



# Pan-Channel Island Consultation on Mobile Termination Rates

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## Consultation Document

### Channel Islands Competition and Regulatory Authorities

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## 1. Executive Summary

Currently, in the Channel Islands, the Mobile Termination Rate (“MTR”) is 4.11 pence per minute (“ppm”). This is a significant component of the cost of calls made to channel island mobile numbers from either fixed line or mobile phones.

Ofcom<sup>1</sup>, the UK’s telecom regulator, has stated that the MTRs of the UK operators will reduce, using a glide path, from the current rate of 0.845 ppm to 0.507 ppm by 1 April 2017. This represents a material difference in charges for terminating calls on mobile networks in the UK compared to the Channel Islands and the evidence to justify such large differences does not appear strong. CICRA and Ofcom are also concerned by information that UK operators have increased or plan to increase the retail cost of calls to the Channel Islands and/or remove Channel Islands numbers from customer pre-paid bundles due to the large difference in these charges. Such developments present risks to the wider economic interests of Jersey and Guernsey and ultimately, could effect decisions on doing business in the Channel Islands.

It is CICRA’s opinion that it is consistent with its duties under Jersey and Guernsey law that MTRs should be more closely aligned between the Channel Islands and the UK.

CICRA, in this consultation, proposes that the MTR for the Channel Islands is reduced to 0.516 ppm by 1 September 2017. CICRA welcomes all comments on this consultation.

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<sup>1</sup> *Mobile call termination market review 2015-18, Statement on the markets, market power determinations and remedies, Ofcom, 17 March 2015*

## 2. Introduction

Mobile termination rates (“MTRs”) are the fees charged to other telecommunications companies by mobile network operators (“MNOs”) to terminate calls on mobile networks. They are a key component of the retail charges that mobile customers ultimately pay for their mobile services. In the Channel Islands, the current MTR is 4.11 pence per minute (“ppm”).

The issue of the level of MTRs and the need to ensure such charges are set at levels that reflect the efficient and cost-effective provisions of terminating services is a matter under review by regulators in many European countries. There has been significant progress in reducing MTRs in recent years within the EU.

The Body of European Regulators for Electronic Communications (“BEREC”) is also actively engaged in this area and publishes a MTR snapshot on a regular basis which provides a valuable source of benchmarking data of the MTRs charged by mobile operators from across thirty-three European countries. The European Commission has also set out its view that National Regulatory Authorities (“NRAs”) in the EU should increasingly set MTRs based on Long-Run Incremental Cost (“LRIC”) and it is anticipated that this will further reduce MTRs in the future.

In Guernsey, the Office of Utility Regulation (“OUR”) carried out two separate reviews of MTRs between 2006 and 2011. The first review determined that an average MTR of 6.75ppm should be put in place from 1 April 2007 and a further review in 2009 resulted in all Guernsey operators applying MTRs at a flat rate of 4.11ppm (including any transit charges). There are three mobile operators currently providing mobile services in Guernsey: Sure (Guernsey) Limited (“Sure”), JT (Guernsey) Limited (“JT”) and Guernsey Airtel Ltd. (“GAL”).

In Jersey, there are also three mobile operators currently providing mobile services: JT (Jersey) Limited (“JT”), Sure (Jersey) Limited (“Sure”) and Jersey Airtel Ltd. (“JAL”). In addition the JCRA has issued a Class I licence to Marathon Limited on the 26 of August 2010. Marathon has spectrum allocated to it in Jersey.

In September 2014 CICRA issued a Final Notice in Jersey that an MTR cap of 4.11ppm should be applied to the mobile operators in Jersey. This would be a flat rate (i.e. no time of day or weekend distinction) and calls would be charged on a per second basis (no minimum call charge or call duration). This put in place a common MTR across the Channel Islands.

This document sets out proposals for future MTRs.

### 3. Purpose of consultation

The purpose of this document is to consult on

- the level of MTRs to be applied in both Jersey and Guernsey in future;
- amending the description of the market in which operators are dominant for call termination; and
- the proposal to require all mobile operators licenced in Guernsey and Jersey to apply a common MTR.

#### **Disclaimer**

*This document does not constitute legal, technical or commercial advice; CICRA is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of CICRA to exercise regulatory powers generally.*

## 4. Structure of the Consultation

The consultation document is structured as follows:

Section 5:	sets out the developments in other jurisdictions in regulating MTRs;
Section 6:	sets out CICRA's proposals with respect to MTRs for Jersey and Guernsey;
Section 7:	sets out the next steps; and
Annex A	sets out the legal and regulatory background to the JCRA's proposals for regulating MTRs.

Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to the following addresses:

Suites B1 & B2 Hirzel Court St Peter Port Guernsey GY1 2NH Email: <a href="mailto:info@bicra.gg">info@bicra.gg</a>	2 <sup>nd</sup> Floor, Salisbury House 1-9 Union Street St Helier Jersey JE2 3RF Email: <a href="mailto:info@bicra.je">info@bicra.je</a>
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All comments should be clearly marked "*Pan-Channel Island Consultation on the Review of Mobile Termination Rates (MTRs)*" and should arrive by 5pm on Wednesday 19<sup>th</sup> June 2015.

In line with CICRA's consultation policy, the CICRA intends to make responses to the consultation available on the CICRA website, the combined website of the GCRA and JCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

## 5. Regulation of MTRs in other jurisdictions

Regulators in a number of jurisdictions have, in recent years, imposed specific regulatory measures aimed at requiring mobile operators to reduce MTRs. The following provides some background on the measures adopted in the UK as well as a high level summary of MTRs in European jurisdictions.

Of significant impact on the Channel Islands is the recent consultation on MTRs issued by Ofcom. The mobile operators in the Channel Islands provide services using telephone numbers issued from the UK numbering plan which is managed by Ofcom and there are close ties between the Channel Islands and the UK through travel and media which has particular relevance to MTRs. The implications are discussed below.

### UK

On 17 March 2015, Ofcom published a statement<sup>2</sup> on its latest mobile call termination review, which sets out its decisions on the regulation of the wholesale mobile call termination markets for the period 1 April 2015 to 31 March 2018. Ofcom has identified 72 separate markets for wholesale Mobile Call Termination (“MCT”) services, corresponding to each of the 68 smaller MCPs and the four largest mobile communications providers (MCPs), that are able to set mobile termination rates (MTRs) for calls to the UK mobile number ranges allocated by Ofcom to that MCP. Ofcom has concluded that each such MCP has significant market power (SMP) in the wholesale market for terminating calls to such numbers.

As proposed in its consultation in June 2014, Ofcom intends to impose a single maximum cap on MTRs of all MCPs (and not just the largest four as at present). Ofcom considers that imposing a charge control on all MCPs with SMP will be more effective than the current approach of imposing a “fair and reasonable” charges obligation in remedying the harm caused by MTRs set above the efficient cost benchmark. Ofcom will continue to use the Long Run Incremental Cost approach (LRIC) to set the charge control.

In addition, Ofcom will impose on all MCPs an obligation to provide network access on fair and reasonable terms and conditions, and an obligation of price transparency. The four largest MCPs will also be subject to a “no undue discrimination” obligation. Ofcom’s draft statement was notified to the European Commission on 6 February 2015. In its response on 5 March 2015 the Commission provided comments pursuant to Article 7(3) of Directive 2002/21/EC. In its comment the Commission stated that

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<sup>2</sup> *Mobile call termination market review 2015-18, Statement on the markets, market power determinations and remedies, Ofcom, 17 March 2015*

*“While the Commission acknowledges that the decrease in MTRs is substantial, the Commission nevertheless considers that, even if the magnitude of the reduction would have been difficult for operators to foresee, the overall downward trend could have been anticipated by the industry. Given Ofcom’s own conclusion that the MTRs should be implemented as soon as possible for the benefit of competition and consumers the Commission considers that timely introduction of the revised MTRs would have been justified, rather than allowing a period of one year for adjustments.”<sup>3</sup>*

Ofcom has confirmed its intention to define the market as termination services that are provided by a named MNP to another communications provider, for the termination of voice calls to UK mobile number ranges to that MCP by Ofcom in the area served by that MCP and for which that MCP is able to set the termination rate.

Ofcom has concluded that alternative forms of communication at the retail level (including calls to a fixed line, on-net mobile to mobile calls, OTT services, SMS, email, instant messaging and social networking sites) are unlikely to constrain the pricing of calls to mobile within the period of this market review since:

- consumers are likely to have limited awareness of the price of calling a particular mobile number. Thus if the price of calls to a specific number were to rise by a small but significant amount, it is not likely to prompt a reaction;
- even if awareness were not an issue, when assessed both individually and collectively, Ofcom does not consider that there are or will emerge sufficient substitution possibilities to constrain the pricing of calls to mobile numbers during the period of its market review; and
- there are no feasible opportunities for supply-side substitution.

As a result of this, Ofcom does not believe that there are any indirect constraints from the retail level on the wholesale market. Based on its analysis of constraints, Ofcom also does not believe that there are any direct constraints that would justify the wholesale market definition beyond that for wholesale termination services provided by each MCP.

Ofcom has concluded that markets for MCT include:

- any call conveyance technology used to deliver voice call termination to a mobile number, whether delivered by 2G, 3G, VoIP or VoLTE based technologies;

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<sup>3</sup> *Commission Decision concerning Case UK/2015/1706: Voice call termination on individual mobile networks in the United Kingdom. European Commission, C(2015) 1593 final*



- all mobile number ranges allocated to a particular MCP over which it is able to set the rate charged to originating (or transit) CPs; and
- the following types of calls:
  - Ported-out numbers (while ported-in numbers are excluded);
  - Calls to voicemail;
  - National roaming;
  - International call forwarding, and
  - Calls to UK mobile numbers roaming abroad.

### *SMP Assessment*

Ofcom, in its consultation concluded that each MCP, including the four largest MCPs and MCPs with fewer subscribers (smaller MCPs), has SMP in the corresponding relevant market.

This conclusion is based on the fact that each MCP has a 100% share of the relevant market and this position has endured throughout the period in which they have operated in this market. In addition, there are high barriers to entry and countervailing buyer power is not sufficient to counterbalance this market power and pricing evidence is consistent with the absence of competitive pressure.

### *Remedies*

Ofcom's primary concern is that without regulation MCPs will have the incentive and ability to engage in the following forms of conduct:

- refusal to supply MCT;
- charging excessively high MTRs; and/or
- supplying MCT on discriminatory terms or in discriminatory ways (including price and non-price elements).

Ofcom concluded that these forms of conduct (in isolation or in combination with others) could lead to harm and that ex post competition law would not be sufficient to remove it. Absent regulation, such conduct would result in a structure and level of prices in retail and wholesale markets, that would be less efficient, distort customer choice, restrict or distort competition and may generate adverse distributional impacts.

The extent of each of the harms is likely to be proportionate to the size of the relevant MCP's customer base. However, Ofcom considers that harm would also arise from smaller MCPs engaging in these forms of conduct. Ofcom, therefore, considered that regulation is necessary and in its June 2014 consultation decided on the following remedies:

- **Network access obligation** (on reasonable request on fair and reasonable terms & conditions). This SMP remedy will apply to all MCPs and will apply from 1 April 2015.

Ofcom considers that in the absence of a requirement to provide network access to other MCPs on fair and reasonable terms, MCPs would have the ability and could have the incentive not to grant access to their network or to grant access subject to unreasonable terms. Such conduct would lead to consumer harm if a MCP finds it difficult or impossible to connect its customer to the customers of an MCP withholding access on reasonable terms, there might also be effects on competition.

Under this obligation, as at present, all SMPs will be required to provide network access on reasonable request and reasonable terms and conditions. However, given that the charge control will now apply to all MCPs, unlike the current condition, Ofcom has removed the reference to charges in the context of this condition. This obligation is no longer needed to function to set an effective upper limit on charges.

- **No undue discrimination obligation.** This will apply to the four largest MCPs only and applied from 1 April 2015. Ofcom has decided that it would not be appropriate to extend this obligation to smaller MCPs because any potential discriminatory conduct from them would have a very limited impact on competition, due to their small customer base and consequently small traffic volumes.

In relation to the four largest MCPs, Ofcom considers that this obligation is still necessary despite the charge control. While a charge control may reduce the scale of possible price discrimination, it does not eliminate the incentive or ability to price discriminate (only the potential degree of divergence in prices).

- **Charge Control.** This will apply to all MCPs and will apply from 1 April 2015 for the four largest MCPs and to smaller MCPs from 1 May 2015.

Ofcom has confirmed the view, as set out in the consultation, that imposing a charge control on all MCPs who have SMP would be more effective than the “fair and reasonable” approach in remedying the harm caused by excessive MTRs. Ofcom has found that the “fair and reasonable” obligation in the last market review has not resulted in all MCPs designated with SMP, or new entrants, from charging MTRs at the benchmark rate.

Ofcom has considered different options for imposing a price cap on smaller MTRs (including a two tier approach). Overall, however, it believes that setting a single MTR cap on all MCPs who have SMP is an appropriate remedy. It notes that this is consistent with the European Commission's preference for mandated symmetric reciprocal termination rates.

Ofcom considers that setting an MTR cap which reflects the costs of an average efficient mobile operator is the appropriate approach to setting the charge control needed to prevent excessive MTRs.

- **Price transparency obligation.** This will apply to all MCPs from 1 April 2015. Ofcom considers that, in the absence of reasonable clarity and certainty with respect to MTRs the purchasers of MCT (such as originating MCPs and transit providers) would not have forward-looking certainty concerning the costs of purchasing MCT. This would harm competition and, at the retail level, consumers' interests.

The price transparency obligation has the purpose of ensuring advance warning is given of charge changes to providers who purchase MCT services and ensures that they have sufficient time to plan for such changes. It also considers that imposing a requirement to publish MTRs and to notify changes in MTRs would facilitate easier monitoring of compliance, which would lead to greater certainty in the MCT market.

In relation to the charge control, Ofcom has decided on the following approach:

- For the period 2015-2018, LRIC remains the appropriate cost standard for the MTR charge control as:
  - LRIC facilitates more effective competition. MTRs above LRIC risk reducing effective competition, adversely affecting, in turn, consumers.
  - Allocative efficiency considerations do not necessarily point to an optimal MTR above LRIC. That it is misleading to consider allocative efficiency and other static effects separately from the effects on competition. Any attempt at fine-tuning a mark-up over LRIC is likely to be challenging and the scope for welfare gains is likely to be small (and could even be negative).
  - Ofcom has considered the various mechanisms through which lower MTRs could affect dynamic efficiency, and investigated the possibility that lower MTRs could reduce the return on investments made by MCPs. It concluded that if such an effect were present it would be very small and most unlikely to discourage efficient investment. Empirical evidence

suggests that investment has not been harmed by previous, much larger, falls in MTRs. It does not consider that effects on investment and innovation would be any more pronounced now.

- There is little empirical evidence to suggest that MTR reductions have harmed vulnerable consumers.
- Ofcom does not accept that MTRs below LRIC, to the small extent that could occur through modelling error, would have a greater adverse impact on competition, efficiency or distributional effects than MTRs the same amount above LRIC.
- Ofcom considers that regulatory certainty is important. Its decision is consistent with the 2009 European Commission recommendation on termination rates, which recommends that termination rates be set at LRIC, and with its recent decision to cap fixed termination rates at LRIC (over the period 2014 to 2016).
- The 2015 MCT model uses a bottom-up approach to calculate the cost of MCT for an average efficient national MCP. The model allows Ofcom to calculate the forward-looking economic cost for MCT independently of any particular MCPs business model or choice of technology. Ofcom used this same approach in the consultation and previous models used to set MTR charge controls.
- In relation to the implementation of the charge control, Ofcom has decided to:
  - Index the MCT charge control using a CPI-X formulation;
  - Set a three year charge control between 1 April 2015 and 31 March 2018;
  - Set a single MTR cap for all MCPs with SMP;
  - Set a charge control based on a maximum cap at all times of day (rather than one based on a weighted average of time of day rates);
  - Implement an adjustment towards the new LRIC rate in the first year of the control (2015/16) with MTRs in the first year mid-way between the current nominal MTR (0.845ppm) and the new forecast nominal LRIC rate, and the MTR capped at the new LRIC rate from the start of the second year of the three year control (i.e. from 1 April 2016); and
  - Allow a short transition period at the start of the charge control period. Until 31 April 2015 the cap would remain at the level prevailing in that applicable control year of 0.845ppm.

As a result of Ofcom's decisions, the final MTR caps (in pence per minute) are:

	Current MTR (from 1 April 2014)	From 1 April 2015	From 1 May 2015	From 1 April 2016	From 1 April 2017
<b>Nominal</b>	0.845	0.845	0.680	0.513	0.507
<b>2012/13 Price</b>	0.826	0.826	0.661	0.490	0.475
<b>Value of X in CPI-X formula</b>	n/a	n/a	n/a	26.3%	3.1%

Table 1 – Ofcom proposed MTRs

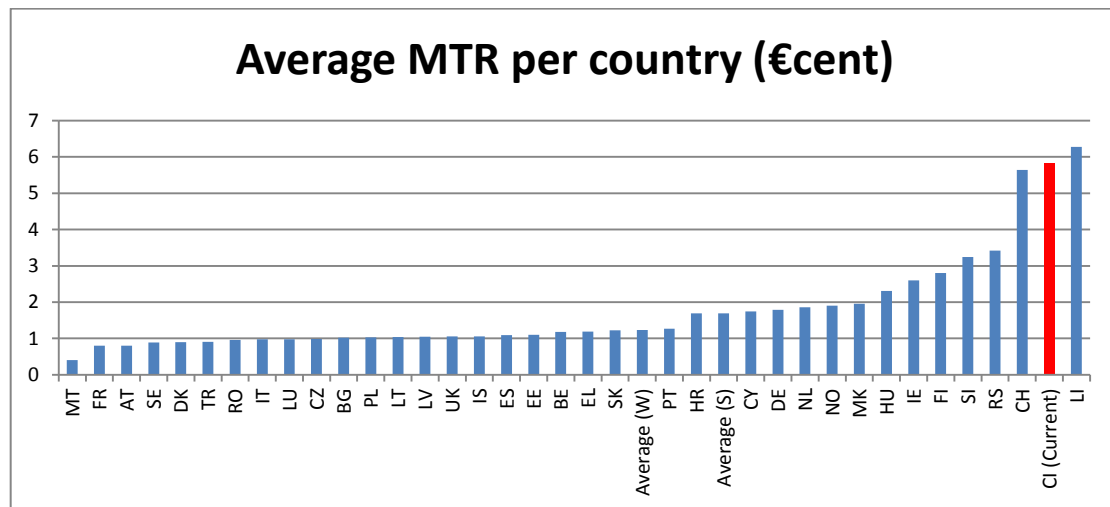
### *EU Approach to MTRs*

The BEREC Integrated Report on Termination Rates in Europe provides an overview of Mobile Termination Rates (MTRs) and SMS Termination Rates (SMS TRs) per country based upon the results of a request for information sent to all NRAs, referring to data as of 1 July 2014. As of July 2014 the situation regarding MTRs in Europe is that the MTR simple average A(s) for the EU stands at 1.69 eurocents per minute, whereas the EU weighted average A(w) is estimated at 1.23 eurocents per minute.

Country	Average MTR per country (€cent)
<i>Austria</i>	0.8049
<i>Belgium</i>	1.1800
<i>Bulgaria</i>	1.0226
<i>Switzerland</i>	5.6424
<i>Cyprus</i>	1.7416
<i>Czech Republic</i>	0.9837
<i>Germany</i>	1.7900
<i>Denmark</i>	0.8951
<i>Estonia</i>	1.100
<i>Greece,</i>	1.1890
<i>Spain</i>	1.0900
<i>Finland</i>	2.8000
<i>France</i>	0.8000
<i>Croatia</i>	1.6870
<i>Hungary</i>	2.3079
<i>Ireland</i>	2.6000
<i>Iceland,</i>	1.0590
<i>Italy</i>	0.9800
<i>Liechtenstein</i>	6.2760
<i>Lithuania</i>	1.0426
<i>Luxembourg</i>	0.9800
<i>Latvia</i>	1.0500
<i>Former Yugoslav Republic of Macedonia</i>	1.9512
<i>Malta</i>	0.4045
<i>Netherlands</i>	1.8610
<i>Norway</i>	1.9040
<i>Poland</i>	1.0296
<i>Portugal</i>	1.2700
<i>Romania</i>	0.9600
<i>Serbia</i>	3.4175
<i>Sweden</i>	0.8882
<i>Slovenia</i>	3.2400
<i>Slovakia</i>	1.2260
<i>Turkey</i>	0.9063
<i>United Kingdom</i>	1.0543
	<b>1.6878</b>
	<b>1.2334</b>

Table 2 – EU MTRs (Source – Termination Rates Benchmark Snapshot (as of July 2014), BEREC)

The graph below shows the relative position of the Channel Islands MTR compared with other European countries.



Graph 1 – Channel Island current MTR shown against EU countries and EU Average MTRs

### CICRA Proposal

Ofcom has extensively modelled the bottom-up LRIC costs for MTRs. These costs are not based on joint or common costs incurred in the operator’s networks. Ofcom has also taken into account the size of operator networks as well as the technology issues, including, the move toward 4G networks. The outcome of Ofcom’s model should therefore in CICRA’s view accurately inform the cost of terminating an incremental minute by a mobile operator.

An issue that is causing Ofcom increasing concern is the action of operators in the UK to either increase the cost of calls to the Channel Islands or to remove calls to the Channel Islands from the pre-paid customer bundles. Ofcom is receiving an increasing number of complaints on this matter and has raised concerns with CICRA on the transparency of charges to numbers that, to customers, are UK numbers given they part of the UK numbering plan yet the mobile termination charges are significantly different.

This increase in charges faced by customers (either directly by being greater than a call to a mainland UK mobile number or indirectly by the Channel Island number being removed from the customers contractual bundle of calls) to dial a Channel Island’s mobile phone risks leading to customers reduce their calls or pay costs that are greater than marginal costs.

In addition, such increases in charges could lead to decisions by businesses of whether and how they conduct their businesses either within the Channel Islands or the link between the UK and the Channel Islands.

All of these concerns could lead to an impact on the welfare of the Channel Islands. Whereas, a reduction of the MTRs in the Channel Islands and the subsequent reduction in the price of calls (or the re-inclusion of Channel Island mobile number in the bundles of UK based customers) could lead to dynamic efficiency gains for the Channel Islands in the form of improved competition, particularly for entrants with smaller networks. The resultant increase in number of mobile calls made to the Channel Islands as well as potential dynamic efficiency increases for the Islands as a whole could outweigh the reduction of income faced by operators by imposing a reduction in MTRs.

It is CICRA's opinion that in order to maximise these welfare benefits and dynamic efficiencies it is necessary that the Channel Islands and the UK have a level playing field for MTRs.

CICRA recognises that there is currently a significant differential between the 4.11ppm MTR in the Channel Islands and the 0.845ppm MTR currently charged in the UK. This gap will only increase as Ofcom further reduces its MTRs as signalled in its recent consultation.

The fact that, as identified by Ofcom's LRIC modelling, the effect of scale does not support a materially different MTR in the Channel Islands compared to operators in a larger jurisdiction such as the UK is significant in informing CICRA's view of the appropriate level of MTRs in Guernsey and Jersey.

The time period over which the current level of MTRs should be reduced is informed not only by the extent of the difference between MTRs in the UK and the Channel Islands but also by the wider economic risks to Jersey and Guernsey. CICRA is increasingly aware of intentions by UK operators to remove calls to the Channel Islands from their call bundles. Discussions with Ofcom suggest that this trend is likely to increase and even accelerate the longer the considerable discrepancy in MTRs exists between the UK and the Channel Islands.

The recent measures by Ofcom to designate certain number ranges as Freephone calls is also of relevance to a decision by CICRA. UK operators are required to make such calls free. However, where their subscribers call these designated number ranges to networks in the Channel Islands they face significantly higher cost exposure given the extent of MTRs in Guernsey and Jersey. This creates an incentive to remove or block calls by their subscribers to such numbers in Guernsey or Jersey



or take counter measures to compensate for the additional costs faced with negative consequences for channel islanders.

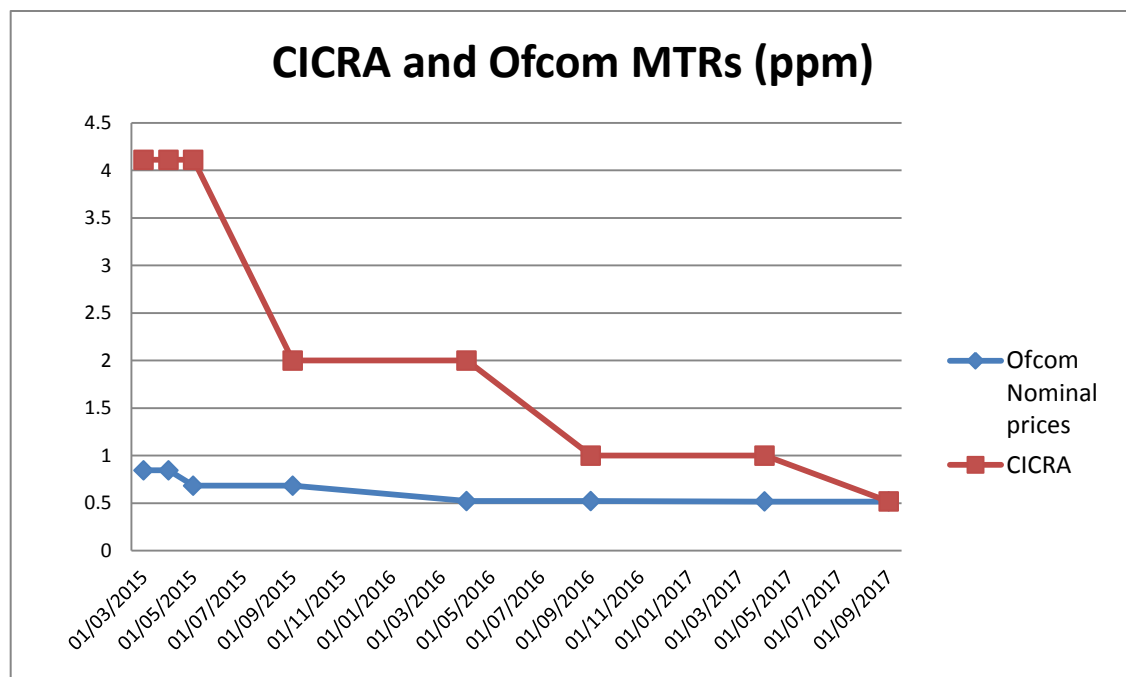
The disadvantage of MTR differentials that lead to such outcomes are difficult to quantify. However CICRA is of the view that this is a significant and growing issue with risks to the wider economies of Guernsey and Jersey that must be taken into consideration in setting the time period over which MTRs in Guernsey and Jersey should be reduced. Evidence on complaint levels provided by Ofcom inform this position.

CICRA therefore proposes that operators in the Channel Islands will be required to reduce MTRs over a period of approximately three (3) years to come in line with the UK MTRs by 1 September 2017.

CICRA’s proposed reduction in MTRs is as follows:

Date	MTR
Current rate	4.11 ppm
From [effective date of decision] to 31/8/16	2 ppm
From 1/9/16 to 31/8/17	1 ppm
1/9/17 to 31/8/18	0.507 ppm

Table 2 – CICRA’s proposed MTRs



Graph 2 – Proposed Channel Island MTRs compared to proposed Ofcom MTRs (pence per minute)

### Question 1

***Do respondents agree that the MTRs proposed should be introduced in the Channel Islands over the period defined by CICRA? Respondents who do not agree with either or both of CICRA's proposal for MTRs or the period over which they are to be introduced are asked to provide reasons and evidence to support their position.***

The existing finding of SMP in the Channel Islands focusses on operators terminating calls on its network, i.e. each mobile operator has SMP in the market for terminating calls on its own network.

CICRA proposes that to come in line with the methodology used by Ofcom in the UK then it intends to use the definition of:

*Calls to the UK mobile numbers allocated by Ofcom to that mobile operator.*

### Question 2

***Do respondents agree that it is appropriate for CICRA to change the description of the market in which the operator has been found to have SMP? Respondents who do not agree are asked to provide reasons to support their position.***

Currently MTR regulation in the Channel Islands applies to the following operators:

Jersey:

- JT (Jersey) Limited, Jersey Airtel Limited and Sure (Jersey) Limited

Guernsey

- Sure (Guernsey) Limited, JT (Guernsey) Limited and Guernsey Airtel Limited

In addition to the operators listed above the JCRA has licensed the following operator in Jersey:

- Marathon (Class I licence issued 26 August 2010)

With CICRA proposing the use of a different definition for the market then this would mean that Marathon should be included in the proposed MTR regulation. It is therefore appropriate that, following completion of this consultation that the Initial Notice (IN) issued by the JCRA would include a direction to Marathon.

**Question 3**

*Do respondents agree that it is appropriate for CICRA to include Marathon in the scope of the regulation of MTRs? Respondent who do not agree are asked to provide reasons to support their position?*

## **6. Next Steps**

CICRA will consider responses received and the evidence provided to inform its position on MTRs. Following consideration of the responses received, as a next step CICRA would then intend to issue an Initial Notice in Jersey and a Draft Decision in Guernsey.

## Annex A - Legislative and Licensing Background

### Legal Background - Jersey

Article 16 of the Telecoms Law provides that the JCRA may include in licences such conditions necessary to carry out its functions. The Telecoms Law specifically provides that licences can include:

- Conditions for the prevention or reduction of anti-competitive behaviour; and
- Conditions allowing the JCRA to make determinations.

A Class III licence also includes conditions relating to the requirement to provide interconnection services and the production of a reference offer for interconnection services ("RIO"). The JCRA has previously issued directions to JT on the production of a RIO<sup>4</sup>.

### Regulatory Framework - Jersey

In April 2010, following a review of the markets for telecoms services in Jersey<sup>5</sup>, the JCRA made the following decision with respect to significant market power ("SMP") in markets relevant to this Initial Notice:

- **Voice call termination on individual mobile networks:** Each mobile operator, that is, JT, CWJ and JAL has SMP in the market for terminating calls on its own network;

Condition 33.2 of the licence issued to JT provides that:

"The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunications Services within a relevant market in which the Licensee has been found to be dominant. A determination may:

- a) provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunications Service;
- b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
- c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies."

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<sup>4</sup> *Direction of the JCRA 2004/3 Re: Jersey Telecom Limited's Reference Interconnect Offer, 29 April 2004, see [http://www.cicra.gg/\\_files/040429%20Initial%20Notice%202004-3.pdf](http://www.cicra.gg/_files/040429%20Initial%20Notice%202004-3.pdf)*

<sup>5</sup> *Response to the Consultation Paper 2009 – T3, "Review of the Telecommunications Market in Jersey" and Decision on the Holding of Significant Market Power in Various Telecommunications Markets, 21 April 2010, see [http://www.cicra.gg/\\_files/100420%20market%20review%20decision.pdf](http://www.cicra.gg/_files/100420%20market%20review%20decision.pdf)*

This condition therefore allows the JCRA to regulate the prices that JT charges for telecommunications services in a way and for a time that it deems appropriate, provided that JT has a dominant position in the relevant market in which those services are supplied.

Condition 34.1(c) of JT's licence is designed to protect fair competition in the markets in which JT operates, and provides as follows:

*The Licensee shall:...*

*(c) comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services.*

This condition allows the JCRA to give directions to JT, including in relation to the prices that it charges.

As noted above, both JAL and CWJ have also been found in April 2010 to be dominant (or to possess SMP) in the provision of termination services on their networks. Part IV of their licences provide for the JCRA to impose further obligations in the event the JCRA determines the operator has SMP in a specific market. Those obligations include a Fair Competition condition (condition 27), part of which is in the same terms as Condition 34.1(c) of JT's licence, set out immediately above.

### **Legal Background - Guernsey**

Section 5(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (the "Telecoms Law"), provides that the Authority may include in licences such conditions as it considers necessary to carry out his functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- conditions intended to prevent and control anti-competitive behaviour; and
- conditions regulating the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.

Under section 10(2)(c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, a licensee found to be dominant in a relevant market is obliged to provide interconnection and access on "terms, conditions and charges that are transparent and cost-oriented".

In addition, Section 10(4) of the Telecoms Law provides for the Authority to require a licensee to justify the costs of and charges for providing interconnection or access and to show that those charges are derived from actual costs.

These provisions allow the Authority to regulate MTRs, should there be a need for regulatory intervention.

### **Regulatory Framework - Guernsey**

In OUR 07/03, the OUR set out proposed findings on market dominance in Guernsey following a review of the market. The DG considered that C&WG, Wave and Airtel were all dominant in the wholesale mobile telecommunications market on their respective networks. The licenses of the three MNOs, include the following condition:

*“The Director General may determine the maximum level of charges the Licensee may apply for Licensed Telecommunications Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;*

*a) provide for the overall limit to apply to such Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Service;*

*b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*

*c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies.”*

This condition therefore allows the Authority to regulate the prices that a licensee charges for its telecommunications services in a way and for a time that he deems appropriate, provided the licensee has a dominant position in the relevant market.