Oaseirys Çhellinsh
Communications Commission

Mobile Termination Rates

Annual Review and Draft Decision Notice

24 February 2016

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Executive Summary

Since the publication of Decision 2013/01, MTRs in the Isle of Man have reduced from 4 ppm to 1.25 ppm, which means they have reached the target rate as set out in the Decision. MTRs are now subject to annual review, and this document is the annual review. The conclusion of the review will be a mobile termination rate which will be applied for one year from 1 May 2016.

This review considers that the approach set out in the previous consultation should be continued. The analysis indicates that there has been little or no change in the simple average of the MTRs included in the benchmark compared to when it was last calculated in 2013. This fact, coupled with the large reduction in the prevailing rate that has been experienced since 2013 and the desire to support ongoing investment by mobile operators, has resulted in the Commission proposing to maintain the MTR at its existing level of 1.25ppm for a further year commencing 1 May 2016.

1. Legal and Regulatory Background

Regulatory Background

In March 2013, the Commission published Decision 2013/01, which applied to Manx Telecom Limited ('MT') and Sure (Isle of Man) Limited ('Sure') for the termination of calls on their respective mobile networks as follows:

(i) *The Commission notified MT and Sure [then 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.*

(ii) *When the target rate has been reached, the MTR will be subject to annual review.*

(iii) *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.*

Since the publication of Decision 2013/01, MTRs in the Isle of Man have reduced from 4 ppm to 1.25 ppm, which means they have reached the target rate as set out in the Decision. MTRs are now subject to annual review, and this document is the annual review. The conclusion of the review will be a mobile termination rate which will be applied for one year from 1 May 2016.

2. Approach to setting the MTR

Background

In Decision 2013/01, 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.

Approach

Overall, the impact of the approach which was adopted following the market review is that MTRs in the Isle of Man have been reduced from a rate which was high compared with EU rates, to a rate where the difference is less significant. However, while MTRs in the Isle of Man have been reduced, so too have rates throughout Europe.

During the last three years, there has been a consistent decrease in MTRs throughout Europe, driven by the European Commission's 2009 Recommendation on the regulatory treatment of termination rates within the EU.[1] This put forward a revised approach for setting MTRs within the EU, with the relevant incremental cost basis deemed to be the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of an operator not providing a wholesale call termination service to third parties. This revised methodology has led to the setting of MTRs across the EU on a "pure" Long Run

[1] Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, available at: http://bit.ly/1Ksh5uj.

Incremental Cost (LRIC) basis[2], which in practice has led to significant reductions in prevailing rates.

Cost modelling

The Commission has previously indicated that a cost modelling approach would entail the development of an appropriately defined LRIC model 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).

MT has been developing a cost model for its business since the publication of the market review decisions. However, the output of MT's model would not by itself be a sufficient basis from which to derive MTRs for the Isle of Man, not least because it would not take into account Sure's costs. Were the Commission to adopt cost modelling as the basis for setting the MTR, a separate cost model would need to be built. Such a model would need to be based on the costs incurred by a hypothetical efficient mobile operator and, most likely, would need to be specified on a 'pure' LRIC basis.

Benchmarking

While the Isle of Man does not have to be bound by the EU approach to MTRs, the Commission has considered the EU approach as an indicator, both of methods used to derive MTRs and of the results these methods produce. It is noted that the intention of the EU Recommendation was to ensure that there is consistency amongst EU member states in how MTRs are calculated, because a consistent approach delivering consistent rates is seen as essential for the functioning of the internal market. Further, several member states have challenged the method (notably Germany and Finland), and are in dispute with the EC because their alternative method delivers a higher MTR.

The EU in its Recommendation also granted some leeway to national regulatory authorities (NRAs) with "limited resources". It recognised that the development of an appropriate cost model was resource intensive, and proposed that resource-constrained NRAs could use alternative methods (albeit for a limited period) as long as the outcome was in line with the weighted average of EU LRIC-based MTRs.

The most recent report on MTRs published by the European regulators' group BEREC[3] confirms that three EU Member States – Estonia, Latvia and Lithuania – use

[2] Pure LRIC only permits the recovery of costs directly caused by the incremental termination of voice minutes, assuming that all other costs have already been incurred.

benchmarking to set their MTRs, as do a small number of non-EU countries within Europe, i.e. Iceland, Liechtenstein and Serbia.

Conclusion on approach

In summary, the EU approach provides examples of the implementation of a consistent assessment of costs associated with the provision of mobile termination, and this is a useful guide. However, the recommended method has proved challenging for some NRAs to implement, in particular for resource-constrained NRAs in smaller jurisdictions.

The Isle of Man is not part of the EU, and so it is irrelevant whether its method is consistent with that of EU member states. However, it is important that the outcome is broadly consistent with EU member states because these are the countries with which the Isle of Man has its main calling relationships, and with which Isle of Man operators have to negotiate terms for call termination.

It is the Commission's view that both the method used to set the MTR and the level of the MTR itself should be appropriate and proportionate for the Isle of Man. As discussed, the previous approach achieved its objectives in terms of bringing the Isle of Man rates into alignment with Europe, and the Commission believes that the Isle of Man MTR no longer acts as a disincentive for operators in their negotiations with external operators. The Commission is also mindful that, since setting the 2013 rate, both IOM operators have successfully launched 4G mobile services on the island, and the Commission wishes to continue to encourage investment in networks and services.

The Commission's view remains that the development of an appropriate pure LRIC model for the Isle of Man would not be proportionate at this time, and that the previous approach of relying on a broad benchmark has achieved the objective of bringing the Isle of Man MTRs into alignment with MTRs across Europe, so that the Isle of Man no longer has a significantly higher MTR which could be used by external operators to discriminate against Isle of Man operators and ultimately customers.

For these reasons, the Commission intends to continue with the benchmarking approach set out in its previous decision.

[3] Fixed and mobile termination rates in the EU January 2015, BEREC 25.5.2015, available at: http://bit.ly/1QhjgQw

3. MTR rate

In order to set the MTR for the year commencing 1 May 2016, the Commission will be guided by the same benchmarking approach that it used in its 2013 Decision, which resulted in the target rate of 1.25ppm being achieved by 1 May 2015. The jurisdictions included in the benchmark and the basis for their inclusion are set out in Table 1 below.

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

The resultant indicative MTR is set out in Table 2 below. While some benchmark countries, including the UK, have seen reductions in MTR levels since 2013 others - notably Ireland, where legal action reversed a planned rate reduction by ComReg – have seen a rise in the MTR. The prevailing £/€ exchange rate has also moved significantly since the previous benchmark was developed and as seven of the nine jurisdictions included in the benchmark are within the Euro area this has resulted in an increase in the sterling-denominated benchmark rate.

Table 2: Indicative MTR based on benchmark data

Jurisdiction	MTR (€) cpm	MTR (£) ppm
United Kingdom		0.68
Channel Islands		4.11
Ireland	2.60	1.97
Belgium	1.18	0.89
Denmark	0.81	0.61
France	0.78	0.59
Italy	0.96	0.73
Portugal	1.27	0.96
Spain	1.09	0.83
Indicative MTR (average of benchmark rates)		**1.26**

Notes:
Sources for MTR data included in the benchmark are as follows:
UK - Ofcom
Channel Islands – CICRA Document No. 12/55, 23rd November 2012
Ireland – ComReg Document No. 12/125 (Decision No. 12/12), 21st November 2012
Belgium, Denmark, France, Italy, Portugal and Spain - BEREC
£/€ exchange rate used = 0.75712 (oanda.com 3/2/2016)

As is clear from Table 2, there has been little or no change in the simple average of the MTRs included in the benchmark compared to when it was last calculated in 2013. This fact, coupled with the large reduction in the prevailing rate that has been experienced since 2013 and the desire to support ongoing investment in the sector, has resulted in the Commission proposing to maintain the MTR at its existing level of 1.25ppm for a further year commencing 1 May 2016.

4. Next steps

Your views are sought on this Consultation paper and draft Decision Notice. Please respond in writing by 17:00 on 30 March 2016 to:

Lynda Lane
Regulatory Assistant,
Communications Commission Ground Floor,
Murray House
Mount Havelock,
Douglas Isle of Man,
IM1 2SF
or by email: Lynda.lane@iomcc.im

This consultation has been circulated to members of the Other Licensed Operators forum on the Isle of Man and electronic copies of this document are also available at www.iomcc.im.

When submitting your views please indicate if you are responding on behalf of an organisation. To ensure that the process is open and honest and in line with the Government's Code of Practice on Consultation, responses can only be accepted if you provide your name with your response. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, within three months of the closing date for this consultation, and will be available on the Commission's website.

It is the Commission's view that 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. Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. Please indicate clearly if any part of your response should be considered to be commercially sensitive, and so required to be confidential. Confidential responses will be included in any statistical summary and numbers of comments received.

The purpose of consultation is not to be a 'referendum' but an information, views and evidence gathering exercise from which to make an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

Annex A

Draft Decision Notice 2016/xx

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 Sure (Isle of Man) Limited, under Part 5 of the Telecommunications Act 1984 (of Tynwald).

(ii) This Decision comes into effect on 1 May 2016 and applies to Manx Telecom Limited ("MT") and to Sure (Isle of Man) Limited ("Sure").

(iii) Condition 44.2.1 of the MT Licence and Condition 28.2.1 of the Sure 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 (Sure), 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 2012/03[4], 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 Sure Licence:

(v) "A price control obligation is imposed in accordance with Condition 44.2.1 (MT) and Condition 28.2.1 (Sure) such that MT and Sure are directed to comply with MTRs as notified in writing by the Commission. The Commission will work with

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

operators and other interested parties on the detailed implementation of this obligation".

(vi) The Commission published a Consultation on 24 February 2016, further specifying the price control obligation applied in the wholesale market for mobile voice call termination. The Commission has taken account of the submissions received in response to the February 2016 consultation in issuing the response to consultation set out above.

(vii) The provisions of the consultation document and the Response to Consultation published on xxxx 2016 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 Sure that the rate for Mobile Termination Rates (MTRs) is set at 1.25 pence per minute (ppm) from 1 May 2016.

The MTR is subject to annual review.

(ix) 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