade will be subject to a Site Visit charge)	£385.77
21.	BT's Normal Working Hours, planned (hourly charge)	£53.69
22.	BT's Normal Working Hours, unplanned (hourly charge)	£80.55
23.	BASIS (BT Assisted Site Delivery Service) fixed charge	£431.12
24.	Site Access	£313.29
25.	Handover	£260.76
26.	Provision of sub meter	£730.94
27.	Survey for capacity upgrade	£431.20
28.	AC Final Distribution Rental per 10kw increment per annum (Charges will appear in billed units of decawatts (10W))	£432.60
29.	Security rental per sq. metre per annum	£28.32
30.	Service Charge per square metre per annum	£70
31.	Security partitioning per site – annual rental charge	£143.04

32.	Rental of existing capacity per kW per annum (Charges will appear in billed units of decawatts (10W))	£201.48
33.	MDF Licence Fee per Internal Tie Cable per annum	£28.14
