

# Market Review 2019

## Review of the Isle of Man Mobile Communications Markets

Document Number 11/19

Date: 29th November 2019

# Contents

<b>1</b>	<b>Foreword</b>	<b>3</b>
	Next Steps	3
	Contact Details	3
<b>2</b>	<b>Introduction</b>	<b>4</b>
	Background	4
	Approach	4
<b>3</b>	<b>Market Overview</b>	<b>6</b>
	Introduction	6
	Retail Mobile Market Structure	6
	Trends in Retail Mobile Services	8
	Looking Forward	8
<b>4</b>	<b>Market Definition</b>	<b>9</b>
	Introduction	9
	Retail Mobile Markets	10
	Wholesale Mobile Voice Call Termination	11
<b>5</b>	<b>Competition Assessment</b>	<b>13</b>
	Approach to Competition Assessment	13
	Assessment of Wholesale Mobile Voice Call Termination	13
	Summary of Preliminary SMP Determinations	14
<b>6</b>	<b>Remedies in the Wholesale Mobile Voice Call Termination Market</b>	<b>15</b>
	Approach	15
	Price Control Remedies	16
	Approach	16
	Mobile Termination Rates	17
	<b>Annex 1. Legislative Basis</b>	<b>19</b>
	<b>Annex 2. Draft Decision Notice</b>	<b>20</b>
	<b>Annex 3. Consultation Questions</b>	<b>23</b>

# 1 Foreword

- 1.1. This consultation paper invites views on proposals for the definitions of relevant telecommunications markets, Significant Market Power determinations, and proposed obligations to remedy identified competition issues. Provisions for conducting market reviews and placing additional obligations on operators with Significant Market Power (SMP) are contained within the licences issued under Section 5 of the Telecommunications Act 1984 (of Tynwald).
- 1.2. This document also includes draft Decision Notices which set out the proposed final determinations and additional obligations, and this constitutes a notification of proposed determinations as required in each operator's Licence. The Communications Commission (the Commission) will consider representations before publishing final Decision Notices. The draft Decision Notice can be found in Annex 2.
- 1.3. The Commission is inviting written responses by 31<sup>st</sup> January 2020 – the Commission is providing an extended period for preparation of responses as the consultation period runs through the Christmas holiday season. When submitting any views please indicate if you are responding on behalf of an organisation. To ensure that the process is open and transparent, responses can only be accepted if you provide your name with your response.
- 1.4. It is the Commission's policy to publish all responses received; any information that could be considered confidential (e.g. commercially sensitive information) should be identified as such and will be redacted from the published version. The Commission reserves the right to challenge claims of confidentiality should the need arise.
- 1.5. If someone asks us to keep part of their response confidential, the Commission will treat the request seriously and make all efforts to respect it. However, the Commission may be required to make responses available, including those that are marked as confidential, in order to meet legal obligations.
- 1.6. 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 2018).

- 1.7. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.
- 1.8. The purpose of this consultation is not to be a referendum, but an exercise to gather sufficient evidence with which to make the most informed decision possible. In any consultation exercise the responses received do not guarantee changes will be made to the Commission's proposals. Responses will be fully considered before the Commission publishes its final Decision Notice, which will constitute the market power determinations and remedies. As such it is important for respondents to ensure they have included sufficient rationale, objective justification, and/or evidence in their responses.
- 1.9. If you want to discuss the issues and questions raised in this consultation, or simply seek clarification, please contact the Commission.
- 1.10. This consultation can be viewed on the Government Consultation Hub <https://consult.gov.im> or through the Commission's web page [www.iomcc.im](http://www.iomcc.im).

## Next Steps

- 1.11. Following the closing date all responses will be considered. The Commission will prepare and publish a summary of the responses and a final Decision Notice which will set out the final determinations and Directions.

## Contact Details

### Kim Oliphant

Communications Commission  
Ground Floor,  
Murray House  
Mount Havelock  
Douglas,  
Isle of Man IM1 2SF  
Tel: 01624 677022  
Email: [cc@iomcc.im](mailto:cc@iomcc.im)



## 2 Introduction

### Background

- 2.1. The Commission is responsible for assessing whether the telecommunications markets in the Isle of Man are effectively competitive in accordance with the Island's regulatory framework. This framework creates an approach to regulation which is specific to the Isle of Man, and which both ensures competition in the provision of services, and ensures continuing infrastructure investment on the Island. The regulatory approach focuses on the Isle of Man's priorities and size of jurisdiction. The background to this regulation can be found in Annex 1 Legislative Basis.
- 2.2. Telecommunications companies on the Island are licenced as necessary under Section 5 of the Telecommunications Act 1984 (of Tynwald) (the Act)<sup>1</sup>.
- 2.3. The Commission conducted a consultation and market review of the telecommunications markets on the Isle of Man in 2011, which included a review of the mobile markets. The "Response to Consultation and Notification of Market Power Determinations Decision Notice Mobile Markets 2012/03" was published in 2012<sup>2</sup>. This is the second round of market reviews.
- 2.4. Ex-ante regulation imposes obligations on providers designated as having SMP and aims to address market failures. Ex-post competition measures on the other hand, serve to address or remove concerns in relation to illegal agreements, concerted practices, or unilateral abusive behaviours which restrict or distort competition. An SMP finding therefore, does not indicate abuse of that position. It merely identifies that the provider has and will have sufficient market power (and therefore the ability) to behave to an appreciable extent, independently of its competitors, its customers, and ultimately businesses and consumers.
- 2.5. A review of the telecommunications markets sets out to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints which are faced by Licensed Operators. A market review commences by defining a market, which is then analysed

to assess the degree of effective competition.

- 2.6. Each licensee is required to abide by a licence condition called the "Fair Trading Condition" which is contained within the individual licences. This sets out the Commission's ex-post competition powers. In addition to this, there is a licence condition termed "Procedure for Market Power Determinations" which sets out in detail the process that the Commission should follow in making a determination that a licensee has SMP. It is this licence condition which sets out the ex-ante powers available to the Commission, which includes the ability to impose proportionate and objectively justified remedies on a licensee designated with SMP. Consolidated versions of all licences, which include both of these provisions, are all published on the Commission's website<sup>3</sup>.

### Approach

- 2.7. The Commission has maintained its approach from the first round of market reviews, which involved adapting the methodology recommended by the European Commission (EC) for defining markets. Whilst the Commission is not legally obliged to follow EC recommendations, this is a well-established process and is accepted as best practice. The market definition methodology is set out by the EC in its SMP Guidelines<sup>4</sup>, and this review has adapted the EC methodology to the particular circumstances of the Isle of Man.
- 2.8. The Commission considers the EC Guidelines as best practice in relation to methodology, and aims to implement them in a pragmatic way appropriate for the Manx markets. Due regard has also been paid to work carried out by European National Regulatory Authorities (NRAs) since the publication of these Guidelines, particularly where the methodology has been developed, and where the EC has engaged in dialogue with NRAs about the implementation of this methodology.
- 2.9. The EC's current recommendation is that the market for Wholesale Mobile Voice Call Termination on individual mobile networks should be considered as susceptible to ex-ante regulation. In the last review of the mobile markets in 2012, the Commission found that MT and Sure had SMP in this market for the termination of calls

<sup>1</sup> [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1984/1984-0011/TelecommunicationsAct1984\\_4.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1984/1984-0011/TelecommunicationsAct1984_4.pdf)

<sup>2</sup> <https://www.iomcc.im/telecoms/market-reviews/2012-mobile-communications-market-reviews/>

<sup>3</sup> <https://www.iomcc.im/licensing/full-and-internet-service-provider-consolidated-licences/>

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XC0507\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XC0507(01)&from=EN)

on their respective networks. The Commission also found that MT had SMP on the market for Mobile Access and Call Origination, but that it was not appropriate at that time to impose remedies in that market.

- 2.10. Given the way in which the mobile market has developed since the time of the last review (see Chapter 2), and the fact there has been no requirement to introduce remedies in the Mobile Access and Call Origination market, the Commission no longer considers the Mobile Access and Call Origination market to be susceptible to ex-ante regulation. The Commission therefore proposes to withdraw the SMP designation from the Mobile Access and Call Origination market.
- 2.11. The approach to the market review has also taken into account the provisions contained within "Additional Obligations on Operators with Significant Market Power", part of the licences issued under Section 5 of the Act which outlines the procedure to be followed in coming to a potential determination of SMP<sup>5</sup>.
- 2.12. The operators in question are Manx Telecom (MT) and Sure (Isle of Man) Ltd (Sure) who provide mobile telephony services on Island.
- 2.13. Should any undertaking (licensee) be found to have SMP, defined as the ability to behave independently of competitors, suppliers, and ultimately businesses and consumers in the market, then there is a case for the use of regulation designed to address any actual or potential abuse of dominance.
- 2.14. This review is solely concerned with mobile markets. The review begins by considering the context, which is an overview of trends in mobile markets, before going on to the formal definition of product and geographic markets, and then an evaluation of their susceptibility to ex-ante regulation. A competition assessment is then carried out for markets deemed susceptible to ex-ante regulation, concluding with a determination as to whether any operator or operators have SMP. Where there is an SMP determination, the Commission then assesses the appropriate remedies.
- 2.15. The Commission has endeavoured to ensure that stakeholders remain informed throughout the market review process. A dedicated page was created on the

Commission's website<sup>6</sup> which has been updated as necessary. This page also contains a list of frequently asked questions together with the relevant answers. The market review process was split into 10 separate stages and each of these are noted below. This consultation is STAGE 8 of this process.

STAGE 1 – Preparatory work;

STAGE 2 – Calls for inputs and industry interviews;

STAGE 3 – Data requests to licensed operators;

STAGE 4 – Analysis of data requests;

STAGE 5 – Market definition and SMP assessment;

STAGE 6 – Drafting appropriate remedies;

STAGE 7 – Draft consultation and decision notice;

STAGE 8 – Consultation period on the review outcomes;

STAGE 9 – Publication of final decisions; and,

STAGE 10 – Implementation of final remedies.

- 2.16. The Commission recognises the importance of seeking feedback and understanding the views of the Licensed Operators. To this Licensed Operators (LOs) have been involved throughout this review process; regular updates were provided at the LO Forum meetings alongside detailed presentations providing opportunities for all LOs to offer input, ask questions and raise queries or concerns at all stages.

---

<sup>5</sup> Part 6 of MT's Licence and Part 4 of the Licences issued to Sure <https://www.iomcc.im/licensing/full-and-internet-service-provider-consolidated-licences/>

<sup>6</sup> *ibid*

# 3 Market Overview

## Introduction

- 3.1. This chapter considers the changes which have taken place in the Mobile Communications Markets on the Island since the time of the last review.
- 3.2. Mobile Communications Markets are those that are involve the provision of products and services that are not provided at a fixed location. At the retail level, customers use mobile devices for various purposes, including making and receiving voice calls, sending texts (SMS), and internet access. Increasingly, customers use their mobile device to access Over-the-Top (OTT) services such as WhatsApp and Skype.
- 3.3. At the wholesale level, operators need access, call origination and call termination in order to provide a retail mobile service. Mobile Access and Call Origination is self-supplied by Mobile Network Operators (MNOs) on their own networks.
- 3.4. Demand for Wholesale Mobile Voice Call Termination services is derived from consumer demand for retail voice services. Before assessing the market for Wholesale Mobile Voice Call Termination services, it is therefore necessary to review key trends in the Retail Market.
- 3.8. The level of mobile Data-Only subscriptions has not grown significantly, and other than a spike during 2017 the market has been largely in decline.
- 3.9. Mobile Number Portability (MNP) is the process where subscribers can keep their mobile number when switching to another mobile provider. The level of MNP gives a good guide to the level of switching in the market.<sup>7</sup> Figure 3 below shows the overall level of switching in the market. Note that the spike in switching in Q4 2017 reflects Isle of Man Government switching its mobile service provider; other than this the overall rate of switching is consistent.
- 3.10. The Commission has analysed market shares in the Retail Mobile Market by the number of subscribers, volume of traffic, and revenue.
- 3.11. MT's share of the Mobile Market has fallen from 73% to 65% between Q2 2016 and Q4 2018 while Sure has seen a market share increase from 27% to 35% over the same period.

## Retail Mobile Market Structure

- 3.5. There are two licensed MNOs on island, MT and Sure. Both offer pre-paid and post-paid mobile services to business and residential customers. Services typically include voice, data and text services. Both MNOs have been assigned Isle of Man mobile numbers in the 07624 range, and each has a Mobile Network Code.
- 3.6. Figure 1 below summarises mobile subscriptions according to whether they are contract/post-pay or PAYG/pre-pay. Data-Only total subscribers is shown in Figure 2.
- 3.7. The current trend within the market is that the contract subscriptions are growing in popularity, whereas PAYG subscriptions are declining. In terms of subscription trends, the Isle of Man trends are more cyclical than perhaps would be expected elsewhere. This is believed

to be related to the significant influx of visitors to the Island over the TT and GP festivals in June and August each year. The evidence supporting this is that mobile subscriptions, especially PAYG, peak during Q2 and Q3 representing a notable increase over Q1 and Q4 figures.

---

<sup>7</sup> MNP only captures those subscribers that choose to keep their number when switching – it does not include subscribers who switch and change number, so the actual level of switching will be higher than shown

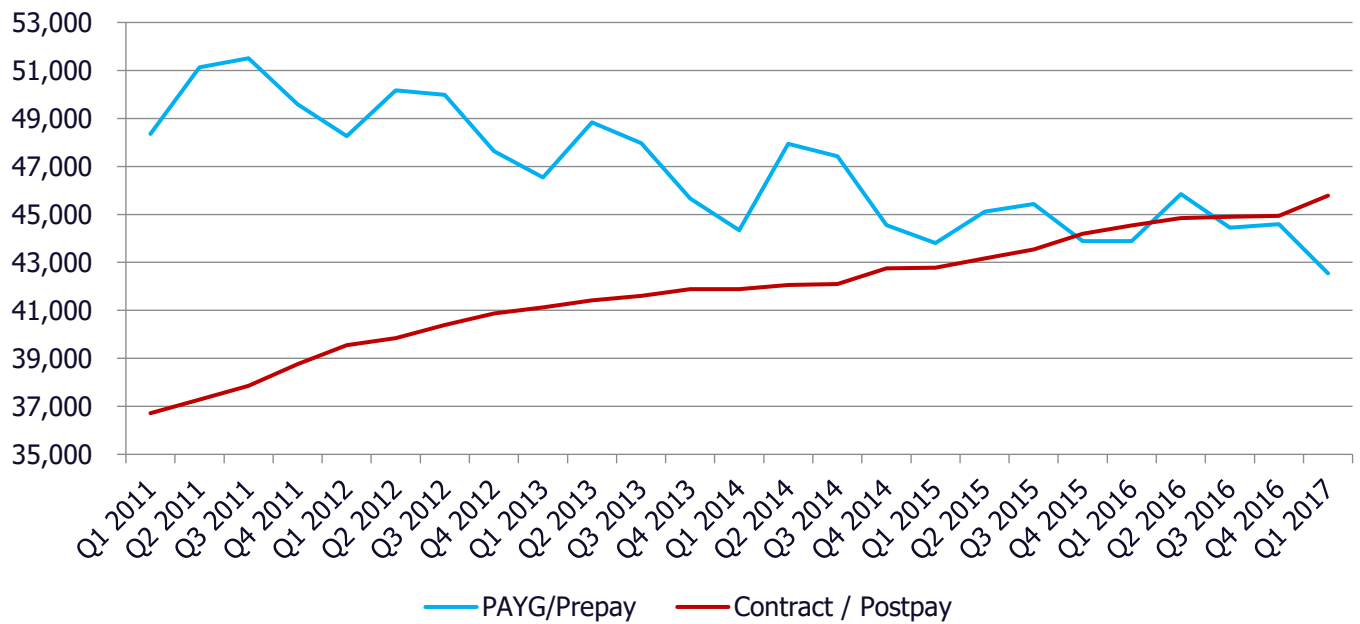


Figure 1 - Mobile Subscriptions by Service

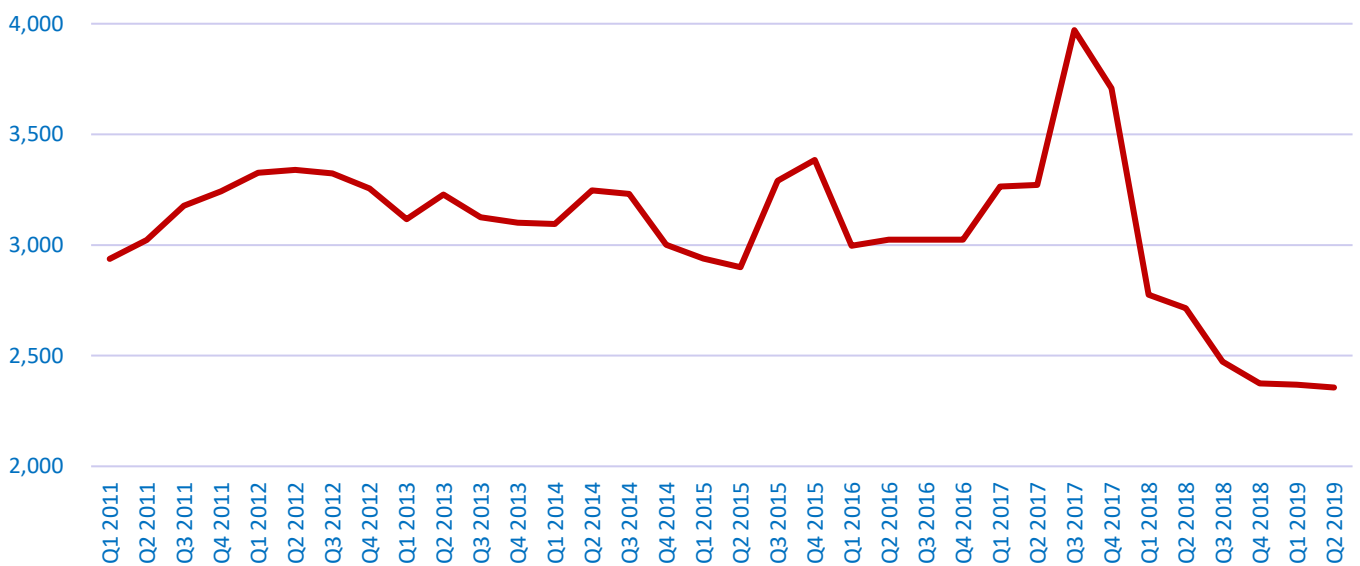


Figure 2 - Mobile Subscriptions (Data Only)

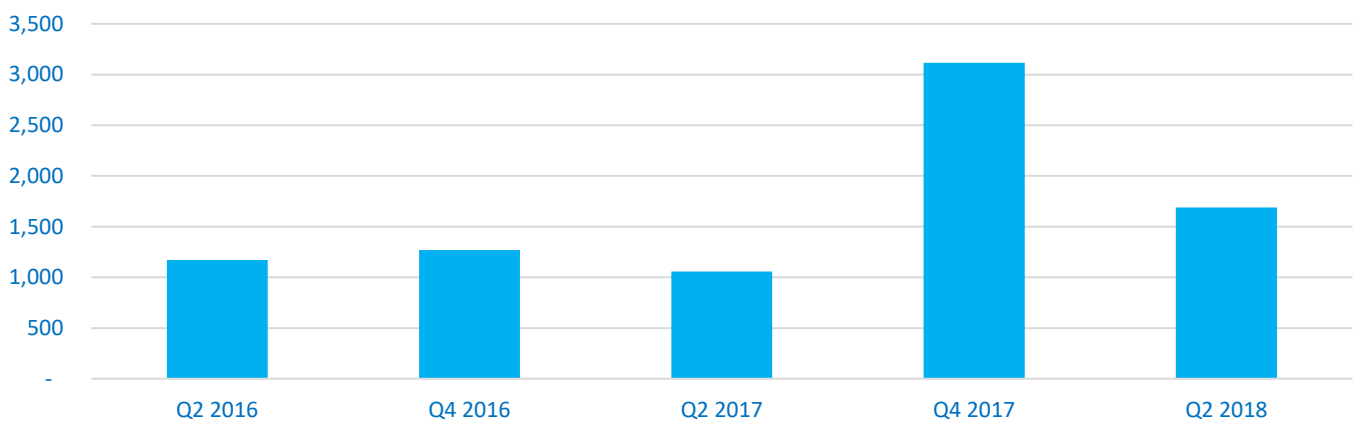


Figure 3 - Breakdown of Number Porting Activity (Total Ports)

## Trends in Retail Mobile Services

- 3.12. The Commission's analysis shows the following trends in the Retail Mobile Market:

### Use of OTT Services

- 3.13. OTT applications are increasingly being used to make voice calls and send messages, however available data indicate that this usage supplements traditional calls rather than completely replacing them. The Commission has drawn on research carried out in other jurisdictions in its analysis of the likely use of OTT services on island<sup>8</sup>. For example, a consumer survey carried out for ComReg in Ireland found that around one quarter of smartphone users made an OTT voice call at least once per day, while a third of users never made an OTT voice call<sup>9</sup>.
- 3.14. Ofcom found that there was a difference in the use of OTT services between pre-pay and post-pay customers, and between national and international calls. According to Ofcom's research, only 8% of pre-pay customers had made an OTT voice call on their mobile phone. Ofcom also found that consumers were far more likely to use an OTT application to make an international call, and noted that international calls were not included in inclusive call allowances, and were generally highly priced<sup>10</sup>.
- 3.15. While the Commission recognises that the use of OTT services is likely to continue to increase in a similar way on-island as is evident in other jurisdictions, it notes that most retail mobile customers receive inclusive allowances of voice calls, and that the marginal price (for the customer) of a call within the allowance is zero. According to Ofcom research, over 90% of mobile-mobile calls are made within inclusive call allowances.

### Increasing Use of Data

- 3.16. Mobile packages offered by both operators include data volumes (measured in GB) in their packages; presumably linked to the rise in the use of OTT services, as well as streaming services, the inclusive volume has been increasing with both operators now offering an unlimited data package. Packages also include data allowances for roaming within the EU.

## Summary of Market Trends

- 3.17. The following broad trends have been identified by the Commission during its review of the Mobile Communications Markets:
- Mobile subscriptions are showing a slight upward trend at present;
  - The number of mobile call minutes remain broadly steady, even increasing slightly;
  - The number of SMS messages sent from mobile phones by subscribers continues to decline;
  - Contract/post-pay subscription continues to grow while, correspondingly, pre-pay subscriptions continue to decline;
  - There is an upward trend in data usage. This is reflected in the packages offered to consumers by mobile operators; and,
  - Total roaming mobile voice traffic and roaming data volumes have increased considerably since the introduction of inclusive roaming allowances.

## Looking Forward

- 3.18. Both MT and Sure offer LTE Advanced (4G+) services; this evolution of 4G networks has facilitated the noted increases in mobile data consumption through providing higher download speeds.
- 3.19. The Commission would expect that both operators will consider the rollout of 5G within the review period although it notes that this is ultimately a commercial decision for the MNOs. The introduction of 5G would increase the speed at which data is transferred, and would facilitate greater data throughput and consumption. It is too early to assess the impact of 5G services on the market, but the Commission does not expect that it will significantly change the competitive conditions in the short term.
- 3.20. The Commission has recently consulted on the Future Use of the Spectrum<sup>11</sup> which represents the first step in the release of key spectrum bands that will facilitate the roll out of new technologies and services, as well as providing continuity for current generation services in the intervening period. The spectrum is to be released on a service and technology neutral basis and as such can be used in the manner that best meets the prevailing demand for services.

<sup>8</sup> There is currently no data available specific to the Isle of Man in relation to OTT service usage trends, however this is an area the Commission may seek to investigate further.

<sup>9</sup> Response to Consultation and Decision FVCT & MVCT ComReg 19/47, para 3.133

<sup>10</sup> Mobile CT consultation 3.24

<sup>11</sup> <https://consult.gov.im/communications-commission/future-use-of-spectrum/>



## 4 Market Definition

### Introduction

- 4.1. The market definition procedures are designed to identify in a systematic way the competitive constraints encountered by MNOs. Market definition identifies the boundaries of a market for the purpose of applying ex-ante regulation. The process involves considering constraints arising on both the demand and supply sides of a market and their interaction.
- 4.2. A relevant product market comprises all products or services that are sufficiently interchangeable or substitutable, not only in terms of the objective characteristics of those products, such as their prices or their intended use, but also in terms of the conditions of competition and/or the structure of supply and demand for the product in question. This leads to a definition of the market boundaries.
- 4.3. When considering demand side substitution, the Commission examines direct and indirect substitution. Direct substitution is where a product or service would itself be sufficiently similar to a focal product to warrant inclusion in the market.
- 4.4. Indirect substitution may also arise when, even if a product is deemed not to be a direct substitute, an alternative operator's strength in the Retail Market may indirectly affect conditions in the Wholesale Market. For this to happen, three conditions would need to be met:
  - a. There would need to be sufficient pass through of a price increase from the wholesale to the retail level;
  - b. Substitution would need to be significant enough to impact on the market; and
  - c. There would need to be minimal switching to the retail arm of the hypothetical monopolist.
- 4.5. In considering the pass through of a price increase from the wholesale to the retail level, the Commission notes that wholesale prices are just one element of the cost stack that makes up a retail price; therefore any wholesale price increase is diluted when translated into a retail price increase. This effect is intensified because a supplier could choose not to pass through the full wholesale price increase to the retail level.
- 4.6. Operator licences also require the area and locality in which the service is offered to be considered. European guidelines consider this to be the geographic scope of markets.
- 4.7. A relevant geographic market comprises the area in which the undertakings concerned are involved in the supply of, and demand for products and/or services, in which the conditions of competition are sufficiently homogeneous. A geographical market should be distinguishable from neighbouring areas because the conditions of competition are appreciably different in those areas.
- 4.8. The licences currently in force set out the procedure for assessing whether a market is susceptible to ex-ante regulation. As part of this process, the Commission has a requirement<sup>12</sup> to abide by the following:

*In determining whether the identified market is a market in relation to which it is appropriate to consider whether to make a determination, the Commission shall have regard to the following factors:*

  - a. *Whether the market is subject to high and non-transitory entry barriers;*
  - b. *Whether the market has characteristics such that it will tend over time towards effective competition; and,*
  - c. *The sufficiency of measures under the Fair Trading Act 1996 or the Fair Trading Condition of this licence (absent a determination under this Condition) to reduce or to remove such barriers or to restore effective competition.*
- 4.9. The Commission has met this requirement by carrying out a test on each preliminarily defined market in order to test whether it is susceptible to ex-ante regulation. The market definition exercise begins by assessing Retail Markets, before examining the Wholesale Markets that service these Retail Markets.
- 4.10. The factors listed in paragraph 4.8 are collectively known as the "Three Criteria Test". It is this test which the Commission uses to assess each market, and it is designed to identify whether problems in the market are structural rather than behavioural. The three criteria must be met cumulatively, all criteria must be satisfied for a market to be susceptible to ex-ante regulation.

<sup>12</sup> MT Licence Condition 42.4; Sure Licence Condition 27.4

4.11. In the last round of Market Reviews<sup>13</sup> the Commission defined a single market for Retail Mobile Communications and the market was not found to be susceptible to ex-ante regulation. The Commission also found that the Wholesale Markets for Mobile Access and Call Origination and for Wholesale Mobile Voice Call Termination were susceptible to ex ante regulation, and that MT had SMP in the markets for Mobile Access and Call Origination and termination to mobile numbers on its own network, and that Sure had SMP for termination to mobile numbers on its own network.

4.12. As demand in the Wholesale Markets is derived from the Retail Markets, the Commission first considers the boundaries of the Retail Mobile Services Market before examining the Wholesale Markets.

### **Retail Mobile Markets**

4.13. As the Retail Mobile Communications Market has never been susceptible to ex-ante regulation, the Commission does not need to conclude on the precise definition and notes that the purpose of the exercise is to provide context for the review of the Wholesale Mobile Voice Call Termination Market. Because of this, the Commission's consideration of the Retail Mobile Communications Market focuses on Retail Mobile Voice Calls and not on the full range of retail mobile services.

4.14. Before considering potential substitutes for a mobile voice call, it is worth considering some characteristics of the mobile markets. In common with European jurisdictions, a retail mobile subscriber who makes a mobile call bears the entire cost of making the call; this is the 'Calling Party Pays' principle. At the wholesale level, the service provider of the called party charges a termination rate to the service provider of the party making the call. The called party has no direct visibility of this charge, and so cannot respond to any increase in the termination rate.

4.15. As the purpose of a voice call is to contact a specific party, potential demand side substitutes are limited to alternative means of contacting that party. The Commission considers that there are three broad alternatives for a caller seeking to make a mobile voice

call to a specific party:

- a. Call them on a fixed landline number;
- b. Use a text-based method; or,
- c. Use a suitable OTT service.

4.16. The Commission's preliminary view, from a functional perspective, is that calls to fixed numbers and calls to mobile numbers are not likely to be good substitutes. A caller would not be likely to find a call to a fixed landline to be a suitable substitute because, even if the calling party knows the recipient's geographic number, calls to mobiles offer a greater possibility of connection.

4.17. In relation to a text-based substitute the Commission's preliminary view is that text-based services lack the immediacy of voice calls, and so from a functional perspective is not a substitute for a voice call.

4.18. The Commission's preliminary view is that the use of OTT services is likely to be complementary to the use of traditional mobile services, rather than a price-induced substitution<sup>14</sup>. Research carried out in other jurisdictions indicates that a number of factors contribute to this complementarity. These factors include the increasing volume of minutes in inclusive bundles, as well as the texts and data that are typically also included which work to reduce consumer awareness of the retail price of making a call to a particular mobile number. Other factors are given including that OTT usage is more prevalent for making international calls, which are typically excluded from inclusive call allowances and have relatively high retail prices<sup>15</sup>.

4.19. The Commission recognises that the volume of OTT VoIP traffic is growing. Ofcom estimates growth in the UK at around 50% per year, and notes that previously perceived barriers to adoption i.e. compatible smartphones, and downloading the relevant app, are diminishing<sup>16</sup>. However, the Commission's preliminary view is that OTT calls are not likely to fall within the same market as mobile calls during the period of this review, but that they are likely to provide an increasing competitive constraint in the Retail Market.

4.20. The Commission considers that the Retail Mobile Market does not include fixed calls, and does not include OTT calls.

---

<sup>13</sup> <https://www.iomcc.im/telecoms/market-reviews/2012-mobile-communications-market-reviews/>

<sup>14</sup> Ofcom cites a WIK paper: Arnold, R. Schneider, A. and Hildebrandt, C., 2016, All Communications Services Are Not Created Equal – Substitution of OTT Communications Services for ECS from a Consumer Perspective, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2756395](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2756395)

<sup>15</sup> For example Ofcom Mobile Call Termination Market Review Consultation 27 June 2017

<sup>16</sup> Ibid para 3.19

# Wholesale Mobile Voice Call Termination

## Product Market Definition

- 4.21. In the last round of market reviews, the Commission defined the Wholesale Markets for Mobile Access and Call Origination and for Wholesale Mobile Voice Call Termination. It was concluded that MT had SMP in the Mobile Access and Call Origination Market, but the Commission decided against imposing remedies in this market. The Commission concluded that MT and Sure (then Cable and Wireless IOM) each had SMP for the termination of calls on their respective mobile networks.
- 4.22. The Commission notes that its previous approach to the Mobile Access and Call Origination Market was cautious, however, it has not been required to take any action in this market since the time of the last review. As a result of this the Commission's preliminary view is that the Mobile Access and Call Origination Market is no longer susceptible to ex-ante regulation, and it is not considered further in this consultation.
- 4.23. The nature of call termination is such that there are no demand or supply side substitutes. The Commission's preliminary view is that a market for Mobile Voice Call Termination would, by necessity, include Wholesale Mobile Voice Call Termination services required to terminate voice calls to a called party's mobile number.
- 4.24. The Commission has identified three key characteristics of Wholesale Mobile Voice Call Termination:
- a. The mobile operator needs to be interconnected with at least one other network (otherwise all calls would be on-network, and wholesale termination would not be required);
  - b. The mobile operator provides the termination service to mobile numbers that it has been allocated; in this case it would be Isle of Man 07624 numbers; and,
  - c. The provider of termination services has the ability to set and control the termination rate for the service.
- 4.25. The Commission's preliminary view is that Wholesale Mobile Voice Call Termination should be technologically neutral. There is currently no difference in the treatment

of calls terminated on 2G or 3G<sup>17</sup>, nor in calls originating from fixed or other mobile networks.

- 4.26. The Commission has considered whether there is an indirect constraint on the Wholesale Market from the Retail Market. For an indirect constraint to be exercised:
- a. Any increases in the termination rate would be passed on to retail customers making the call;
  - b. Customers would need to be aware of, and respond to an increase; and,
  - c. A sufficient number of customers would switch to an alternative form of communication.
- 4.27. It should be again noted that the termination rate is a wholesale charge and represents only one part of the costs to the retail subscriber of making a mobile call. The table below illustrates the relationship between the wholesale Mobile Termination Rate (MTR) and the retail price:

	Charge in ppm <sup>18</sup>
Current MTR	1.25
Call charge <sup>19</sup>	40
MTR as % of call charge	3.12

Table 1 - Proportional Breakdown of MTR

- 4.28. Even if the Mobile Termination Rate increased by 10%, the impact on the retail price would be very small representing an increase from 3.12% to 3.44% of the overall cost.
- 4.29. The Commission's preliminary view is that an indirect constraint would unlikely arise and if it did it would be very limited, and would not materially affect the Wholesale Market.
- ## Geographic Market Definition
- 4.30. Wholesale Mobile Voice Call Termination is sought by the calling party's provider at a relevant handover point on the called party's provider's network. The geographic market would therefore need to be wide enough to include any part of the island where handover is possible for the termination of calls to Isle of Man mobile numbers. This would suggest that the geographic market is the Isle of Man.

<sup>17</sup> While it is possible to terminate a voice call on a 4G network (using Voice Over LTE) the Commission is not aware of either network utilising this technology at this time.

<sup>18</sup> Pence per Minute

<sup>19</sup> This is the charge for an out-of-bundle one minute off-net call to an IOM mobile subscriber.

- 4.31. The Commission notes that MT and Sure have all-Island mobile coverage and market services on an Island-wide basis, therefore from a functional and technical perspective, the provision of call termination services is the same regardless of the geographic location of the caller. This means that the same termination service is provided by a mobile operator for calls that originate on-Island, and for calls that originate elsewhere. The Commission recognises that calls originating off-Island may have additional wholesale costs associated with the conveyance of the call, but its preliminary view is that there are no differences associated with the caller's location in the provision of call termination services.
- 4.32. The Commission's preliminary view is that the geographic market for Wholesale Mobile Voice Call Termination is the Isle of Man. The market includes all

calls terminated to Isle of Man mobile numbers, irrespective of the location of the origination of the call.

### Susceptibility to Ex-ante Regulation

- 4.33. The Commission's preliminary conclusion is that the market for Wholesale Mobile Voice Call Termination is susceptible to ex-ante regulation, see Table 2 below for details.

**Q1. Do you agree with the Commission's preliminary view of the definition of the product and geographic market for Wholesale Mobile Voice Call Termination?**

**Q2. Do you agree with the Commission's preliminary view that the market for Wholesale Mobile Voice Call Termination is susceptible to ex-ante regulation?**

Entry barriers	Market structure trend	Sufficiency of ex post measures
<ul style="list-style-type: none"> <li>▶ Each operator controls the access of other operators' subscribers to its own network. There is thus the presence of strong economies of scale, scope and density.</li> <li>▶ Call termination can only be provided by the operator to which the called party is connected.</li> <li>▶ Entry barriers are high and non-transitory.</li> </ul>	<ul style="list-style-type: none"> <li>▶ There is no substitute for WMVCT at a wholesale level.</li> <li>▶ All operators that can terminate calls to IOM mobile numbers on their own networks have 100% market share, and this is unlikely to change.</li> <li>▶ The market is a structural monopoly.</li> </ul>	<ul style="list-style-type: none"> <li>▶ In the absence of any ex- ante regulation, a dominant operator might engage in entry deterring practices that would erect or reinforce barriers to entry that would protect its dominant position against potential, or actual, entrants.</li> <li>▶ Competition law not sufficient to address structural problems.</li> </ul>

*Table 2 -Key considerations in determining if the markets for Wholesale Voice Call Termination are susceptible to ex-ante regulation*



# 5 Competition Assessment

## Approach to Competition Assessment

- 5.1. The purpose of competition assessment is to identify whether there is an operator (or operators) with SMP. In this context, SMP means the power to behave, to an appreciable extent, independently of competitors, customers, and consumers.
- 5.2. The approach to competition assessment is to analyse the level of competition in each market that has been found to be susceptible to ex-ante regulation, examining how effectively competitive forces work. The assessment draws on quantitative and qualitative data available to the Commission, including that collected specifically for this market review. SMP can be individual or collective.
- 5.3. MNO licences indicate the factors that the Commission may choose to take into account when making an SMP determination<sup>20</sup>. Not all factors will be relevant in all markets, and some factors will be more significant than others. Broadly, these factors can be categorised as considering:
  - a. Existing competition;
  - b. Potential competition; and,
  - c. Countervailing Buyer Power.
- 5.4. Market shares and their variation over time provide a useful indication of the market structure and the relative importance of operators active in the market. While there is some precedent that a market share persistently above 50% may be, save in exceptional circumstances, considered evidence of a dominant position, there may be factors in the market that mitigate even a high market share. Therefore a market share above 50% should be seen as a rebuttable presumption of dominance.
- 5.5. The competition assessment examines the current and historical structure and trends in the market, and considers how competition may be likely to change over the next 2-3 years.
- 5.6. The assessment also considers whether there is any Countervailing Buyer Power, this refers to the ability of a customer, or customers because of their position in the market, to successfully resist supplier price increases. The source of this negotiating strength may come from a customer's:
  - a. overall size and commercial significance to the supplier;
  - b. ability to credibly threaten to switch, within a reasonable time frame to alternative suppliers;
  - c. ability to sponsor a new entrant; and/or,
  - d. ability to engage in self-supply.
- 5.7. However, mere size and commercial significance of customers alone does not necessarily prove that they have Countervailing Buyer Power, and the ability of large customers to negotiate on price (for example, to receive volume discounts) is not the same as the exercise of Countervailing Buyer Power. The exercise of buyer power by a large customer is not the same as Countervailing Buyer Power; it may benefit that customer by way of volume discounts, but will not necessarily prevent the operator from increasing prices in general.
- 5.8. When the Commission assesses Countervailing Buyer Power, the key consideration is the extent to which buyer power mitigates the market power of the supplier. The Commission therefore takes into account not only the size of the customer, and the proportion of sales it represents, but also whether the customer could credibly switch to alternative suppliers or self-supply within a reasonable timeframe. The Commission then assesses what impact such behaviour would be likely to have on the market, and in particular how other customers may be affected.

## Assessment of Wholesale Mobile Voice Call Termination

### Existing Competition

- 5.9. Each mobile operator is the sole supplier of Wholesale Mobile Voice Call Termination to its own subscribers and by definition mobile operators do not face competition in this market and barriers to entry are high. In Chapter 4, the Commission assessed the likely sufficiency of indirect constraints from the Retail Market, and its preliminary conclusion was that any indirect effect would not be strong enough to develop effective competition in the

<sup>20</sup> MT Licence Condition 42.6; Sure Licence Condition 27.6

Wholesale Mobile Voice Call Termination Market.

- 5.10. Each mobile operator has a market share of 100% for the termination of calls on its own network and this is likely to persist for the duration of this review.

#### **Potential Competition**

- 5.11. Barriers to entry and expansion in this market are high. It is the Commission's preliminary view that potential competition is not likely to be an effective constraint, and so does not undermine the presumption that mobile operators have the power to behave independently of their competitors and their customers.

#### **Countervailing Buyer Power**

- 5.12. MT and Sure are currently the only providers of Wholesale Mobile Voice Call Termination services and are the largest purchasers of termination services on-Island. No operator is in a position to constrain each mobile operator's market power.

#### **Preliminary SMP Determination**

- 5.13. The Commission's preliminary view is that MT and Sure both have SMP in the market for Wholesale Mobile Voice Call Termination on their respective mobile networks.

### **Summary of Preliminary SMP Determinations**

- 5.14. All operators have SMP for termination of voice calls to Isle of Man mobile numbers on their mobile network.

- Q3. Do you agree with the Commission's preliminary view that all operators that can terminate voice calls to Isle of Man mobile numbers on their mobile networks should be designated with SMP?**

# 6 Remedies in the Wholesale Mobile Voice Call Termination Market

## Approach

- 6.1. The Commission's approach to identifying remedies is to target remedies at competition problems that may exist in the absence of ex-ante regulation. It is therefore not necessary to catalogue examples of actual abuse of market power, nor to provide exhaustive examples of potential abuses. If an operator has been identified with SMP it has the ability and incentive to engage in anti-competitive behaviour to the detriment of end users.
- 6.2. In general, the types of competition problems that may arise involve conduct by an SMP operator that would:
  - a. Exploit customers by virtue of its SMP position. Exploitative practices could include excessive pricing where, absent regulation, prices could be persistently high with no effective pressure to bring them down. An SMP operator could also be insulated from the need to innovate, and to improve its efficiency and quality of service.
  - b. Leverage market power into adjacent vertical or horizontal markets with a view to market foreclosure. Such leverage allows an SMP operator to transfer its market power from one market to another effectively enabling an SMP operator to strengthen its position in both markets. Examples of leverage could include the denial of access to a downstream competitor; quality discrimination; exploiting information asymmetries; unwarranted withdrawal of access already granted; and margin squeeze.
  - c. Exclude or delay investment or market entry. Examples of this type of competition problem could include predatory pricing; refusal to supply access; or raising customer switching costs.
- 6.3. In particular, if a mobile operator sets excessive Mobile Termination Rates, it would earn a higher margin and could potentially harm its competitors either by reducing their margins or, if competitors increase their retail prices, by reducing their competitiveness. The power, absent regulation, to set high Mobile Termination Rates would thus generate profits that would be likely to affect competition in the Retail Mobile Communications Market.
- 6.4. Another example of competitive harm could arise if mobile operators were able to charge excessive Mobile Termination Rates while fixed operators were constrained by regulated Fixed Termination Rates. In this case, there could be a transfer of termination revenue from fixed services to mobile services.
- 6.5. Setting excessive Mobile Termination Rates could also harm the perceived competitive position of the Island overall, as operators outside of the Island may use a high rates as a reason to exclude calls to the Isle of Man from bundles. Given the regulated termination rates in force throughout the EU, an Isle of Man termination rate that was significantly out of step with the average EU level could disadvantage the Island by acting as a constraint on calls to the Island.
- 6.6. The Commission's preliminary view is therefore that, absent regulation, mobile operators would have the ability and incentive to set excessive Mobile Termination Rates and that this would likely harm competition and be to the detriment of consumers.
- 6.7. As this is a second-round market review, the Commission has emphasised the importance of learning from the implementation of remedies imposed following the previous market reviews. The Commission welcomes the steps that have been taken by the industry to date towards developing competition in telecommunications services on the Island, and wishes to acknowledge the constructive engagement of operators.
- 6.8. According to operators' licence conditions<sup>21</sup>, where the Commission has determined that a communications provider has SMP in a defined market, the Commission should consider whether the imposition of any condition is proportionate and objectively justified. It should also take into account the following objectives in so far as practicable:
  - a. Ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such Electronic Communications Services as satisfy all reasonable demands for them;

<sup>21</sup>Licence Conditions - MT 42.14; Sure 27.14

- b. Ensuring that users derive maximum benefit in terms of choice, price and quality;
- c. Ensuring efficient investment in infrastructure and promoting innovation;
- d. Encouraging the efficient use and effective management of radio frequencies and numbering resources; and
- e. Ensuring efficient and sustainable competition.

These principles have been taken into account in the preliminary view of remedies presented below.

- 6.9. In designing remedies the Commission seeks to balance the need to provide sufficient detail on proposed measures with the need to ensure that proposed remedies have the required flexibility to evolve in line with the market. Issues that have arisen since the time of the last reviews are discussed in terms of each remedy below.
- 6.10. In order to achieve this balance the obligations as set out in the Draft Decision are high level and will be supplemented by more detailed further specifications in separate documents, as required. This approach has worked well in the past and the Commission proposes to maintain this approach; it is the Commission's view that this provides the greatest degree of certainty for all market participants.
- 6.11. As discussed in Chapter 5, the Commission's preliminary view is that all operators that can terminate voice calls to Isle of Man mobile numbers on their own network have SMP in the Wholesale Voice Call Termination on their mobile network. This currently applies to MT and Sure, but in general will apply to all operators that can terminate calls on a mobile network in the Isle of Man.

The Commission has considered remedies that may best address the actual and potential competition problems identified. The last review of the mobile markets put in place a glide-path that reduced the regulated Mobile Termination Rates to 1.25 ppm, and subsequent annual reviews have maintained them at this level<sup>22</sup>.

## Price Control Remedies

- 6.12. The Commission's preliminary view is that a price control

remains necessary. In the previous market review of the Mobile Market, the Commission directed that:

- (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.*

## Approach

- 6.13. The Decisions made during the last mobile market review reduced the Mobile Termination Rates in the Isle of Man from a rate which was high compared with EU rates, to a rate where the difference was far less significant. However, while the regulated Mobile Termination Rate in the Isle of Man has been reduced, so too have rates throughout Europe, and regulatory pressure continues to bear in this area.
- 6.14. There has been a consistent decrease in Mobile Termination Rates throughout Europe, driven by the European Commission's 2009 Recommendation on the regulatory treatment of termination rates within the EU.<sup>23</sup> This put forward a revised approach for setting termination rates 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 Mobile Termination Rates across the EU on a "pure" Bottom-up Long Run Incremental Cost (BU-

<sup>22</sup> <https://www.iomcc.im/telecoms/closed-telecommunications-consultations/2018-mobile-termination-rates/>

<sup>23</sup> 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>.



LRIC) basis<sup>24</sup>, which in practice has led to significant reductions in prevailing rates.

6.15. In the previous mobile market review and subsequent annual reviews, the Commission has indicated that a cost modelling approach would entail the development of an appropriately defined cost model incorporating relevant accounting information from the two mobile operators. This 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.

6.16. Existing cost models in the Manx market would not by themselves be a sufficient basis from which to set the regulated Mobile Termination Rate, 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 new cost model would need to be developed. 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. The Commission notes that BU-LRIC models developed in other jurisdictions have, without exception, resulted in the setting of lower MTRs.

6.17. It is the Commission's view that both the method used to set the MTR and the rate itself should be appropriate and proportionate for the Isle of Man. The approach implemented to date achieved its objectives in terms of bringing the Isle of Man into alignment with Europe and also with jurisdictions of close geographic proximity.

6.18. 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.

## Mobile Termination Rates

6.19. Since the time of the last market review of the Mobile Markets, MTRs in the Isle of Man have been set with reference to the following comparator jurisdictions:

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

Table 3 - Jurisdictions included in benchmarking process

Data for these jurisdictions in 2019 is set out in Table 4 below<sup>25</sup>.

Jurisdiction	MTR (€) cpm	MTR (£) ppm
United Kingdom	0.55	0.50
Channel Islands	4.61	4.11
Ireland	0.79	0.72
Belgium	0.99	0.90
Denmark	0.95	0.86
France	0.74	0.68
Italy	0.90	0.82
Portugal	0.42	0.38
Spain	0.67	0.61
<b>Indicative MTR (average of benchmark rates)</b>	<b>1.18</b>	<b>1.08</b>
<b>Indicative MTR (average benchmark rates – excluding Channel Islands)</b>	<b>0.75</b>	<b>0.68</b>

Table 4 - Proposed MTR based on benchmarking

<sup>24</sup> '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.

<sup>25</sup> Sources for MTR data included in the benchmark are as follows: Channel Islands – CICRA Document No. 12/55, 23<sup>rd</sup> November 2012, UK, Belgium, Denmark, France, Ireland, Italy, Portugal and Spain - BEREC rates at January 2019, €/£ exchange rate used = 1.0935 (HMRC September 2019).

- 6.20. When calculating the MTR benchmark the analysis highlighted the Channel Islands as an outlier<sup>26</sup>. As a result the Channel Islands was excluded from the final benchmark of comparative jurisdictions, shown in Table 4.
- 6.21. The Commission has carried out sensitivity analysis on factors included in the benchmark, and notes the following:
- Although MTRs across Europe have continued to decrease over the last year, fluctuations in the EUR/GBP exchange rate to some extent mask this effect;
  - When an average MTR is calculated for the 37 countries included in BEREC's report, the average is 0.80 ppm;
  - The average for the EU member states included in BEREC's report is 0.71ppm.
- 6.22. The Commission proposes that the analysis of comparator jurisdictions justifies a reduction in MTRs in the Isle of Man, however, the Commission maintains its view that ongoing investment by MT and Sure in their respective mobile networks should be supported through avoiding a rate that would be disproportionately low. The Commission notes also that even a significant decrease in MTRs would have little or no effect on retail prices paid by consumers.
- 6.23. For the reasons set out above, the Commission proposes to set a target rate of 0.7 ppm, to be achieved on a glide path as follows:

From 1 April 2020	From 1 April 2021	From 1 April 2022
1.1 ppm	0.9 ppm	0.7 ppm

*Table 5 - Proposed MTRs to apply from 1 Jan 2020*

#### **Q4. Do you agree with the Commission's proposals for preliminary remedies?**

<sup>26</sup> It is common practice to consider any values that fall more than two standard deviations from the mean an outlier.

# Annex 1. Legislative Basis

- A1.1. The Commission is responsible for issuing telecommunications licences on Island. The licences are issued under s.5 of the Telecommunications Act 1984; provisions for placing additional obligations on operators with SMP are contained in the licences.
- A1.2. The procedures to be followed by the Commission for identifying relevant markets and determining any SMP are set out in Part 6 of Manx Telecom Limited's Licence, and Part 4 of the Licences issued to Sure (Isle of Man) Limited<sup>27</sup>.
- A1.3. These parts state that the Commission is expected to take account of *"generally accepted principles regarding the identification of markets as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island"*.
- A1.4. The Commission has adapted the methodology recommended by the European Commission (EC) for defining markets. While the Communications Commission is not legally obliged to follow EC recommendations, this constitutes a well-established process and is considered as best practice. The market definition methodology is set out by the EC<sup>28</sup> in its SMP Guidelines, and this review has adapted this methodology to the particular circumstances of the Isle of Man.
- A1.5. The approach is to treat the EC guidelines as best practice in terms of their methodology, and to implement them in a pragmatic way which recognises the specificity of the Isle of Man. The Commission has also taken into account work carried out by European National Regulatory Authorities (NRAs) particularly where the methodology has been developed, and where the EC has engaged in dialogue with NRAs about the implementation of the methodology.
- A1.6. The objective of ex-ante regulation is ultimately to produce benefits for end users by making retail markets competitive on a sustainable basis. While competition

law methodologies are used in the market definition exercise, the application of competition law or ex-post competition measures is generally directed to a specific complaint against a particular form of behaviour which has already occurred, while the market review process considers the dynamic of an overall market, and is a prospective analysis which does not depend on instances of abuse of a dominant position. Competition law and ex-ante regulation are therefore complementary approaches in telecommunications regulation. The Commission does not currently have specific competition powers in primary legislation and is seeking to address this in the Communications Bill 2018<sup>29</sup>. General competition powers for the Island at present are contained in the Fair Trading Act 1996 as amended, which empowers the Office of Fair Trading to conduct investigations into prices and instances of anti-competitive practice. There is a fair trading condition in the operators' licences.

---

<sup>27</sup> <https://www.iomcc.im/licensing/full-and-internet-service-provider-consolidated-licences/>

<sup>28</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0710>

<sup>29</sup> <http://www.tynwald.org.im/business/bills/Pages/default.aspx>

## Annex 2. Draft Decision Notice

### **Notification of Market Power Determination: Mobile Communications Markets**

#### **Decision Notice 2020/xx**

##### **Statutory Powers:**

- i. This Notification of Market Power Determinations 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 Section 5 of the Telecommunications Act 1984 (of Tynwald).
- ii. This proposed Decision applies to Manx Telecom Limited ("MT") and to Sure Isle of Man Limited ("Sure"). With reference to Condition 42.7 of the MT Licence, and Condition 27.7 of the SURE Licence, this proposed Decision identifies relevant markets, and makes a market power determination. The Commission has presented its preliminary review of the telecommunications markets.
- iii. The provisions of the consultation documents shall, where appropriate, be construed with this proposed 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.
- iv. In line with Condition 42.9 of the MT Licence, and Condition 27.9 of the Sure Licence, representations may be made to the Commission on this proposed Decision within a period of six weeks from the date of its publication. The Commission will consider all representations received within that period before reaching a final Decision.

### **Mobile Communications Markets**

##### **Market Definition**

- v. Condition 42 of the MT Licence and Condition 27 of the Sure Licence requires that, before making a market power determination, the Commission must identify relevant markets, and in accordance with Condition 42.5 (MT) and Condition 27.5 (Sure) assess whether a Communications Provider has Significant Market Power ("SMP"). The method to be followed is set out in Condition 42 of the MT Licence and Condition 27 of the Sure Licence.
- vi. The relevant mobile communications markets which have been identified are:
  - There is a market for Retail Mobile Communications.
  - There is a market for Wholesale Mobile Access and Call Origination.
  - There is a market for Wholesale Mobile Call Termination.
- vii. The geographic scope for all mobile communications markets is the Isle of Man.

##### **SMP Designation**

- viii. The assessment of market power was carried out in accordance with generally accepted principles, and took into account relevant factors as provided for in Conditions 42.5 and 42.6 of the MT Licence,



and Conditions 27.5 and 27.6 of the Sure Licence.

- ix. No operator is designated with SMP in the Retail Mobile Communications Market.
- x. No operator is designated with SMP in the Wholesale Market for Mobile Access and Call Origination.
- xi. MT and SURE are designated as having SMP on the Market for Wholesale Mobile Call Termination on their respective networks.

## **Obligations in Relation to Mobile Communications Markets**

- xii. The Commission reserves the right to give further non-binding guidance on the implementation of any proposed measures on the eventual publication of the final Decision.
- xiii. According to Condition 42.14 of the MT Licence, and Condition 27.14 of the Sure Licence, where the Commission has determined that a Communications Provider has SMP on a market, the Commission may consider proportionate and objectively-justified SMP obligations, taking into account such of the following objectives as appear to the Commission to be appropriate
  - ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such Electronic Communications Services as satisfy all reasonable demands for them
  - ensuring that users derive maximum benefit in terms of choice, price and quality;
  - ensuring efficient investment in infrastructure and promoting innovation;
  - encouraging the efficient use and effective management of radio frequencies and numbering resources; and
  - ensuring efficient and sustainable competition.
- xiv. Condition 44 of the MT licence provides that MT shall comply with such conditions as the Commission may specify by direction in accordance with Condition 42 and paragraphs 44.2, and 44.3. Condition 28 of the Sure Licence provides that Sure shall comply with such conditions as the Commission may specify by direction in accordance with Condition 27 and paragraphs 28.2 and 28.3.
- xv. The Commission specifies by direction that the following SMP conditions be imposed in the wholesale market for mobile call termination pursuant to the Conditions of the MT licence and to the Conditions of the Sure Licence:

## **Obligations Relating to Price Controls**

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:-

- (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.

A price control obligation is proposed in accordance with Condition 44.2.1 (MT) and Condition 28.2.1 (Sure) such that MT and Sure are obliged to comply with Mobile Termination Rates (MTRs) as directed by the Commission.

The rates set by the Commission until 2022 are:

From 1 April 2020	From 1 April 2021	From 1 April 2022
1.1 ppm	0.9 ppm	0.7 ppm

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

The Commission may set such rates and conditions after this date after appropriate consultation with operators and other interested parties and any necessary review.

**Q5. Do you have any comments on the Draft Decision Notice in Annex 2 Draft Decision Notice?**

## Annex 3. Consultation Questions

Q1. Do you agree with the Commission's preliminary view of the definition of the product and geographic market for Wholesale Mobile Voice Call Termination?

Q2. Do you agree with the Commission's preliminary view that the market for Wholesale Mobile Voice Call Termination is susceptible to ex-ante regulation?

Q3. Do you agree with the Commission's preliminary view that all operators that can terminate voice calls to Isle of Man mobile numbers on their mobile networks should be designated with SMP?

Q4. Do you agree with the Commission's proposals for preliminary remedies?

Q5. Do you have any comments on the Draft Decision Notice in Annex 2?

Q6. Do you have any further comments?