



Mobile Termination Rates
**Further specification of the price control obligation, wholesale
market for mobile call termination**
Response to Consultation and Decision
Decision 2013/01

27 March 2013

Contents

Executive Summary	3
1. Legal and Regulatory Background	4
Regulatory Background.....	4
2. Context for regulating MTRs	6
EU Background.....	6
MTRs in the Isle of Man	8
Summary of responses.....	10
Commission analysis	10
3. Approach and methodology	13
Summary of January 2013 Consultation proposals	13
Summary of responses.....	13
Commission analysis	14
Conclusions on approach and methodology	16
4. MTR target rate.....	17
Summary of January 2013 Consultation proposals	17
Summary of responses.....	19
Commission analysis	19
Conclusions on the MTR target rate	20
5. Achieving the target rate	21
Summary of responses.....	21
Commission analysis	22
Conclusions on achieving the target rate	22
Annex A.....	23
Decision Notice 2013/01.....	23
Statutory powers	23
Decision.....	24

Executive Summary

Decision 2012/03 found that Manx Telecom (MT) and Cable and Wireless Isle of Man (C&WIOM) each has Significant Market Power (SMP) on the wholesale market for the provision of mobile call termination (MTR) on their respective networks. Decision 2012/03 imposed SMP obligations on MT and C&WIOM in relation to wholesale mobile voice call termination. A price control obligation was imposed such that MT and C&WIOM are directed to comply with MTRs as notified in writing by the Commission. The Commission noted that it would work with operators and other interested parties on the detailed implementation of this obligation.

The Commission published a Consultation on 22 January 2013, further specifying the price control obligation applied in the wholesale market for mobile voice call termination. Responses to Consultation were received from Manx Telecom (MT) and Cable & Wireless Isle of Man (C&WIOM). The Commission thanks both respondents for their comments, which have been considered in coming to a Decision.

Key points of this Decision on the further specification of the price control obligation are as follows:

- MTRs will be derived by benchmarking against comparator countries. These will include countries which have already followed the EC's recommended methodology in setting rates, and neighbouring countries which share similar characteristics with the Isle of Man;
- There will be a single MTR which does not vary by time period;
- MTRs will be billed on a per second basis, from the first second;
- In order to promote regulatory certainty, the regulated MTR will be set for a definitive time period;
- The approach to setting MTRs is technologically neutral. That is, the MTR will apply to all voice calls terminated on the relevant mobile network in the Isle of Man, irrespective of whether the mobile network is 2G, 3G or 4G, and irrespective of the origination of the voice call.

The Commission has set a target rate for MTRs of 1.25 pence per minute (ppm). This target rate will be achieved by 1 May 2015. The MTR will then be subject to annual review. The Commission has put in place a 2 year glidepath towards the target rate. The MTR will be 4ppm, effective from 1 May 2013. The MTR will be 2.5ppm, effective from 1 May 2014.

1. Legal and Regulatory Background

Regulatory Background

- 1.1. In 2010, the Communications Commission published its Response to Consultation on proposals for a new framework for communications regulation.¹ Having considered all responses, the Commission's recommendation was that the Isle of Man should create an approach to regulation which is specific to the Isle of Man, and which both ensures competition in the provision of services and promotes continuing infrastructure investment on the Island. The regulatory approach should be appropriate to the size of the jurisdiction, and should focus on the Isle of Man's priorities. Specifically on Mobile Termination Rates (MTRs), this report included the observation that high MTRs tend to have a distortionary effect against smaller players or market entrants, and a proposal that mobile termination rates should be reduced or eliminated on the Island.
- 1.2. The Commission published its reviews of the telecommunications markets as a consultation in June 2011. The June Consultation set out the preliminary view of the proposed remedies or obligations. The Consultation also noted that many European countries have ex ante controls on MTRs, and often set target MTRs with a glide path for achieving the desired level. The Commission stated that it expected that MTRs would continue to decrease, to bring them into line with costs.
- 1.3. A response to consultation and Decision Notice was published on 4 October 2011 but the Decision was withdrawn on 30 November 2011 to allow further review. At this time, it was decided that the Commission would issue three separate Decision Notices covering retail fixed markets, wholesale fixed markets and mobile communications markets.
- 1.4. A further consultation and notification of proposed determinations in the mobile markets was published on 18 May 2012. The Commission proposed that, as operators with SMP on their respective networks, MT and C&WIOM would have an obligation to comply with directions from the Commission on the setting of MTRs. The Commission pointed out that regulators in all other European countries set the level of MTRs, that the European Commission believes this is necessary in order to bring down the price of mobile calls for consumers, and that across Europe, mobile termination rates had come down due to this form of regulation.

¹ Response to Consultation on Proposals for a New Framework for Communications Regulation, Communications Commission, August 2010

1.5. This was followed by a response to consultation and Decision, published on 31 October 2012², which came into effect on 30 November 2012.

1.6. Decision 2012/03 found that Manx Telecom (MT) and Cable and Wireless Isle of Man (C&WIOM) each has Significant Market Power (SMP) on the wholesale market for the provision of mobile call termination on their respective networks. The licences, granted under the Telecommunications Act (of Tynwald) 1984, allow for additional obligations to be imposed on operators with SMP. Decision 2012/03 imposed SMP obligations on MT and C&WIOM in relation to wholesale mobile voice call termination. A price control obligation was imposed in accordance with Condition 44.2.1 (MT Licence) and Condition 28.2.1 (C&WIOM Licence) such that MT and C&WIOM are directed to comply with MTRs as notified in writing by the Commission. The Commission noted that it would work with operators and other interested parties on the detailed implementation of this obligation.

1.7. The Commission met with MT and C&WIOM in January 2013 to discuss its approach to the implementation of the price control obligation.

1.8. The Commission published a Consultation on 22 January 2013, further specifying the price control obligation applied in the wholesale market for mobile voice call termination³. Responses to Consultation were received from Manx Telecom (MT) and Cable & Wireless Isle of Man (C&WIOM). Both operators marked their entire response as commercially confidential. It is the Commission's view that, while commercial confidentiality must be respected, it is important that consultations are carried out in a transparent manner, that the views of respondents are published, and that the reasoning behind the Commission's consideration of these views can be made clear. Following discussion with the operators, the Commission agreed summaries of respondents' opinions. In addition, C&WIOM decided to produce a non-confidential version of its response and this will be published on the Commission's website.

1.9. The Commission has carefully considered responses to the Consultation in coming to its final Decision. The Decision is included as Annex A.

² Response to Consultation and notification of market power Determinations and Decision Notice 2012/03: Mobile communications markets, Communications Commission, 31 October 2012

³ Mobile Termination Rates: Further specification of the price control obligation, wholesale market for mobile call termination, Communications Commission, 22 January 2013

2. Context for regulating MTRs

EU Background

- 2.1 While the Isle of Man is not bound by the EU Regulatory Framework for Electronic Communications⁴, the Communications Commission is obliged to have regard to it, specifically in its approach to SMP determinations⁵.
- 2.2 The Commission considers that the current European approach to market analysis, assessment of significant market power and imposition of remedies constitutes best practice, in that a decade of experience has been built up. The Commission considers that the Isle of Man has the opportunity to benefit from lessons learned across Europe, and has drawn on mainstream European experience in formulating its regulatory approach for the Isle of Man.
- 2.3 The European Commission (EC) published a Recommendation in May 2009 on the regulatory treatment of fixed and mobile termination rates in the EU.⁶ The Recommendation sought to harmonise an approach to the setting of fixed and mobile termination rates across Europe, and to improve consistency in how regulators apply remedies in the call termination markets.
- 2.4 The reasoning behind the EC Recommendation is that, where regulated termination rates are set above an efficient level of cost, productive inefficiencies are encouraged, and there is distortion in the market. This is particularly so in the termination of calls from fixed lines, because historically, fixed termination rates have been significantly lower than mobile termination rates. This is generally reflected in the retail price, and a customer calling a mobile from a fixed line is often disproportionately penalised.
- 2.5 The EC also notes that high (i.e. above cost) MTRs also potentially penalise later market entrants, and smaller market operators. This is because a mobile operator which has a smaller subscriber base would typically send a significant number of its calls to other networks. This could have the effect of magnifying financial disadvantage arising from smaller scale and traffic imbalances. For example, where regulated off-net termination

⁴ The EU Electronics Communications Framework is composed of five Directives, covering Authorisation; Access; e-privacy; Universal Service and Framework

⁵ See, for example, para 42.3 of the MT Licence and para 27.3 of the C&WIOM Licence

⁶ COMMISSION RECOMMENDATION of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)

rates are set above an efficient cost level, asymmetric traffic flows could make it difficult for smaller operators to match on-net offers from a larger competitor.

2.6 The EC's approach to termination rates recognises that wholesale termination rates are charges which operators make to each other. Termination represents both a revenue and an expense for operators, so that any decrease in termination revenue is transferred as a decrease in expenditure for another operator. This means that the principal goal of regulating termination rates is to address imbalances and distortions in the wholesale market. The EC's view is that, while the immediate impact is in the wholesale market, reducing MTRs will eventually be of consumer benefit. The EC notes that aligning termination rates to efficient costs, and addressing distortions between the fixed and mobile markets, will strengthen the competitive dynamic which in turn can be expected to generate consumer benefits through lower prices and greater service innovation.⁷

2.7 The core of the EC Recommendation is that termination rates should be based on the costs incurred by an efficient operator. This is not necessarily the same as the actual costs incurred by an existing operator, but the approach implies that termination rates would be symmetric. The EC proposed that the relevant cost methodology would be based on the incremental costs of providing call termination to other providers, using long-run incremental costs (LRIC). The EC further proposed that it was justified to apply a 'pure' LRIC approach to setting the termination charge, whereby the 'relevant increment' is the wholesale call termination service and which includes only avoidable costs, and that only traffic-related costs should be included within the model.⁸

2.8 As well as defining the relevant cost modelling methodology to be used when setting termination rates, the Recommendation provides an alternative methodology (benchmarking) for regulators, particularly if limited resources would prevent them from putting in place an appropriately defined bottom-up cost model. Regulators using benchmarking are obliged to ensure that the termination rates derived from this process generate efficient outcomes consistent with a competitive market and, in particular, that the benchmarking process does not result in termination charges that are higher than the average of the rates sets by regulators implementing the recommended cost methodology.

2.9 One of the key principles of the EC Recommendation is that the methodology proposed would favour recovering elements of common costs from the competitive retail side of the mobile market and not from wholesale termination itself. This means that the calculation of the cost of mobile termination would not include the contribution of the mobile termination charge to the joint and common costs of the network. This would have the effect of reducing mobile termination rates.

⁷ COMMISSION STAFF WORKING DOCUMENT accompanying the COMMISSION RECOMMENDATION on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU Implications for Industry, Competition and Consumers, C(2009) 3359 final, 7.5.2009

⁸ In applying the principles contained in the Recommendation when setting MTR levels, National Regulators have used terminology such as 'pure' LRIC, 'LRIC+' and BU-LRIC to describe the cost methodology being implemented.

2.10 As of 31 July 2012, seven European member States⁹ had notified a pure BU-LRIC¹⁰ MTR to the European Commission under the Article 7 process. The target rates which were notified ranged from 0.8 cpm to 1.27 cpm, with implementation deadlines in Q1 and Q2 2013. These target rates mean that the countries which are basing their MTRs on modelled costs find that the rates should generally be less than 1ppm.

MTRs in the Isle of Man

2.11 Figure 1 below shows developments in the MTR in the Isle of Man over the last four years, setting out at the same time statements made and actions taken by the Commission relating to the setting of MTRs on the island.

2.12 As Figure 1 shows, MTRs in the Isle of Man have come down, following intervention by the Commission in 2010. In February 2010, the Commission directed MT to reduce its MTRs to the level at which they are currently set¹¹ and in October 2010 C&WIOM presented proposals to the Commission for a phased reduction in its MTRs down to this same level.

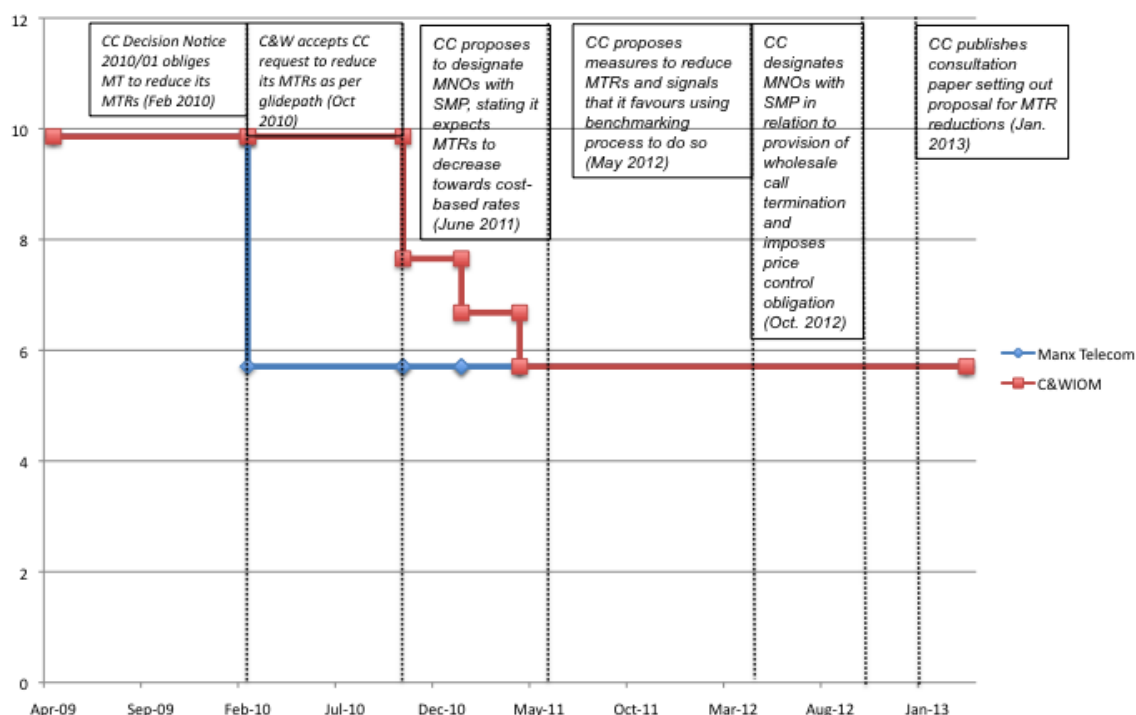
2.13 As Figure 1 also shows, the MTRs of both operators have now been unchanged for a considerable period of time - in the case of MT for over three years and close to two years in the case of C&WIOM. However, as is also illustrated in Figure 1, the Commission has in the intervening period repeatedly stated its intention to intervene again in order to ensure further MTR reductions by both operators and it has put in place a framework of *ex ante* regulation in relation to mobile termination as the basis for doing this.

⁹ Belgium, France, Portugal, Italy, Spain, Denmark, UK

¹⁰ Bottom Up modeling using Long Run Incremental Cost is a method for understanding the incremental cost to an operator for providing a service when compared to not providing the service.

¹¹ Decision Notice 2010/01 Statement of closure of investigation into a complaint alleging breach of licence conditions by Manx Telecom <http://www.gov.im/lib/docs/cc/notices/ccdecisionnoticemanxtelecominve.pdf>.

Figure 1: MTR developments in the Isle of Man, 2009 to date



Note: the average MTR of 5.71ppm illustrated above is based on a daytime/evening/weekend traffic split of 50/26/24 as per operator data supplied to the Commission in January 2013.

2.14 According to BEREC's (Body of European Regulators for Electronic Communications) snapshot of MTRs across Europe, the peak average in July 2012 was 3.6 cents per minute (cpm) and the off-peak average was 3.4 cpm¹². This indicates that, in the context of the BEREC snapshot, MTRs in the Isle of Man would be in the most expensive quarter of European countries.

2.15 The Commission has consistently stated that it would not propose to undertake a cost modelling exercise to set MTRs at this stage, but would propose to set rates by benchmarking MTRs in the Isle of Man. The Commission has noted throughout the consultation process that it would take account of guidance published by the EC, including the Recommendation on mobile termination rates¹³, and further guidance to regulators published under the Article 7 process¹⁴. This means that the Commission

¹² BEREC MTR Snapshot, September 2012 BoR (12) 80

¹³ COMMISSION RECOMMENDATION of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, 2009/396/EC

¹⁴ See, for example, European Commission Decision concerning Case EE/2012/1352: Voice call termination on individual mobile networks in Estonia, 10.8.2012

would expect to draw on the example of other European regulators which have set cost-efficient MTRs based on cost modelling as well as examples from similar jurisdictions.

Summary of responses

2.16 One respondent proposed that the impact of the Commission's proposals on its business would be disproportionately higher, as mobile termination revenues represent a larger proportion of total turnover. The respondent stated that it could not compete effectively in the fixed markets, and in its view this is due to a lack of suitable wholesale products. The respondent indicated that it does not expect to be able to recoup the revenue lost on MTRs, even if it were able to compete on a more complete range of fixed and mobile products. The respondent's view is that it would be prepared to lower its MTR once a suitably priced fixed access product (such as Wholesale Line Rental) is made available. The respondent proposed that the MTR Decision should only apply to MT, until such time that MT makes WLR ready for service.

Commission analysis

2.17 The Commission has carefully considered the contextual information regarding the potential impact of its proposals on the respondent's business, and notes that its consideration includes additional information provided by the respondent on a confidential basis.

2.18 The Commission notes that the respondent has provided a static analysis of the potential impact on its business, measured in terms of wholesale costs and revenues and how these would change under different MTR assumptions. This analysis is static in the sense that it assumes all variables, and in particular, those relating to inbound and outbound wholesale traffic flows remain the same over the next few years. In general, telecommunications operators respond to changes in the market, and in the regulatory environment, by modifying their retail offers, and so it may not be the case that variables such as wholesale traffic flows will remain the same over the long-term. Further, the Commission has been signalling its explicit intention to reduce MTRs since 2009, and so operators have had ample opportunity to consider how they may best to respond commercially to this change. The respondent's analysis does not factor in any possible changes in retail traffic levels or revenues that might flow from new retail offerings made possible by the proposed MTR reductions.

2.19 The Commission notes the contribution which MTR revenue makes to the respondent's business. However, it is the Commission's view that MTRs have been kept at an unacceptably high level in the Isle of Man for a considerable period of time. The

MTR in the Channel Islands (which the respondent believes is related to the cost of provision) was reduced to 4.11ppm three years ago. This suggests that, for the last three years (at least) the Isle of Man has been subject to artificially high MTRs which are not related to the cost of providing the service. While this may be of benefit to one particular operator, it is the Commission's view that it is not of benefit to the Isle of Man as a whole, it is not of benefit to competition in telecommunications in general, and it is certainly not of benefit to mobile customers on the Island, who ultimately shoulder the cost of inflated MTRs via higher retail charges for calls to mobiles.

2.20 The Commission has also considered the respondent's proposal to link the regulation of MTRs to the regulation of the wholesale fixed market, in that the respondent proposed that it should not have to comply with the MTR Direction until MT has developed and offered a particular wholesale access product in the fixed market. Such an approach would be contrary to the logic of the market review process, and as far as we are aware, would be unprecedented. The market review process defines a relevant market for the supply of a product or the provision of a service in a given geographical area. The relevant product/service market therefore comprises all those products or services that are sufficiently interchangeable or substitutable, with reference to a number of criteria, including their objective characteristics, their prices, their intended use, and the conditions of competition. In the review of the mobile communications markets, the Commission identified a relevant market for wholesale mobile voice call termination¹⁵, and this market has been recommended by the European Commission as susceptible to *ex ante* regulation, and has been defined in every European country.

2.21 Once a market has been defined, the Commission assesses the extent to which any undertaking is deemed to have Significant Market Power (SMP), which is the extent to which it enjoys a position equivalent to dominance: that is, a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. In the market for wholesale mobile voice call termination, the Commission found that MT and C&WIOM each had SMP on their respective networks. An SMP finding means that there is no effective competition on the market in question. Where the Commission has determined that an operator has SMP, it may specify by direction a number of conditions which are designed to prevent the operator from abusing its position of dominance. These conditions are set out in the operators' licences. In Decision 2012/03, the Commission specified by direction that, in the market for wholesale mobile call termination, MT and C&WIOM, as operators with SMP on their respective networks, were directed to comply with MTRs as notified by the Commission. The detailed implementation was subject to further consultation.

¹⁵ Response to Consultation and notification of market power Determinations and Decision Notice 2012/03: Mobile communications markets, Communications Commission, 31 October 2012

- 2.22 The process of defining a relevant market and then assessing the conditions of competition in that market provides a structured means of ascertaining the need for *ex ante* regulation in that market, and then identifying appropriate remedies which will apply on that market. The Commission has summarised above the analytical process which it has followed, and believes that there is no logic in the respondent's wish to make the imposition of a remedy in one market contingent on the imposition of a remedy in another, different, market, particularly as remedies are already in place in the wholesale fixed market, and implementation of these remedies is underway.
- 2.23 In addition, even if there was a perceived logic in the respondent's proposal, in the Commission's view there is no legal basis for linking an assessment in one market to the imposition of remedies in a different market. The Commission has carried out its reviews of the fixed and mobile markets following best practice, and the imposition of remedies is dependent on the definition of a relevant market, and the assessment of SMP on that market. In the Commission's view, this means that remedies in the wholesale fixed markets are imposed with regard to the market definition and SMP finding on that market (ie the wholesale fixed markets), and cannot be linked to the assessment of the mobile market.
- 2.24 The reason why C&WIOM is subject to direction on MTRs is because it has been designated with SMP on the market for wholesale mobile call termination on its network. The measures the Commission intends to put in place are to ensure that SMP operators cannot abuse their position of dominance in the market. It is therefore not acceptable to suggest that measures should not apply to an operator which has been found to have SMP on the market in question. While the Commission understands the respondent's concerns with regard to revenue, it has noted that MTRs have been kept very high in the Isle of Man for a long period of time, and it cannot be acceptable for an SMP operator to seek to use excessive revenue gained in a market where it has a position of dominance to cross-subsidise its activities in another market.

3. Approach and methodology

Summary of January 2013 Consultation proposals

3.1 In the January 2013 Consultation, the further specification of the price control obligation set out the approach and methodology which the Commission proposed to use in setting MTRs. Key points of the proposed approach were:

- MTRs will be derived by benchmarking against comparator countries. These will include countries which have already followed the EC's recommended methodology in setting rates, and neighbouring countries which share similar characteristics with the Isle of Man;
- There should be a single MTR which does not vary by time period;
- MTRs will be billed on a per-second basis, from the first second;
- In order to promote regulatory certainty, the regulated MTR should be set for a definitive time period;
- The approach to setting MTRs should be technologically neutral. That is, the MTR will apply to all voice calls terminated on the relevant mobile network in the Isle of Man, irrespective of whether the mobile network is 2G, 3G or 4G, and irrespective of the origination of the voice call.

Q1 Do you agree with the Commission's approach and methodology for the setting of MTRs? Please provide reasons for your answer.

Summary of responses

3.2 Both respondents indicated that, ideally, MTRs should be based on cost modelling, not derived by benchmarking. C&WIOM stated that, contrary to the Commission's claim, it had not agreed to the benchmarking approach proposed by the Commission in its May 2012 consultation.

3.3 One respondent proposed that initially, only MT should be subject to the MTR decision, and that the target rate should be applied immediately unless evidence can be provided by the operator to justify a higher rate with reference to costs. In the respondent's view, this would be consistent with the approach in the UK where

Ofcom had recognised that a different glidepath may be appropriate for newer entrants to allow them time to become a viable competitor.

3.4 Respondents did not comment on the proposal to have a single MTR which does not vary by time period; on the proposal that MTRs should be billed on a per second basis, from the first second; on the proposal that the MTR should be set for a specified time period, and on the proposal that the approach should be technologically neutral, and so apply to all voice calls terminated on the relevant mobile network.

Commission analysis

Should MTRs be based on cost modelling?

3.5 The Commission agrees with respondents that, ideally, MTRs in the Isle of Man would be set to reflect the costs incurred by an efficient operator. In order to do this, an appropriately defined LRIC model would need to be developed incorporating relevant cost information from the two mobile operators. This cost information would need to be sufficiently detailed for a judgement to be made about the actual incremental cost of providing wholesale call termination to another provider. A judgement would also be required as to the extent to which the incremental cost could be considered to be the costs incurred by an efficient operator (as opposed to an actual operator).

Is the use of benchmarking for setting MTRs in the Isle of Man permissible under the terms of the existing operator licences?

3.6 The current licences permit the Commission, following an SMP determination to specify by direction on the Communications Provider:

"conditions imposing such price controls as the Commission may direct in relation to matters connected with the provision of Network Access to a Relevant Network;"¹⁶

3.7 The licences do not specify the nature of any price control. It is clear from the licences that the Commission may choose a methodology, provided that its approach complies with the requirement that a price control is required to counteract a risk of excessive pricing or margin squeeze¹⁷, and that conditions are:

¹⁶ Paragraph 44.2.1 of the MT Licence; paragraph 28.2.1 of the C&WIOM licence

¹⁷ Paragraph 44.3.1 of the MT Licence; paragraph 28.3.1 of the C&WIOM Licence

"proportionate and appropriate for the purposes of: (i) promoting efficiency; (ii) promoting sustainable competition; and (iii) conferring the greatest possible benefits on the End-Users having taken account of the extent of the investment by the Communications Provider in the matters to which the condition relates".¹⁸

3.8 The Commission considers that it has addressed the terms of the current licences through the consultation process, and that it is permissible for a price control to be set by benchmarking and that to do this is a proportionate and appropriate response to the competition problem which needs to be addressed.

Is an asymmetric approach, such that the MTR Decision would apply to one operator but not the other, justified?

3.9 The Commission has considered the effect where one operator is allowed to set high termination rates, and the other is not. The effect is to transfer wealth between terminating and originating operators. Generally, the beneficiary of high termination rates is the operator with the largest share of terminating traffic, which is usually (but not always) the operator with the largest market share. Where only one operator is allowed to set high termination rates, that operator may achieve a high private benefit through being able to use excess profits to subsidise on-net or other services. However, this is at the price of a low overall benefit, and in the Commission's view, while an operator being permitted to set high termination rates may benefit that one individual competitor in the market, it does not benefit competition.

3.10 The Commission notes that the EC Recommendation is strongly in favour of rates being symmetric, and regulators which are subject to EU regulation had to ensure that regulated MTRs were symmetric by December 2012. The EC Recommendation offers some flexibility for new entrants to benefit from higher MTRs, but this is viewed as a transitional arrangement which should not exceed four years, and is subject to specific circumstances such as the new entrant operating below the minimum efficient scale (normally taken to mean a market share of less than 20%), and the identification of exogenous factors giving rise to objective cost differences.

3.11 The Commission considers that if the EC Recommendation were to be applied to the Isle of Man mobile market, there would be no justification for asymmetric termination rates. The Commission has no evidence that the objective costs of the operators differ to the extent that would justify different termination rates, particularly as both sets of costs would need to be considered efficient for such a judgement to be made. (In other words, the cost differences could not be because one operator is more efficient than the other). For all of these reasons, the

¹⁸ Paragraph 44.3.2 of the MT Licence; paragraph 28.3.2 of the C&WIOM Licence

Commission intends that MTRs in the Isle of Man will continue to be set on a symmetric basis between the two mobile operators.

Conclusions on approach and methodology

3.12 The Commission has carefully considered the views of respondents, and while it agrees that ideally MTRs would be set with reference to the costs incurred by an efficient operator, it recognises that the production and analysis of these costs would introduce an unnecessary delay and constitute a significant regulatory burden. For this reason, the Commission has considered whether benchmarking is appropriate, and has concluded, in the interests of proportionality, that it is.

3.13 The Commission may consult at a later date on the desirability and feasibility of developing appropriate cost models for all regulated wholesale services (including mobile call termination). If it is decided at some future point to implement this kind of cost modelling then it would mean the eventual replacement of benchmarking as the means used to set the regulated MTR. For the foreseeable future, however, the Commission intends to continue using benchmarking as the basis for setting the MTR.

3.14 The Commission has outlined its reasoning for deciding that MTRs in the Isle of Man will be symmetric.

3.15 The points on which respondents did not comment are assumed to be accepted. That is:

- there will be a single MTR which does not vary by time period;
- MTRs should be billed on a per second basis, from the first second;
- the MTR shall be set for a specified time period;
- the approach is technologically neutral, and so applies to all voice calls terminated on the relevant mobile network.

4. MTR target rate

Summary of January 2013 Consultation proposals

4.1 In the January 2013 Consultation, the Commission proposed to set a target rate for MTRs of 1.23 pence per minute (ppm).

4.2 In setting a regulated MTR for the Isle of Man, the Commission proposed to adopt a methodology based in large part on the EC Recommendation but also taking into account, due to specific characteristics of the Isle of Man, developments in relation to the setting of MTRs in jurisdictions that are of close proximity to the Isle of Man. As a result, the Commission proposed to include within its benchmark not only those EU countries where BU-LRIC models have already been put in place (which includes the UK) but also the Channel Islands and Ireland, given their proximity to the Isle of Man and the volume of calls to and from these jurisdictions.

4.3 As discussed earlier, the EC Recommendation indicates that countries which decide not to put in place MTRs based on 'pure' LRIC modelling may benchmark against other countries. However, there are two important caveats:

- Countries included in the benchmark comparison should be those EU countries which have actually modelled their costs according to the recommended methodology, and which have implemented cost-oriented MTRs;
- The "benchmark" MTR "*...should not exceed the average of the termination rates set by NRAs¹⁹ implementing the recommended cost methodology*".²⁰

4.4 These caveats are designed to ensure first of all that the inputs to the benchmarking are based on actual modelled rates, and secondly that benchmarking is not used as a means of sustaining MTRs which may be higher than would be objectively justified.

4.5 Arising from the above, the Commission proposed that its benchmark target MTR would be based on an average of the cost efficient MTRs in the jurisdictions set out in Table 1.

¹⁹ National Regulatory Authority

²⁰ EC Recommendation, para 22

Table 1: Proposed benchmark jurisdictions and basis for inclusion

Jurisdiction	Basis for inclusion
United Kingdom	BU-LRIC MTR in place/Close proximity jurisdiction
Channel Islands	Close proximity jurisdiction
Ireland	Close proximity jurisdiction
Belgium	BU-LRIC MTR in place
Denmark	BU-LRIC MTR in place
France	BU-LRIC MTR in place
Italy	BU-LRIC MTR in place
Portugal	BU-LRIC MTR in place
Spain	BU-LRIC MTR in place

4.6 In line with the EC Recommendation, the MTRs that the Commission proposed to use when setting its benchmark rate were the cost efficient target rates that NRAs within the benchmark countries have identified. Table 2 below sets out the rates which were included when calculating the benchmark.

Table 2: Derivation of target MTR based on benchmark data

Jurisdiction	MTR (€) cpm	MTR (£) ppm
United Kingdom		0.79
Channel Islands		4.11
Ireland	1.04	0.90
Belgium	1.08	0.93
Denmark	1.07	0.92
France	0.80	0.69
Italy	0.98	0.84
Portugal	1.27	1.09
Spain	1.09	0.94
Target MTR (average of benchmark rates)		1.25

Notes:

Sources for MTR data included in the benchmark are as follows:

UK - Ofcom adjusted rate following CAT's judgment according to which the MTR target rate (at 2008/9 prices) would be 0.69ppm. Adjusted for inflation the target rate is estimated at 0.794 in nominal terms for 2013.

Channel Islands – CICRA Document No. 12/55, 23rd November 2012.

Ireland – ComReg Document No. 12/125 (Decision No. 12/12), 21st November 2012.

Belgium - European Commission decision concerning case BE/2010/1086: voice call termination on individual mobile networks in Belgium

Denmark - European Commission decision concerning Case DK/2012/1342: Voice call termination on individual mobile networks in Denmark. The regulated MTR in Denmark was set at 0.08 DKK/pm. DKK/€ exchange rate used = 0.13399 (oanda.com 22/1/2013)

France - European Commission decision concerning Case FR-2010-1128: Voice call termination on individual mobile networks in France

Italy - European Commission decision concerning Case IT/2011/1219: Voice call termination on individual mobile networks in Italy

Portugal - Commission decision concerning Case PT/2012/1312: Price control for voice call termination on individual mobile networks in Portugal

Spain - European Commission decision concerning Case ES/2012/1314: Voice call termination on individual mobile networks in Spain

£/€ exchange rate used = 0.86142 (oanda.com 6/3/2013)

4.7 The Commission indicated that an MTR glidepath was desirable as it provides the SMP mobile operators with a period of time in which to adapt their business plans to take account of the reduction in the MTR from its current levels to the target rate. A glidepath also avoids any disruption which might be caused by a very large one-off reduction to the target rate. At the same time, the Commission is mindful of the need to arrive at the target rate within a reasonable timescale.

Q2 Do you agree with the Commission's proposed target rate for MTRs?

Summary of responses

4.8 One respondent indicated that the target rate was lower than expected.

4.9 Another respondent expressed a view that the proposed benchmarks are not relevant and appropriate because they include significantly larger jurisdictions where operators are perceived to be able to benefit from economies of scale. In this respondent's view, it considered "only the Channel Islands to be an appropriate benchmark for the Isle of Man". As it did not agree with the methodology, this respondent also disagreed with the proposed target rate.

Commission analysis

4.10 The Commission has discussed its overall approach in the previous section. As discussed above in the context of benchmarking as a methodology, in the absence of sufficient information from operators which would assist in determining the actual incremental cost of providing wholesale mobile voice call termination, the Commission is satisfied that an approach based on international benchmarking is an appropriate way to set the MTR level in the Isle of Man.

4.11 If the Commission adopted the approach set out in the EC Recommendation, the target rate would be below the average set by those member states which have used BU-LRIC modelling. The EC does not have any special conditions for small jurisdictions. For example, following Article 7 intervention by the EC, Gibraltar, which has a population of less than 30,000, has set an MTR target rate of 1ppm by January 2014.

4.12 The Commission has therefore taken a conservative approach in including the Channel Islands, and the effect of this has been to set a higher target rate than would otherwise be the case. The Commission could, for example, have also included Gibraltar (given its size relative to the Isle of Man) within the benchmark. Such a move would have resulted in a lower target rate than the one proposed.

4.13 For a number of reasons, the Commission does not agree with the respondent who proposed that only the Channel Islands could be considered as a suitable benchmark. The Commission has explained why the EU approach considers that MTRs should be derived from BU-LRIC cost models. While one respondent proposed that the Channel Islands MTR was based on a Current Cost Accounting model, the Commission understands that this was not based on BU-LRIC, and that it also took into account some international comparators. It is therefore not in line with the mainstream European methodology for calculating costs. The Commission also understands that the Channel Islands rate was set in 2010, and at the time the CI rate was set at 4.11ppm, the UK rate was 4.18ppm. The CI rate has not been reviewed since 2010²¹, however, the UK has now adopted BU-LRIC modelling and its target rate is now 0.69ppm by 2014/15. In the Commission's view, then, it is justified in including the Channel Islands in the benchmark model, even although there are some concerns about cost methodology and the timing of setting the rate. However, because of these concerns, it would not be appropriate to set the target rate in the Isle of Man to reflect the rate set in Guernsey 3 years ago.

Conclusions on the MTR target rate

4.14 The Commission considers that the methodology followed to set the target rate is appropriate, proportionate and justified. It is a conservative rate which is higher than would be the case if the EU approach was applied. The target rate for MTRs in the Isle of Man is 1.25 ppm.²²

²¹ The Commission understands that the Regulator in the Channel Islands intends to review the MTR later in 2013.

²² This is higher than the 1.23 ppm rate put forward in the consultation, as it takes account of recent Euro-Sterling currency movements.

5. Achieving the target rate

5.1 The January 2013 Consultation identified four main options for moving MTRs towards the target rate:

Option 1 is to reduce the MTR to the target rate on 1 April 2013. The MTR would then be subject to an annual review from 1 April 2014. While Option 1 would involve a minimal notice period for operators, the Commission has, for the last 3 years, signalled its intention to reduce MTRs. There may be advantages for operators in reducing the MTR as soon and as quickly as possible. A disadvantage of this Option would be that operators would have little or no time to incorporate the change within their business plans for the current year.

Option 2 would reduce the MTR to 4 ppm on 1 April 2013, and then reduce to the target rate on 1 April 2014. The MTR would then be subject to annual review. This Option would be more gradual, and would allow operators to incorporate changes within their business plans over the next 2 financial years.

Option 3 would reduce the MTR to 4ppm on 1 April 2013, and would then put in place a 2-year glidepath to meet the target rate on 1 April 2015. The MTR would then be subject to an annual review from 1 April 2015.

Option 4, which is a variant of Option 3, would also reduce the MTR to 4 ppm on 1 April 2013, and put in place a 2-year glidepath to meet the target rate on 1 April 2015. This Option involves an interim additional reduction on 1 April 2014, possibly to 2.5 ppm. The MTR would then be subject to an annual review from 1 April 2015.

Q3 Do you agree with the Commission's discussion of options as to how the target rate is reached? Please provide reasons for your answer.

Summary of responses

5.2 One respondent expressed a preference for a 2-year glidepath with an interim reduction. The other respondent disagreed with the target MTR rate due its view that the benchmarks used to derive the target rate were inappropriate, and the negative impact it would have on its wholesale revenues and, hence, its competitiveness across the communications sector.. It stated that the introduction of lower MTRs should be timed to coincide with the introduction of measures to improve competition in the fixed market - namely through the introduction of WLR

by MT - to ensure competition would not be weakened in the mobile and fixed markets.

Commission analysis

- 5.3 The Commission has taken into account views expressed by respondents. The Commission has addressed issues to do with linking the imposition of remedies in the mobile market to the implementation of remedies in the wholesale fixed market earlier in this document, and has noted that such an approach would, in the Commission's view, be contrary to the logic of the market review process and would be without legal foundation. The Commission has also noted that, in any case, appropriate remedies have been put in place in the wholesale fixed markets, and are being implemented.
- 5.4 The Commission agrees that ideally, MTRs should be set with reference to the costs of an efficient operator, and the use of benchmarking is an interim solution in the absence of appropriate accounting information.
- 5.5 The Commission considers that its calculation of a target MTR is appropriate and proportionate, and is based on an objective analysis. The Commission has taken a conservative view, and its proposed target rate is higher than it would be if the Isle of Man were subject to EU legislation.
- 5.6 The Commission also considers that there is no objective reason for having MTRs in the Isle of Man higher than MTRs in the Channel Islands. The Commission notes that one respondent expressed a view that the Channel Islands' MTRs are based on the costs of an efficient operator, and while the Commission has expressed reservations about the methodology used to calculate this, and more especially about the time in which the Channel Islands' rate was set, acting on these reservations would lead to a lower rate in the Isle of Man than in the Channel Islands, and not a higher rate.

Conclusions on achieving the target rate

- 5.7 The Commission has decided that the target rate for MTR in the Isle of Man will be 1.25ppm. The Commission has taken into account points made by respondents about the impact on their business plans, and while the Commission has been signalling since 2009 that it expects MTRs to be reduced, it has considered operators' views about how this fits with their planning. With this in mind, the Commission has decided to put in place a two-year glidepath towards the target rate. This means that the target rate will be achieved by 1 May 2015.
- 5.8 In order to reach this target, MTRs will reduce to 4ppm, effective from 1 May 2013. There will be a further reduction to 2.5ppm by 1 May 2014.

Annex A

Decision Notice 2013/01

Statutory powers

- (i) This Decision is issued in accordance with "Additional Obligations on Operators with Significant Market Power" Part 6 of the Licence granted to Manx Telecom Limited, and Part 4 of the Licence granted to Cable and Wireless Isle of Man Limited, under Part 5 of the Telecommunications Act 1984 (of Tynwald).
- (ii) This Decision comes into effect on 1 May 2013 and applies to Manx Telecom Limited ("MT") and to Cable and Wireless Isle of Man Limited ("C&WIOM").
- (iii) Condition 44.2.1 of the MT Licence and Condition 28.2.1 of the C&WIOM licence provide for the Commission to direct price controls, as long as this is done in a way consistent with the provision in Condition 44.3 (MT) and Condition 28.3 (C&WIOM), such that it appears to the Commission, from the market analysis carried out for the purpose of setting that condition, that there is a risk that the Communications Provider might sustain prices at an excessively high level or apply a price squeeze to the detriment of End Users; and it appears to the Commission that any such conditions are proportionate and appropriate for the purposes of:-
 - promoting efficiency;
 - promoting sustainable competition; and
 - conferring the greatest possible benefits on the End-Users having taken account of the extent of the investment by the Communications Provider in the matters to which the condition relates.
- (iv) In Decision 2012/03²³, the Commission specified by direction that the following SMP conditions be imposed on the wholesale market for mobile call termination pursuant to the Conditions of the MT licence and to the Conditions of the C&WIOM Licence:
- (v) "A price control obligation is imposed in accordance with Condition 44.2.1 (MT) and Condition 28.2.1 (C&WIOM) such that MT and C&WIOM are directed to comply with MTRs as notified in writing by the Commission. The Commission will work with operators and other interested parties on the detailed implementation of this obligation".

²³ Response to Consultation and notification of market power Determinations and Decision Notice 2012/03: Mobile communications markets, Communications Commission, 31 October 2012

- (vi) The Commission published a Consultation on 22 January 2013, further specifying the price control obligation applied in the wholesale market for mobile voice call termination²⁴. The Commission has taken account of the submissions received in response to the January 2013 consultation in issuing the response to consultation set out above.
- (vii) The provisions of the consultation documents and the Response to Consultation published on 27 March 2013 shall, where appropriate, be construed with this Decision. The analysis set out through the consultation above explains the reasoning behind and for making the proposals and indicates the effects the proposals are expected to have.

Decision

- (viii) The Commission notifies MT and C&WIOM that a target rate for Mobile Termination Rates (MTRs) is set at 1.25 pence per minute (ppm) by 1 May 2015. In order to reach this target, MTRs will be charged at a maximum of 4ppm from 1 May 2013. There will be a further reduction to 2.5ppm by 1 May 2014.
- (ix) When the target rate has been reached, the MTR will be subject to annual review.
- (x) From 1 May 2013, the following conditions will apply:
 - The MTR will not vary by time period.
 - The MTR will not include any additional charges
 - The MTR shall be billed on a per second basis, effective from the first second
 - The MTR will be applied on a technologically neutral basis

²⁴ Mobile Termination Rates: Further specification of the price control obligation, wholesale market for mobile call termination, Communications Commission, 22 January 2013