Oaseirys Çhellinsh
Communications Commission

Mobile Termination Rates

Annual Review and Draft Decision Notice

07 March 2018

Contents

Executive Summary

Since the publication of Decision 2013/01, the prevailing regulated mobile termination rate ('MTR') in the Isle of Man has reduced from 4 ppm to 1.25 ppm, which means the regulated MTR has reached the target rate as set out in the Decision. The MTR is now subject to annual review by the Commission, and this document is the annual review for 2018. The conclusion of the review will be an MTR that will be applied for one year from 1 May 2018.

This review considers that the approach set out when conducting annual reviews in previous years should be continued. Analysis of the benchmark rate indicates that there has been only a small reduction in the simple average of the MTRs included in the benchmark compared to when it was last calculated in 2017[1]. This fact, coupled with (a) the large reduction in the prevailing rate that has been experienced in the Isle of Man since 2013, (b) the lack of any direct benefit, in terms of lower prices, for retail customers in reducing the MTR, (c) the desire to support significant new investment by the mobile operators in 4G Advanced mobile broadband services, and (d) the Commission's plans to undertake a fresh market review of mobile termination services within the period covered by the proposed control, has resulted in the Commission proposing to maintain the MTR at its existing level of 1.25ppm for a further year commencing 1 May 2018.

[1] https://www.iomcc.im/telecoms/closed-telecommunications-consultations/2017-mobile-termination-rates/

1. Legal and 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 2018.

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 the regulated MTR. Key points of the proposed approach were:

- The regulated MTR would be derived by benchmarking against comparator countries. These would 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;
- The regulated MTR 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 the MTR 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 was that the regulated MTR in the Isle of Man was reduced from a rate which was high compared with EU rates, to a rate where the difference was far less significant. However, while the regulated MTR in the Isle of Man has been reduced, so too have rates throughout Europe, where regulatory pressure continues to bear in this area.

In recent 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.[2] 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" bottom-up Long Run Incremental Cost (BU-LRIC) basis[3], which in practice has led to significant reductions in prevailing rates.

[2] 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.

[3] '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.

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 set the regulated MTR 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 would need to be dimensioned using inputs from both MT and Sure. In addition the model would, in line with best practice internationally, need to be specified on a 'pure' BU-LRIC basis. As already noted, BU-LRIC models developed in other jurisdictions have, without exception, resulted in the setting of lower MTRs.

Benchmarking

While the Isle of Man does not have to be bound by the EU approach to setting the regulated MTR, the Commission has considered the EU approach as an indicator, both of methods used to derive the MTR 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 regulated MTRs are calculated, because a consistent approach delivering consistent rates is seen as essential for the functioning of the internal market.

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 MTRs set on a BU-LRIC basis within the EU.

The most recent report on MTRs published by the European regulators' group BEREC confirms that, as was the case in 2017, four EU Member States – Cyprus, Estonia, Latvia and Lithuania – continue to use benchmarking to set their MTRs, utilising BU-LRIC rates in other countries to set the benchmark rate in their jurisdictions. The same report confirms that benchmarking continues to be used in a number of non-EU countries within Europe, i.e. Albania (using BU-LRIC benchmarking), Iceland, Liechtenstein and Serbia.[4]

[4] Termination rates at European level January 2017, BEREC July 2017, available at: http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/7095-termination-rates-at-european-level-january-2017

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 not strictly necessary that its method is in line 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 commercial 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 MTR into alignment with Europe and also with jurisdictions of close geographic proximity, 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 have recently begun to implement 4G Advanced services within their networks. The Commission welcomes this development and it wishes to continue to encourage ongoing necessary investment in mobile networks and services.

The Commission's view remains that the development of an appropriate pure BU-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 MTR 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 for the purposes of this rate review.

3. MTR rate

In order to set the MTR for the year commencing 1 May 2018, 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 original 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
Ireland	BU-LRIC MTR in place/Close proximity jurisdiction
Channel Islands	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, updated for the most recent changes in prevailing MTRs in the benchmark countries, is set out in Table 2 below.

Table 2: Indicative MTR based on benchmark data

Jurisdiction	MTR (€) cpm	MTR (£) ppm
United Kingdom		0.50
Channel Islands		4.11
Ireland	0.79	0.70
Belgium	0.74	0.66
Denmark	0.64	0.57
France	0.74	0.66
Italy	0.98	0.87
Portugal	0.81	0.72
Spain	1.09	0.97
Indicative MTR (average of benchmark rates)		**1.09**

Notes:
Sources for MTR data included in the benchmark are as follows:
UK - Ofcom
Channel Islands – CICRA Document No. 12/55, 23rd November 2012
Belgium, Denmark, France, Ireland, Italy, Portugal and Spain - BEREC
£/€ exchange rate used = 0.89221 (oanda.com 5/3/2018)

As is shown in Table 2, the simple average of the MTRs in the benchmark countries shows a slight reduction from the current regulated MTR of 1.25ppm. While this might seem to justify a modest reduction in the regulated MTR with effect from May 2018, the Commission does not believe that such a move would be justified, for the following reasons:

- There is no evidence to show that a small reduction in the regulated MTR would yield any consumer benefits in the form of lower retail prices for end-users. Instead a cut in the MTR would simply mean a revenue transfer from providers of call termination services to operators who purchase these services. The Commission is not convinced that the common good would be enhanced by such a move;

- The Commission remains very keen to support ongoing investment by MT and Sure in their respective mobile networks and, in particular, in the deployment by both operators of 4G Advanced services. It is the Commission's belief that a positive investment climate will help to ensure that this investment occurs sooner than would otherwise be the case, thus boosting the availability of high-speed mobile broadband services on the Island;

- The Commission intends to commence a further round of market reviews inside the coming twelve months, which will include within its scope a full review of the market for mobile termination services. In this context, the Commission will revisit the issue of how the MTR is set, with this review feeding into arrangements for MTR regulation from 2019 onwards.

For these reasons, the Commission is proposing to maintain the MTR at its existing level of 1.25ppm for a further year commencing 1 May 2018.

4. Next steps

Your views are sought on this Consultation paper and draft Decision Notice. Please respond in writing by 17:00 on 4 April 2018 to:

Katy Collister
Regulatory Manager,
Communications Commission Ground Floor,
Murray House
Mount Havelock,
Douglas Isle of Man,
IM1 2SF
or by email: cc@iomcc.im

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. All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2002). An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

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 2018/01

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

(ii) This Decision comes into effect on 1 May 2018 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[5], 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 operators and other interested parties on the detailed implementation of this obligation".*

(vi) The Commission published a Consultation on [DATE], further specifying the price control obligation applied in the wholesale market for mobile voice call

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

termination. The Commission has taken account of the submissions received in response to the [DATE] consultation in issuing the response to consultation set out above.

(vii) The provisions of the consultation document and the Response to Consultation published on [DATE] 2018 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 2018.

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