Mobile Termination Rates:
Review of Price Controls

Final Notice

Proposed Directions to Mobile Network Operators on Mobile Termination Rates in Jersey

Document No: CICRA 12/39 **30 July 2012**

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TELECOMMUNICATIONS (JERSEY) LAW 2002

PROPOSED DIRECTIONS TO MOBILE NETWORK OPERATORS REGARDING MOBILE TERMINATION RATES IN JERSEY

FINAL NOTICE

1. On 16 January 2012, the Jersey Competition Regulatory Authority ("JCRA") issued an Initial Notice under Article 11 of the Telecommunications (Jersey) Law 2002 ("the Law") concerning proposed directions to Jersey Telecom Limited ("JT"), Cable & Wireless Jersey Limited ("CWJ") and Jersey Airtel Limited ("JAL") in respect of the mobile termination rate ('MTR') to be charged by those operators for voice call termination on their respective public land mobile networks in Jersey.

2. The JCRA received three responses to the Initial Notice, two non-confidential responses from CWJ and Airtel and a confidential response from JT[1]. The responses, and the JCRA's comments, are summarised below.

3. CWJ, JT and JAL made representations, certain of which the JCRA has determined should be reflected in revised Directions concerning MTRs. The JCRA has therefore made amendments to its proposed Directions and is publishing the same under a fresh Initial Notice under Articles 11(1) and Article 11(10) of the Law. This Final Notice is intended to address the representations provided by CWJ, JT and JAL, and bring to a close the consultation process initiated by the 16 January 2012 Initial Notice.

Back-dating

4. CWJ and JAL disagreed with the JCRA's view that the effective date of the new mobile termination rate should be 1 July 2011. CWJ disagreed with the JCRA's contention that the JCRA, JT, CWJ and JAL established an understanding on backdating termination charges in a meeting between the parties in January 2011. CWJ submitted that discussions held up to, and including, January 2011 were purely in relation to fixed termination charges. CWJ's first recollection of a discussion on MTRs was during a telephone conversation between the JCRA and CWJ in June/July 2011 in which the JCRA queried CWJ on its views on aligning the MTR in Jersey with that charged in Guernsey, effective 1 July 2011.

5. The JCRA notes that back-dating regulatory decisions is undertaken by many national regulatory authorities worldwide. In its view, back-dating may be especially appropriate if the basis for the direction is the fair competition provisions of the licences, and not merely the power to set prices for SMP services. The JCRA also notes the conflicting views on when discussions of a possible revision of MTRs began. In this instance, the JCRA's view is that the date on which the proposed MTRs take effect should be revised. The JCRA considers that it is indisputable that by 1 April 2012 at the very latest all operators were aware of the JCRA's intention to reduce MTRs and fixed termination rates in Jersey to the levels prevailing in Guernsey. As such, the JCRA has concluded that the proposed determinations with respect to MTRs (and fixed termination rates) should take effect on 1 April 2012.

[1] JT has stated that it will not provide a non-confidential version of its response.

Asymmetric MTRs

6. CWJ stated in its response to the Initial Notice that it had no problem with JT reducing its MTR to the level discussed, but did not believe that the reduction should be reciprocated, on the basis that a reciprocal reduction would financially benefit JT and penalise CWJ. CWJ did not consider it reasonable or fair that MTRs were given priority over other significant, and long-standing, areas requiring the JCRA's attention, such as fixed termination rates and wholesale leased lines. In its submission, CWJ stated that these views remained current today.

7. The JCRA agrees with the European Commission's view that asymmetric MTRs may (in exceptional circumstances) be implemented in order to allow time (no longer than 4 years after entry) for a new entrant to reach "minimum efficient scale", which is defined as 15-20 per cent market share. The JCRA notes that no Jersey operators now meet these criteria. Accordingly, the JCRA does not consider it appropriate to implement asymmetric MTRs in the current market.

JAL's response

8. JAL supported the JCRA's proposed alignment of MTRs in Jersey with those in Guernsey, but insisted that such realignment should occur at the same time as a reduction of the fixed termination rate in Jersey to the equivalent rate in Guernsey. On this issue, the JCRA notes an Initial Notice on fixed termination rates is being issued in parallel with the revised MTR Initial Notice mentioned earlier in this Notice.

9. JAL agreed with the JCRA's proposals that MTRs are billed on a per second basis, are technology neutral and that there is no separate On-island transit charge for Jersey originated traffic.

10. JAL did not agree with the JCRA's proposal that the updated MTR be capped until 31 March 2013. JAL submitted that due to the cost and resourcing of undertaking a further review, the updated MTR should be set until December 2015. The JCRA considers it important, as a minimum, to bring MTRs in Jersey in line with those charged on Guernsey. Accordingly, the revised Initial Notice does just this. The JCRA intends to conduct a thorough review of call termination rates (including MTRs) on a pan-Channel Island basis by no later than 30 September 2013. The JCRA is confident that the current process of reducing MTRs to the same level charged in Guernsey will not incur undue costs or resources.

11. JAL did not support the suggestion that Jersey MTRs could be benchmarked against countries in the EU, nor did it consider it necessary or appropriate for the JCRA to follow the approach used in the EU for setting MTRs, because of the fundamentally different environmental market conditions between Jersey and the EU. The JCRA notes JAL's concerns about the comparability of Jersey with most EU jurisdictions. While the JCRA considers that benchmarking may be appropriate, it will consider this issue, together with the potential for cost-based setting of call termination rates, in 2013. The approach to setting MTRs in the revised MTR Initial Notice does not seek to incorporate a benchmark based on MTRs in other European jurisdictions.

12. JT reluctantly accepted the proposed reduction in MTRs, but highlighted some concerns regarding the proposal to reduce MTRs in line with EU trends. JT's prime concern was that reducing MTRs would reduce the margin that it received on this service and undermined one of its profitable business lines. JT also requested that the JCRA consider the impact of lower MTRs at a local level on consumers. The JCRA has taken account of the issues raised by JT when formulating the revised Initial Notice and is satisfied that the proposed measures would not unduly impact on consumers.

13. In light of these representations, the JCRA no longer intends to proceed with the proposed Directions attached to the Initial Notice of 16 January 2011. The JCRA now intends to proceed with revised proposed Directions to JT, CWJ and JAL, attached to the fresh Initial Notice published concurrently with this Final Notice.

30 July 2012 **By Order of the Board of the JCRA**