Mobile Termination Rates in Jersey

Initial Notice

Proposed directions to mobile network operators

Document No: 13/37 **26 July 2013**

Jersey Competition Regulatory Authority,
2nd Floor, Salisbury House,
1-9 Union Street, St Helier,
Jersey JE2 3RF

1 Introduction

1. Mobile termination rates ("***MTRs***") are the fees charged to other telecommunications companies by mobile network operators ("***MNOs***") to terminate calls on their mobile network. They are a key component of the retail charge that mobile customers ultimately pay for their mobile phone services. In Jersey, the current MTR is 4.11 pence per minute ("***ppm***"). These rates are consistent with the rates charged by Sure Guernsey Limited and were set by the Channel Island Competition and Regulatory Authorities ("***CICRA***") in November 2012 for a period of 11 months, after which CICRA intended to conduct a pan Channel Island review of MTRs in Jersey and Guernsey.

2. 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 provision of terminating services is a matter currently under review by regulators in many European countries. There has been considerable progress in reducing MTRs in recent years within the EU.

3. 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 very valuable 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 LRIC (i.e. "Long-Run Incremental Cost") and it is anticipated that this will further reduce MTRs in the coming years.

4. The expected review of MTRs in the Channel Islands has not yet been launched and CICRA is cognisant of the coming expiry of the current MTRs in Jersey. In anticipation of the coming review of MTR's across the Channel Islands, CICRA proposes to extend application of the existing rates for an additional 12 months. CICRA is separately consulting on a similar proposal for the level of fixed interconnection rates ("***FIRs***") charged by JT in Jersey.

5. In Jersey, there are three mobile operators currently providing mobile services: JT (Jersey) Limited ("***JT***"), Sure (Jersey) Limited ("***Sure Jersey***") and Jersey Airtel Ltd ("***JAL***"). The current MTR applied by all three operators is 4.11ppm and has been in place since November 2012.

6. In this Initial Notice, CICRA is proposing to extent from the current date of expiry (30 September 2013) the existing MTRs regulation for all Jersey MNOs of 4.11ppm for a further 12 months.

7. This document summarises the issues involved, and sets out:
   - the direction that CICRA proposes to issue to JT under and Condition 34.1 of the Class III licence issued to JT by CICRA under Article 14(1) of Telecommunications (Jersey) Law 2002 (the "Telecoms Law");
   - the direction that CICRA proposes to issue to Sure Jersey under Condition 27.1(c) of the Class II licence issued to Sure Jersey by CICRA under Article 14(1) of the Telecoms Law; and
   - the direction that CICRA proposes to issue to JAL under Condition 27.1(c) of the Class II licence issued to JAL by CICRA under Article 14(1) of the Telecoms Law.

8. It constitutes the Initial Notice of the proposed directions under Article 11(1) of the Law. CICRA is now inviting comments on its proposed directions.

2 Structure of the Initial Notice

2.1 Structure of Initial Notice

Section 3: sets out the legal and regulatory background to CICRA's proposals for regulating MTRs;

Section 4: sets out proposed approach to regulating MTRs in Jersey;

Section 5: sets out the proposed directions with respect to MTRs for Jersey; and

Section 6: sets out the next steps.

2.2 Timetable for Responses to Initial Notice

9. Responses to this Initial Notice should be submitted in writing and should be received by CICRA before 9.00am, 27 August 2013.

Written comments should be submitted to: CICRA,
2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF

Or by email to **info@cicra.je**

10. In accordance with CICRA's policy, non-confidential responses to the Initial Notice will be made available on CICRA's website (www.cicra.je). Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential.

3 Legal Background & Regulatory Framework

3.1 Legal Background

11. Article 16 of the Telecoms Law provides that CICRA may include in licences such conditions as it considers 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 CICRA to make determinations.

12. 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***"). CICRA has previously issued directions to JT on the production of a RIO[1].

3.2 Regulatory framework

13. In April 2010, following a review of the markets for telecoms services in Jersey, CICRA 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, Sure Jersey and JAL has SMP in the market for terminating calls on its own network;*

14. 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."

[1] *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

2 *Response to the Consultation Paper 2009 – T3, "Review of the Telecommunication 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

15. This condition therefore allows CICRA 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.

16. 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.

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

18. As noted above, both JAL and Sure Jersey 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 CICRA to impose further obligations in the event CICRA 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.

4 MTR Proposal for MNOs in Jersey

4.1 Level and calculation method for MTRs

19. EU regulators have typically set MTRs using cost-based models. Given the nature of the call termination market in the EU, which is based on Calling Party Pays ("***CPP***") – whereby only the calling party is charged for the service provided – SMP network operators do not have an incentive to reduce rates for call termination services because the network operator has no incentive to reduce the cost of termination for an operator with which it is in competition. Additionally, high MTRs can incentivise SMP operators to offer low prices for on-net calls[2] that may be cross-subsidised by revenue from wholesale services. However, even if retail services were not cross-subsidised by wholesale services and competition development was not distorted, end consumers of telecommunications services could still end up paying for inefficiency through higher prices for fixed calling services. For this reason, bottom-up LRIC models that only reflect the efficiently incurred costs are often used.

20. CICRA considers that there is merit in adopting a cost-based approach to setting cost-based MTRs. However, implementing a cost-based approach would require significant further input from each of the mobile operators, as well as a number of high level assumptions concerning forecasts of traffic on the network and/or the price trends of specific network elements.

21. An alternative to detailed costing calculations is to benchmark MTRs based on other jurisdictions that have undertaken the full costings and calculations for the same range of services. Setting MTRs on a basis of benchmarking is often used when it is not practicable to obtain sufficient amounts of data from the SMP operator and it is an alternative to constructing a bottom-up model, which has the drawbacks mentioned above. If CICRA adopted a benchmarking approach, it would ensure that MTRs reflected the costs of an efficient operator providing the same service. Adopting this approach would ensure that the rates in Jersey are in line with rates set by regulators in other countries and CICRA could formalise the process for setting MTRs, so that Jersey mobile network operators MTRs are linked to the benchmark countries as their rates change going forward. This approach would also be relatively simple for CICRA to adopt and would not require any detailed analysis of actual operator costs. Given the resources available within CICRA compared to other larger NRAs, the benchmarking approach would also be compatible with the EC's Recommendation on termination rates.

22. Neither of these approaches, cost modelling and benchmarking, are exercises that can be completed in a short space of time and with a comprehensive review of MTRs in both Jersey and Guernsey expected to be completed in 2014, CICRA considers the best approach, under the circumstances, is to extend the existing MTRs and its current properties (second plus second billing, technology neutral etc) for a further 12 months.

23. It is proposed that these caps would remain in place until 30 September 2014, by which point it is expected that CICRA will have concluded its deliberations on the most appropriate manner in which to set interconnection rates in the Channel Islands.

[2] "On-net" describes a call for which both the caller and the recipient are on the same network

5 Proposed directions

24. CICRA proposes to issue a direction to JT under Condition 34.1(c) of JT's licence, and directions to Sure Jersey and JAL under Condition 27.1(c) of their respective licences, as follows:

   - The rate charged by the relevant licensee for voice call termination on its public land mobile network in Jersey ("the mobile termination rate") shall be no more than 4.11 pence per minute;

   - there shall be no additional charge (other than the mobile termination rate) applied by the relevant mobile network operator for any on-island transit of a call to be terminated on a mobile network;

   - the mobile termination rate shall be billed on a per second basis effective from the first second; and

   - the mobile termination rate shall apply with respect to all voice calls terminated by the relevant mobile network operator in Jersey on a technology-neutral basis (i.e. on both 2G, 3G and 4G mobile networks) and irrespective of the origin of the traffic.

25. The directions shall be deemed to have come into effect on 1 October 2013, and shall expire on 30 September 2014.

6 Next Steps

26. The proposed directions will take effect on 1 October 2013, unless representations or objections are received in relation to them, in which case, the relevant date will be set out in a Final Notice published under Article 11(5) of the Telecoms Law.

27. Representations or objections in relation to the proposed directions can be made in accordance with the arrangements set out in Section 2 of this Initial Notice.

28. CICRA intend to undertake a further review of MTRs in both Guernsey and Jersey during 2014, as it is recognised that significant reductions in MTRs are planned in a number of European countries in the near future and it is important that consumers in the Channel Islands similarly benefit. It is noted that EU regulators are moving increasingly to rely (with the encouragement of the European Commission) on more sophisticated costing models upon which to base more cost-reflective termination charges. However, CICRA wishes to assess whether, in the context of the Jersey and Guernsey markets, the development of such costing models would be proportionate or whether the continued use of benchmarking would be a more suitable approach.