Mobile Call Termination

2017

Initial Notice

Market Definition and Finding of Dominance

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Jersey Competition Regulatory Authority

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1. Executive Summary

1.1 The provision of wholesale voice call termination services is needed to support the ability of callers to make voice calls to Jersey mobile users.

1.2 Retail mobile service providers pay a charge (the mobile termination rate of **MTR**) to mobile network operators for the provision of voice call termination services.

1.3 MTRs represent one component of the cost of calls made by the consumers. Because the cost of MTRs is passed through by the retail mobile provider to the consumer and given that the charges imposed by mobile network operators in Jersey are broadly similar, there is little incentive for such operators and/or providers to negotiate with each other for a more favourable MTR.

1.4 The level of MTRs in Jersey is currently regulated by the JCRA. However, prior to any consideration as to whether the current regulatory cap on the level of such charges should reduce, for reasons of due legal process, there is a need to define the relevant market and establish whether there is the existence of significant market power. This is the purpose of this Initial Notice.

1.5 This document follows a consultation issued by the Authority in November 2016 (the **Consultation**) to which stakeholders were invited to respond. It sets out the Authority's considered position as to the relevant market and existence of significant market power in the provision of wholesale voice call termination services in Jersey.

1.6 In the Authority's view, there are four separate relevant markets specific to four Jersey licensed operators, each of which hold significant market power in the provision of wholesale voice call termination services for calls to their own network.

1.7 The JCRA envisages that the period for this review will be 3 - 5 years. This is because the JCRA does not anticipate that market conditions will change over a shorter time frame such that the market definition would need to be revisited at an earlier point. The JCRA's view is that the only market development that could potentially affect market conditions would be the introduction of 5G, which is not likely to occur any earlier than the time frame indicated above. However, the JCRA will continue to monitor developments in this market and will consult again should market conditions change materially during the review period.

2. Background

2.1 Telecommunications networks, both fixed and mobile, need to be connected to one another in order that customers of those different networks are able to call each other.

2.2 Call termination means the completion of a call from a customer of another network. Mobile call termination (**'MCT**) is a particular type of call termination service provided by a mobile network operator (**'MNO'**), which is the receiving operator. It enables the originating network operator to connect a call through to a customer of a different MNO.

2.3 Depending on the nature and origin of a call, there are a number of other services that support the conveyance of a call to its ultimate destination including Call Origination and Transit which attract different charges. Those services are not within the scope of this review.

2.4 An MCT service therefore provides the originating operator access to the last leg of a call being made by one of its customers to the customer of the terminating MNO to allow the call to be completed. For this service, an amount known as the mobile termination rate (**'MTR'**) is paid to the MNO providing the wholesale call termination (**MCT**) service.

2.5 Regulators in many European countries have identified a need to ensure that MTRs are set at a level that reflects the efficient and cost-effective provision of those services.

2.6 In 2010, the Jersey Competition Regulatory Authority (the '**JCRA**') found that there were distinct markets for the termination of calls on each mobile network in Jersey[1] and that each MNO held significant market power ('**SMP**') for the termination of traffic on its own network. This conclusion has formed the basis of subsequent decisions by the JCRA to impose a price control on MTRs in Jersey[1].

2.7 In September 2014, the JCRA issued a Final Notice in Jersey (which remains in force) that an MTR of 4.11 pence per minute ('**ppm**') should be applied to MNOs in Jersey. This is now significantly higher than the level set in many other countries. Given this disparity, CICRA has decided to look again at MTRs charged in the Channel Islands. However, the JCRA and/or the GCRA have the power to intervene to regulate MTRs only where they have determined that an operator holds significant market power on the relevant market.

2.8 In November 2016, the JCRA issued its **2016 Consultation on the Review of Mobile Termination Rates in Jersey[2]**. The Consultation provides the input to this Initial Notice.

2.9 The JCRA sought the views of the stakeholders on the following issues :

(a) Do the MNOs active in Jersey have SMP on the relevant market ?

[1] Decision on the Holding of Significant Market Power in Various Telecommunications Markets – http://cicra.je/_files/100420%20market%20review%20decision.pdf

[2] CICRA 16/48, www.cicra.je

(b) If the MNOs do have SMP, is a price control (ie, setting an MTR) the most appropriate remedy ?

(c) If setting an MTR is the most appropriate remedy, what is the basis on which the MTR should be calculated ?

2.10 After consideration of the responses received to its Consultation, the JCRA has decided to issue this Initial Notice ('**IN**') :

(a) Defining the relevant market (the '**market definition**'), and,

(b) Determining whether the MNOs active in Jersey have SMP on the relevant market (the '**assessment of dominance**').

2.11 The JCRA will continue to carry out its assessment as to the appropriate remedy in terms of whether the level of MTRs charged by those operators with SMP is appropriate. This will form part of a subsequent and separate consultation.

Disclaimer :

This document does not constitute legal, technical or commercial advice; the JCRA 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 the JCRA to exercise regulatory powers generally.

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

2nd Floor, Salisbury House
1 – 9 Union Street
St Helier
Jersey JE2 3RF

Email : *info@cicra.je*

All responses should be clearly marked *'Initial Notice on Mobile Call termination – Market Definition and Significant Market Power'* and should arrive by 5pm on 18 May 2017.

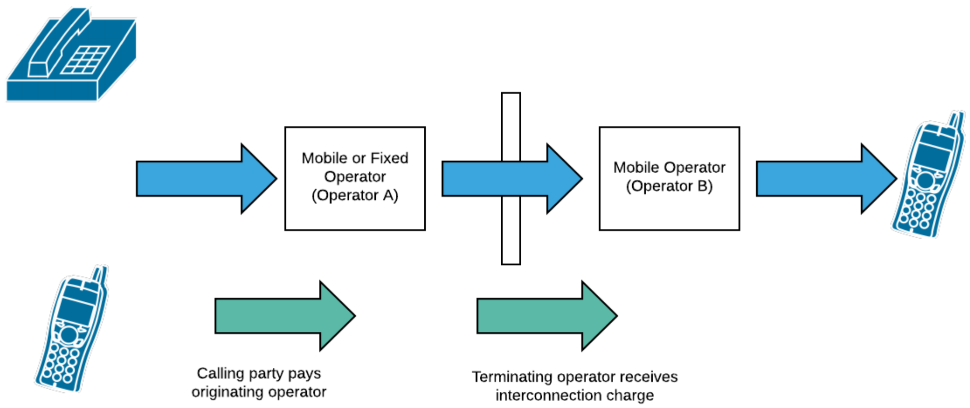
In line with CICRA's consultation policy, it intends to make responses to the Consultation available on the CICRA website *www.cicra.je*. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. The JCRA regrets that it is not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

3. Review of the Mobile Call Termination Market

Introduction

3.1 An operator originating a call to a mobile number (the **originating operator**) typically pays an amount known as the **mobile termination rate** (**MTR**) to the **mobile network operator** (**MNO**) providing the wholesale service. This is the current practice in Jersey (as in many countries in Europe and across the world). The call flow is illustrated in Figure 1, below :

Figure 1 : Mobile termination and calling network provider pays



3.2 In this section, the JCRA introduces its powers relating to price controls and how these are applied specifically to the provision of mobile call termination.

The Place of Price Control Regulation in the Regulatory Framework

3.3 The JCRA has specific powers to determine the maximum level of charges that operators may impose in certain markets. Set out in the following sections are :

(a) What these "price control" powers are;

(b) The generally accepted rationale for controlling prices in the telecommunications sector; and

(c) The approach which is commonly taken to controlling prices.

The powers of the JCRA

3.4 In accordance with Article 16 of the Telecommunications Law, the JCRA may grant a licence for the running of any telecommunications system specified in the licence. Licensees are subject to conditions set out in their licence, which, in the case of Class II and Class III licences, include a fair competition provision. It is, therefore, a pre-condition to the imposition of a price control upon a Licensee by the JCRA that the Licensee should first have been found to be 'dominant' in the regulated market (the concept of 'dominance' and ‘significant market power’ are used interchangeably). This reflects the underlying rationale for price regulations, as explained in the following paragraphs.

The rationale for regulating prices

3.5 Dominance and SMP mean that a company has a position of economic strength in a market where as a result of that position, the company is not subject to the normal constraints that would be present in a competitive market, but is instead able to act to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.

3.6 In a competitive market, if a non-dominant company were to raise prices above the competitive level, competitors could respond by offering more competitive pricing and customers would be able to switch away to these more competitive offers. In a market where a dominant player raises its prices above the competitive level, the ability of customers to switch away to more competitive suppliers is limited or may even be non-existent and since competition is fragile, the ability of competing suppliers to offer more competitive prices may, in any event, also be limited. A dominant provider can therefore charge prices that are above those that would prevail in a competitive market, to the detriment of consumers.

3.7 In a market subject to economic regulation, such as the telecommunications market in Jersey, the relevant regulatory body may take steps *ex ante* to prevent this type of harm arising by imposing a price control. In Jersey, as explained above, the JCRA has the power to impose this type of price control on licensees within a relevant market in which that licensee has been found to be dominant[3].

Approach to MTR price regulation

3.8 Before making a decision on dominance and the appropriate form of remedy the JCRA first needs to define the relevant market(s) susceptible to *ex ante* regulation. The JCRA then carries out an analysis of the relevant markets to decide whether or not any market player holds a dominant position on that market. If the JCRA determines that such a dominant position exists and identifies a need for remedies it will then propose appropriate regulatory measures.

3.9 The main focus of an analysis of the relevant markets is to identify the competitive conditions prevailing in a market by assessing systematically the competitive constraints which are faced by undertakings in the market. A market review commences by defining a market, which is then analysed to assess the degree of effective competition.

3.10 The European Commission’s Guidelines set out the following three components for its forward-looking market analysis procedure :

(a) Definition of the relevant market susceptible to *ex ante* regulation;

[3] In Class II and Class III licences, this power is set out in licence condition 27 (fair competition).

(b) Assessment of competition in each market, in order to identify competitive constraints and assess whether any operator(s) has SMP; and

(c) Where market power is identified, consideration of the appropriate SMP obligation in relation to that market.

In undertaking its market review, the JCRA has taken account of the European Commission's recommended approach as well as the experience of other regulatory authorities in Europe.

3.11 Having considered the views of the respondents to its Consultation, the JCRA is in a position to confirm the defined relevant markets and its analysis of the state of competition within these markets. Where markets are deemed to be effectively competitive or will become effectively competitive within the lifetime of the market review, any existing regulation can then be considered for withdrawal. Where markets are deemed to be uncompetitive, the JCRA must consider appropriate regulatory obligations on any operator that has been identified to have significant market power.

4. Responses to the Consultation

Introduction

4.1 JCRA received a total of three responses to its '*2016 Consultation on the Review of Mobile Termination Rates in Jersey*', from :

- Sure;
- JT; and
- Airtel-Vodafone (Airtel)

Sure provided a confidential and a non-confidential version of its response.

4.2 The JCRA would like to thank each of the respondents for their input to this process. The non-confidential sections of the responses are published on the CICRA website, *www.cicra.je*.

Market analysis

4.3 Any SMP designation consists of two distinct steps. Firstly, the relevant product and geographic markets must be defined, and secondly, the question of whether the undertaking in question holds significant market power ('**SMP**') on that market must be addressed. In this section, the JCRA therefore considers the responses received from its Consultation on any relevant retail and wholesale markets and whether one or more mobile network operators ('**MNOs**') licensed by the JCRA have SMP on the relevant market in which wholesale mobile call termination services are provided. Such assessments are typically forward looking and so, for the purposes of this review, the JCRA will consider likely market developments over the next three to five years.

Market definition

4.4 It is important to bear in mind that the relevant market under consideration here is a wholesale market, namely the market on which wholesale termination of voice calls is provided (however that market is defined). However, in carrying out an assessment of the relevant wholesale market/s, it is first appropriate to consider the retail markets since the starting point for the overall assessment of wholesale markets is generally accepted[4] to be the definition of the relevant retail markets from a forward looking perspective[5], taking into account demand-side and supply-side substitutability[6]. This is because demand for

[4] See Recital 4 of the 2007 EC Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation

[5] ie, a perspective which evaluates the expected and foreseeable technological and economic developments likely to affect mobile markets for the proposed period of this price control

[6] See Recital 4 of the 2007 EC Recommendation

wholesale products is derived from the retail market and will be affected by its characteristics[7].

4.5 Once it has defined the relevant downstream (retail) market, the JCRA then moves to an analysis of whether consumers' behaviour in the downstream market, (ie, the retail level) is capable of acting as a constraint on the prices charges by an MNO at the wholesale level.

Retail market – product market

4.6 In its Consultation, the JCRA considered that the appropriate starting point for its assessment would be a voice call initiated by the calling party to the called party's mobile number for which a termination fee is applicable. This is because callers value calls that successfully reach the called party. In this respect, it is the end-to-end call which is important rather than individual parts of that call (such as termination). Customers value mobile services because these allow them to make calls and to be contacted in many different locations in a way that is not possible with fixed services.

4.7 The JCRA therefore based its focal product on calls to all Jersey mobile numbers which were active, or which it expected to be active, over the period of the review. Such a focal product captures the fact that termination of a call initiated by the called party's mobile phone can be over different technologies. This includes 2G, 3G and 4G networks or, potentially, Wi-Fi based solutions. At the retail level, when callers initiate a call to the called party's mobile phone, they (and their originating network) have no control over the technology used to terminate the call. Calling parties will very often be unaware of which technology is used. Moreover, calls to a particular called party's mobile phone may terminate using different technologies during the same call (eg, drop-back from 3G to 2G).

4.8 The proposed set of focal products also excluded services that do not use mobile telephone numbers to establish voice calls between two users, for example, Viber and Skype. The JCRA refers to these services as 'pure-OTT' as they do not involve mobile numbers, are purely delivered over data connections and are not routed via the switch of the called parties' network[8]. For the avoidance of doubt, calls which are initiated on OTT applications, such as 'Skype Out', but terminate on mobile numbers were included in the set of focal products.

4.9 Having identified this focal product, the JCRA considered that it was then necessary to determine whether callers would switch away to an alternative product if the price of voice calls to mobile numbers were to increase on the basis of the SSNIP[9] test.

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[7] In particular, competitive constraints at the retail level may impose an indirect constraint on the wholesale market since some proportion of the wholesale price increase is likely to be passed on to the retail level. This may, in turn, result in retail customers switching to goods which do not require the wholesale input. If such retail substitution would be sufficient to limit the ability of a wholesale operator to profitably raise wholesale prices (ie, MTRs) by any significant amount then an indirect constraint exists.

[8] For example, 'pure-OTT' applications such as those operated by Viber and Skype rely on access to a mobile handset via a data connection. As such a call does not need to be routed via the switch of the called parties' network, so it does not attract a termination rate. Moreover, consumers can distinguish these calls to mobile numbers and are likely to expect to pay different rates.

[9] SSNIP – Small but significant non-transitory increase in price

4.10 For the following reasons, the JCRA considered that callers would be unlikely to do so and that relevant retail product market was therefore a voice call initiated by the calling party to the called party's mobile number in Jersey for which a termination fee was applicable:

(a) For the reasons set out in the Consultation document, the JCRA's view was that the characteristics of alternative forms of communication meant that consumers would be unlikely to switch to them in response to a small but significant retail price increase of a call to a mobile number[10]. There was therefore a lack of demand-side substitution;

(b) In order for retail supply-side substitution to be a realistic possibility, a firm that was not currently supplying mobile voice calls (to a specific number) would have to be able to begin doing so relatively quickly following an MTR driven increase in the retail price and in a way that avoided payment of MTRs. However, since the payment (or not) of MTRs is controlled by the operator on whose network the call is terminated, a new market entrant could not avoid paying MTRs to such an operator. The retail supply-side substitution argument therefore did not appear to have much force for the period of this market review.

4.11 Having defined the relevant product market, the JCRA then considered whether consumers' behaviour in that market was capable of acting as a constraint on pricing at the wholesale level. The JCRA concluded that it was not. This was because for callers to react to an increase in the price of calls to a specific mobile number, they must be sufficiently aware of that increase and deem that it is sufficiently material to act upon it. In particular, consumers need to be aware they are calling a mobile number, the specific network/call provider that controls the number and the price they would face when calling that particular network/mobile number. Research carried out by other national regulatory authorities suggests consumers are unlikely to be aware of (and therefore unlikely to react to) any impact that an increase in MTRs might have at the retail level, even if retail price rises were significant, i.e. of the order of 5% - 10%.

4.12 In order to test the validity of this conclusion, the Consultation asked the following question :

Question 1 : Does the respondent agree with the JCRA's provisional views relating to the retail market product market? If the respondent does not agree with the JCRA's provisional views, the respondent should provide all of its analysis and assessment of the market.

[10] This is consistent with the findings of Ofcom which, in its 2011 review, found that these alternative products should not be included in the relevant product market since customers did not consider them to be substitutable for mobile calls. Alternative products considered were : calls to a fixed line as a substitute for calls to a mobile, on-net mobile to mobile (M2M calls as a substitute for off-net calls, call back arrangements, the use of 'pure OTT' services, SMS, email, instant messaging and social networking sites).

RESPONSES

Sure's Response

Product market definition

4.13 Sure did not agree with the JCRA's provisional view that the relevant retail market is '*a voice call initiated by the calling party to the called party's mobile number in Jersey for which a termination fee is applicable'.*

4.14 Sure considered that the increasing scope and scale of substitutes to calls terminating on a mobile network was changing the extent to which direct regulation should be applied. Sure maintained that it was not within the JCRA's remit to regulate calls originating off-island to local mobile networks, but regardless, local operators could no longer be deemed to hold SMP in that market anyway, due to the prevalence of OTT substitutes. Sure, therefore, did not accept the JCRA's retail market definition.

4.15 With respect to demand-side substitution, Sure contended that the market was not sufficiently homogenous to qualify as a single market. Sure made the observation that for one group of consumers, calls to Jersey mobiles are 'domestic calls', typically included in calls bundles, whereas for the remainder of the consumers, calls to a Jersey mobile are not domestic calls but rather are international calls which can be substantially more expensive than domestic calls. Owing to this difference in call costs, Sure believed that alternative calling methods, such as Over the Top ('**OTT**') platforms, are used substantially more for international calls than for domestic calls[11]. Sure, therefore, concluded that the demand side characteristics of the market defined by the JCRA are not sufficiently homogenous to justify including these in the same market. Sure also considered that there is clear evidence that customers (both in Jersey and the UK) are choosing different calling methodologies (particularly using OTT alternatives) due to ease of use, additional functionality (including group and video calling) and cross-platform capabilities.

4.16 Sure therefore objected to the definition of a single retail market for calls originated anywhere in the world and terminated on Jersey mobile numbers.

4.17 Based on the above market characteristics, Sure believed that there were at least two separate retail markets for mobile calls to Jersey mobile numbers and that only one of these markets was within the jurisdiction of the JCRA.

[11] Whilst OTT platforms are also available for domestic calls to a Jersey mobile number, the incentive to use OTT is reduced owing to the lower rates for these calls, which are typically included in call bundles offered by mobile operators.

Retail markets	Key delivery method	In JCRA Jurisdiction ?
A voice call initiated by a calling party **outside the Bailiwick of Jersey** to the called party's mobile number	1. OTT (VoIP), or 2. Switched by mobile network	NO
A voice call initiated by a calling party **within the Bailiwick of Jersey** to the called party's mobile	1. Switched by mobile network	YES

Is consumers' behaviour in that market capable of acting as a constraint on pricing at the wholesale level ?

4.18 Sure considered that on the retail market, termination fees do not play an active role and a retail customer would not know whether its mobile operator paid a termination fee to another mobile operator or not.

Other points

4.19 Sure considered that the UK can be considered as a 'special case' in respect of calls to the Channel Islands as the Jersey numbers are part of the overall UK numbering plans and some customers may not know that a call to the Channel Islands is different to any other call to a mobile number within the UK numbering scheme. Sure said it had already provided detailed arguments and factual evidence supporting the case that the retail pricing of UK MNOs is not directly linked to the termination rates charged by Channel Island MNOs.

4.20 Sure stated that in most cases calls to Jersey registered mobiles are not included within the pay monthly call bundles offered by UK mobile operators which could increase the likelihood of a higher usage of OTT services when UK mobile customers call a mobile in Jersey, compared to when they call a mobile on a UK network. Sure considers that if calls to the Channel Islands were to be included in UK customers' mobile bundles then those customers, having experienced the benefits that OTT services could offer, would not be minded to consider going back to using standard mobile voice calls.

4.21 Sure noted that the JCRA requests that any respondent who disagrees with the JCRA's provisional views, provides 'all of its analysis and assessment of this market'. Sure believes that the JCRA needs to allow operators reasonable time to provide that information, particularly as the JCRA has a duty to ensure that it reaches outcomes based on objectively justified methodologies. A key network tool for the analysis of OTT usage is a Deep Packet Inspection ('DPI') facility. Sure expects to have DPI equipment operational within its network by April 2017, which is likely to assist both Sure and the JCRA to better understand the true materiality of OTT calls as a substitute for the termination of calls on Sure's Jersey mobile network from off-island.

Airtel's Response

4.22 Airtel agreed that the focal product should be calls terminated using MNO's CS[12] core network irrespective of the radio technology used.

4.23 However, in its response, Airtel went on to state that :

"Airtel has always disputed this determination and continues to believe that incumbent (JT) holds SMP in Jersey. By the logic presented in 4.2 each MNO will have SMP status for fixed number ranges allocated to them. Airtel believes the methodology adopted by CICRA is flawed and incomplete, considering only the number ranges allocated to each MNO as the basis of determining SMP status".

4.24 However, including calls originating from outside the Channel Islands should not form part of the review. This is because foreign operating companies (including UK) are under no obligation to reciprocate the pricing set here.

JT's Response

4.25 JT set out a number of points regarding the correct product market definition.

4.26 JT agreed with the assessment that a voice call initiated by the calling party to the called party's mobile for which a termination fee is applicable is the relevant market for MTRs.

4.27 However, JT believes the retail mobile voice communications market is changing and there are many methods of mobile communications that are direct substitutes to mobile voice calls to Jersey and Guernsey mobile numbers. JT's view is that callers would switch away to an alternative product if the price of voice calls to mobile numbers increases. This is based on the fact that JT already sees that consumer habits are changing with mobile minutes decreasing and users substituting away from mobile calls to other types of mobile calls (but not using a mobile number) using OTT services via apps.

4.29 JT agrees that calls to a fixed line, on-net mobile to mobile calls and call back arrangements would not be a substitute for calls to a mobile.

4.30 JT disagrees with the JCRA's analysis that certain forms of non-voice communications[13] are not substitutable for voice calls. It is JT's opinion that many users are moving away from voice calls and are communicating using a variety of non-voice communications such as Skype, Messenger, WhatsApp, Facetime, Email, Twitter, Facebook, to name but a few of the most popular methods.

[12] CS – Circuit Switched
[13] Pure OTT services, SMS, e-mail, instant messaging and social networking sites.

JCRA ANALYSIS

Relevant product market

4.31 In assessing the relevant retail product market, the JCRA initially identifies the likely narrowest market (focal product) and then considers evidence that might suggest expanding that market definition based on a systematic analysis of substitutes whose inclusion might broaden the initial narrow market definition.

4.32 As explained above, the JCRA considered here that the appropriate focal product was '*a voice call initiated by the calling party to the called party's mobile number in Jersey for which a termination fee is applicable'.*

4.33 Regarding the points raised by operators in respect of the extent of the scope of the product market, the JCRA understands that two related points are being made. Firstly, operators (Sure and JT) argue that the product market is wider than the focal product identified, primarily because of the availability of substitutable retail products (eg, OTT calls and/or certain forms of non-voice communications). In respect of the substitutable retail products identified by Sure, Sure highlights the increasing availability of this technology in Jersey (eg, the ability to make a WhatsApp call from an iPhone). Secondly, Sure argues that the way in which consumers make calls might vary depending on whether the number being called was an international or domestic number. It is, therefore, possible that a consumer might consider an OTT service to be a more appropriate functional substitute for a call to a mobile number when making an international call than when making a domestic call and that some further subdivision in the market depending on call destination might be possible.

4.34 The JCRA notes these arguments. It is clear that, at least for some consumers, there may be partial functional substitutability between mobile voice calls and other methods of making calls, such as OTT. However, the JCRA also notes that despite the growth of popularity of OTT applications, these do not offer any interoperability between different platforms, (ie, do not ensure sufficient any-to-any communication), and require that end users are simultaneously logged in to the same OTT provider. Moreover, there is still a significant number of end users who do not use data-enabled smartphones, high-quality mobile internet is not universally available, and there are differences in quality of OTT services. These points are noted by Ofcom in its 2015-2018 MCT Review[14], where it states that the use of OTT applications is not a close substitute for calls to a mobile number for the time being[15].

4.35 The JCRA considers that, for the purposes of the current review, the precise market definition can be left open insofar as regards the question of whether OTT services and mobile voice calls are in the same product market. This is because, as explained below, in the context of this review the purpose of defining a retail product market is to assess which products (or subset of products) within that retail market could impose a competitive constraint at the wholesale (MCT) level rather than determining the extent to which

[14] http://www.ofcom.org.uk/_data/assets/pdf_file/0029/76385/mct_final_statement.pdf
[15] MCT Review, paragraphs 3.44 – 3.62

particular product subsets within that hypothetical market (however defined) exercise a competitive constraint on each other.

4.36 As regards non-voice communications, the JCRA considers that there are fundamental differences between the nature of voice communication and non-voice communication. Research carried out by other regulatory authorities tends to confirm that the characteristics of these alternative forms of communication mean that they are not a close enough substitute to voice calls to be included in the same market[16].

Is consumers' behaviour in that market capable of acting as a constraint on pricing at the wholesale level?

4.37 As set out above, a related, and fundamental, point is that the purpose of defining the retail market is to assess whether consumer choices in that market impose any kind of indirect constraint on the behaviour of operators at the wholesale level. This is explained by Ofcom in its 2015-18 MCT Review, where it states that :

> '*Indirect constraints arise because wholesale price rises may be passed through to the retail market, causing retail consumers to switch away, and therefore lowering wholesale volumes. Such indirect constraints might lead to products being included in the same relevant market even if those products do not constrain each other directly at the wholesale level.'*[17]

4.38 In other words, the relevant question is not of itself whether there is a degree of functional substitutability between different retail products (eg, OTT vs voice calls over mobile) but rather whether, if there was a small but substantial (5%-10%) permanent increase in wholesale prices, consumers would react to this by switching away to those other functionally substitutable retail products.

4.39 It is the clear view of the JCRA that consumers would not do so. This is for a number of reasons.

4.40 Firstly, even if a 5% - 10% MTR increase were passed through into retail prices and consumers were aware of this, the resulting percentage increase in retail prices would be much less than 5% - 10%. This is because MTRs make up a very small percentage of the underlying costs of calls. It is, therefore, unlikely that consumers, even if they were aware of the price rise, would switch to an alternative retail product on the basis of a 5% - 10% increase in the (wholesale) MTR.

4.41 Secondly, for callers to react to an increase in the price of calls they must be sufficiently aware of that increase to act upon it. In particular, consumers need to be aware they are calling a mobile number, the specific network/call provider that controls the number and the price they would face when calling that particular network/mobile number. Research carried out by other national regulatory authorities suggests consumers are unlikely to be

[16] MCT Review, paragraphs 3.63 – 3.65
[17] MCT Review, paragraph 3.12.

aware of (and therefore unlikely to react to) the impact that an increase in MTRs has at the retail level, even if retail price rises were significant, ie, of the order of 5% - 10%[18].

4.42 In its response, Sure agreed with this conclusion, stating that a calling party (ie, the retail customer) would not be aware of the MTR that is charged for the termination of the call being made.

4.43 It is therefore the conclusion of the JCRA that for the period covered by this review, the availability of functionally substitutable products (such as OTT services) at the retail level (however that market is defined) would not constrain an operator's ability to raise MTRs by 5% - 10% at the wholesale level.

Other points

4.44 Aside from these two specific points, the JCRA notes that respondents to this Consultation have put forward arguments (set out above) that do not address either of these two key issues but instead concern wider issues of alternative usage patterns and international logistic routing for communications such as OTT services.

4.45 In particular, Sure indicates that the nature of competitive conditions is different at various parts of the logistic network for calls to mobile numbers. However, this critique of the JCRA's approach deals with points that have no relevance to the provision of termination services, which was the subject of the Consultation. The provision of a service which establishes the final connection between a calling party and a receiving party (ie, the act of 'completing the call') and in respect of which a charge is levied (ie, the MTR) is the service that is being assessed. Irrespective of the physical point at which the call may be deemed to be handed over from the network on which the call was initiated to the network on which the call will be terminated, the call will not be 'completed' (ie, terminated) unless the network operator provides the service of call termination; the service of termination (ie, completing the call to the number of the Jersey customer) is always provided within Jersey.

4.46 Following receipt of Consultation responses, the JCRA has also considered the issue raised by Sure regarding the ability of an MNO to charge a different MTR depending on the origin of the call (on-island origination or off-island origination).

4.47 The JCRA's view with regard to the origin of a call, whether from outside of the Channel Islands or from another Channel Islands operator, is that since there is only one, undifferentiated termination service being provided by the operators, the origin of the call is not relevant in determining the scope of the retail market.

4.48 Sure, in its responses, argued that UK operators would not pass on an MTR saving to consumers, so neither UK nor Channel Islands consumers would benefit from MTR regulation. With respect to the situation relating to UK operators, the JCRA is not able to comment on this as it is a commercial decision for the operators involved. In general, the JCRA is concerned that excessive charges relating to the termination of mobile calls are

[18] As noted above, a retail price rise of 5%-10% based solely on an MTR rise may be unlikely, given that MTRs make up only a small percentage of the overall retail cost of a call.

being levied by virtue of the operators' dominant positions in the local market and that the costs related to the operation of mobile networks should be recovered from markets where competition constraints are present. As explained elsewhere in this Initial Notice, the service for the termination of a mobile call is the same (and therefore involves the same costs) irrespective of where the call originated. The JCRA is not ignoring the fact that there is a variable cost of transit/conveyance in order for a Jersey based operator to be able to terminate the call (by use of the MCT service); it simply notes that the transit/conveyance services are outside of the scope of this review of the Mobile Call Termination market.

4.49 Finally, Sure argues that operators have not been given sufficient time to respond to the Consultation. The JCRA does not accept that this is the case, given that the reason that Sure states that it requires more time is to demonstrate the degree of substitutability between OTT calls and mobile voice calls. For the reasons explained above, the JCRA does not consider that this evidence would alter its conclusion on this point.

JCRA CONCLUSION

4.50 For the reasons explained above, the argument being forwarded by operators that the increased usage of alternative forms of communications at the retail level would constrain the pricing of wholesale termination charges for calls to mobiles is not one that has been evidenced by respondents and is not accepted.

4.51 The JCRA's conclusion is, therefore, that the appropriate retail product market for this *ex ante* assessment includes a voice call initiated by the calling party to the called party's mobile number in Jersey for which a termination fee is applicable. The precise product market definition may be wide enough to encompass OTT services but can be left open in this case, since the availability of alternative forms of voice communication (such as OTT services) at the retail level would not impose a competitive constraint on the pricing of wholesale termination charges.

Wholesale market – product market

4.52 The JCRA consulted on a provisional view that the relevant wholesale product market definition was :

'termination of all calls made to all mobile numbers allocated to each MNO for which the MNO charges the MTR'

4.52 The following factors appeared relevant to its provisional conclusion :

(a) An MNO is likely to face **homogenous competitive conditions** in providing mobile call termination services to the different numbers it hosts, which implies that its conduct in supplying the service in relation to different mobile numbers is likely to be similar; and/or,

(b) An MNO faces a **common constraint**, for example, through billing systems which would make it difficult and/or costly to charge different MTRs to different mobile numbers, even it if wanted to.

4.53 The JCRA therefore concluded that, absent regulation, competitive conditions in the wholesale market for different mobile numbers were likely to be homogenous if the same MNO set a termination rate. However, competitive conditions may differ between those numbers for which different MNOs set the termination rate. Therefore, the JCRA's provisional consideration was that, on the basis of homogenous competitive conditions, termination of all calls made to all mobile numbers allocated to each MNO for which the MNO charges the MTR should be defined as a distinct product market.

4.54 The JCRA considered whether the market should be widened to include mobile numbers hosted by more than one MNO. However, it noted that each of these MNOs will be able to set the MTR independently of all other MNOs, absent SMP price regulation. There is, therefore, no common pricing constraint linking the MTR set by each of the MNOs and so it was not considered appropriate to widen the relevant market beyond each MNO.

4.55 The JCRA in its Consultation asked the following question :

Question 2 : Does the respondent agree with the JCRA's provisional view that there is no common pricing constraint linking the MTR set by each of the MNOs and therefore the relevant market is each MNO ? If the respondent does not agree with the JCRA's provisional view, the respondent should provide all of its analysis and assessment of the market.

RESPONSES

<u>Sure's Response</u>

4.56 Following the standard method adopted by regulators in other jurisdictions, the analytical approach taken by the JCRA was to start from a narrow market definition and consider evidence that might justify widening that definition. Sure's response appears to have considered the narrow market definition as the JCRA's position rather than as a starting point in a systematic analytical process. Sure's critique of this narrow market definition is therefore not considered further here.

4.57 Sure commented that it was incorrect for the JCRA to base its provisional view of the wholesale product market definition on the assumption that MNOs only terminate traffic using numbers allocated to them by Ofcom. It also considered that the true position reinforces the differences that exist at the wholesale level between those calls that were initiated outside the Bailiwick and those that were initiated within the Bailiwick. In the case of the former, the UK operator that initiates (or provides a transit service) for the call to reach Sure's Jersey network has no visibility of the MNP database in use in Jersey. It can, therefore, only route such calls to the Jersey operator that was originally allocated the number range by Ofcom.

4.58 For this reason, Sure believes that it would be more accurate for the JCRA to redefine the wholesale reference product as :

'… termination of all calls made to all mobile numbers currently allocated or assigned to each MNO for use on its network for which the MNO charges the MTR.'

4.59 Sure makes further points about jurisdiction which are more appropriately dealt with later in this document than in the assessment of the relevant product market definition.

4.60 Sure believes that CICRA's previous proposals to set an MTR irrespective of origin would significantly hinder Jersey operators' commercial bargaining power in future negotiations with UK operators, as there would no longer be an incentive for UK operators to negotiate bilaterally. The outcome of such a move would almost inevitably lead to Sure (and OLOs) needing to offset any material losses at the wholesale level (in relation to call termination) with increased charges for local retail customers which it considers would be counter to the duties that the JCRA has with respect to protecting the interests of local consumers.

4.61 With regard to calls originating in Jersey, Sure agrees with the JCRA's position that no common pricing constraints link the MTR set by each MNO in Jersey and, therefore, the relevant market should be termination of mobile calls on each MNO's network (taking into account the need to allow for numbers ported in and out between Jersey MNOs).

4.62 Sure believes that the JCRA needs to recognise two distinct wholesale markets :

Wholesale Markets	**Regulated by JCRA (Sure's view)**	**Sure SMP ?**
Termination of a call initiated by a calling party **outside the Bailiwick of Jersey** made to a mobile number currently allocated or assigned to an MNO for use on its network and for which the MNO charges the MTR	NO	NO, as supply-side substitution is possible
Termination of a call initiated by a calling party **within the Bailiwick of Jersey** made to a mobile number currently allocated or assigned to an MNO for use on its network and for which the MNO charges the MTR	YES	YES

Airtel's Response

4.63 For reasons outlined previously, Airtel does not agree with the argument that each MNO is an independent relevant market. The only market definition must be geographic which treats the Bailiwicks of Jersey and Guernsey as one common entity with a transit rate defined between the two.

JCRA ANALYSIS

4.64 The JCRA's analysis in the Consultation and this Initial Notice is focused on the wholesale mobile call termination service and its associated charge (MTR). It is not considering the market for transit and/or conveyance of a mobile call before it is handed over to the MNO for termination.

4.65 Certain arguments put forward by Sure in its response to this question rely on matters that are proper to the conveyance and/or transit of the mobile call to the mobile network operator. These costs and charges do not form part of the MTR and are therefore not part of the assessment that the JCRA is considering in (and are not relevant to) this Initial Notice.

4.66 The JCRA has considered the comments from Sure with regards to the effect of mobile number portability and that a product market definition should not be based on Ofcom number allocations given that the MNO charging the MTR will be affected where porting has occurred. On the basis of those comments, the JCRA has updated its definition. That revised definition is included below.

4.67 The JCRA is cognisant of the fact that there are a number of ways that a call can be originated (including through OTT services). There may also be a number of ways that a call could be conveyed to the terminating operator's network. However, once the call is on the network of the terminating operator, it is that MNO that has sole control of the termination of that call and in particular the charge for that service.

4.68 The only MNO than can (using the terminology in Sure's table above) terminate a call initiated by a calling party made to a mobile number currently allocated or assigned to an MNO for use on its network and for which the MNO charges the MTR is that MNO. Therefore the MNO has 100% of the market for the termination of mobile calls to numbers currently allocated or assigned to it.

JCRA CONCLUSION

4.69 The JCRA considers, after taking into account the response of Sure, that the definition provided in the Consultation should be revised. The following definition is therefore appropriate :

'… termination of all calls made to all mobile numbers currently allocated or assigned to each MNO for use on its network for which the MNO charges the MTR.'

Call Types

4.70 In its Consultation, the JCRA suggested that the provision of mobile call termination to all numbers allocated or assigned to a particular MNO should be included within the same market. However, this does require clarification with regards to which call types the JCRA proposes should be covered by this definition.

4.71 The JCRA, taking into account the revision to the definition outlined above, considers that the market for mobile call termination will include :

- Any call conveyance technology used to deliver voice call termination services to mobile numbers, whether delivered by 2G, 3G, 4G, VoIP or VoLTE based technologies, and,
- All mobile numbers currently allocated or assigned to each MNO for use on its network for which the MNO charges the MTR

4.72 The Consultation listed the following call types to be included within the Mobile Call Termination market :

Call Type	JCRA Position
Voice Calls	Terminated on a mobile number
Off-net	YES
On-net	NO
Ported in	NO
Ported Out	YES
Calls to voicemail	YES
Voice calls to mobile numbers terminating on IP	YES
Call forwarding (including international)	YES
Calls to Jersey number roaming abroad	YES
Calls to non-Jersey numbers roaming in Jersey	NO

4.73 The JCRA in its Consultation asked the following question :

Question 3 : Does the respondent agree with the JCRA's provisional views relating to the call types included within the proposed product definition ? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment of this market.

OPERATOR RESPONSES

Sure's Response

4.74 Sure's response, which is set out in the form of a table below, focuses solely on wholesale MTRs. The format of the table matches that used by the JCRA in Table 1 (of its Consultation) with an additional column added to set out Sure's position in relation to each call type :

Call Type	Consultation Proposal (JCRA)	Sure's position
Voice calls	Terminated on a mobile number	Various types of OTT service (including WhatsApp and Facetime) make use of a subscriber's mobile number as the unique identifier within their database of users. It is therefore incorrect to infer that the use of a mobile number must be solely in relation to a standard voice call.

		If one of the means of call delivery is purely VoIP based technology (as listed by the JCRA) then that would capture OTT based services. We do not believe that they are relevant to wholesale MTRs.
Off-net	YES	Sure does not believe the GCRA's remit allows it to regulate off-net calls that are initiated outside the Bailiwick, nor does Sure accept that it has SMP in the market for such calls. Sure, however, agrees that off-net calls originated in Jersey should form part of the market.
On-net	NO	Sure agrees with this view. MTRs are not relevant where there is no inter-operator interaction.
Ported in	NO	If a number is ported in then the mobile termination is provided by that gaining operator. It charges the operator that was allocated the numbers at the standard regulated on-island MTR. If the call originates on-island then it is routed directly to the terminating MNO so the charge is entirely appropriate. This scenario should therefore be set as 'YES'. However, for a call that originates off-island (which, for the avoidance of doubt, Sure does not accept as being part of the relevant market) the UK originating or transit operator has no visibility of the Jersey MNP database, so the call can only be routed to the operator to which that number was allocated by Ofcom. That operator is then required to provide an on-island mobile transit (rather than termination) service to route the call to the relevant on-island terminating MNO that has since been assigned that number. Regardless of the JCRA's current views, it should be noted that if it determines that the same MTR should apply for calls from off-island as for calls initiated on-island then, in the case of ported numbers, each operator required to provide an on-island mobile service would have to do so at no charge, as the MTR applied by the terminating MNO would be the same as that charged by the on-island mobile transit operator to the relevant UK operator. This would leave the on-island mobile transit operator with a routing requirement for which it would receive no revenue – thus leaving that operator unable to recover its efficiently incurred costs. This would be an entirely unjustifiable requirement and one that Sure would be unwilling to commit to and which the JCRA has no authority to mandate. Moreover, Sure remains adamant that calls initiated outside the Bailiwick cannot be subject to a regulated MTR anyway as they do not form part of the relevant market and the JCRA has no jurisdiction to regulate those calls in any case.
Ported out	YES	Please refer to our comments above relating to 'Ported In'. Any operator required to provide an on-island mobile transit service must be able to recover the cost of doing so. Applying the same MTR for off/on-island initiated calls would not allow that to occur. To be clear,

		Sure would not provide a free on-island mobile transit service, which we note is also entirely different to a mobile call termination service. We believe that the flag for this item must be set to 'NO'.
Calls Voicemail	YES	Sure agrees with this view. The voicemail service is provided by the terminating mobile network operator. This should however only include calls to voicemail which qualify under one of the above categories.
Voice calls to mobile numbers terminating on IP	YES	Sure agrees with this view but only to the extent that the call should be treated as a termination on a mobile operator's network. This should, however, only include calls which qualify under one of the above categories.
Call forwarding (including international)	YES	Sure agrees with this view as the incoming call is terminated on the mobile network, with it then creating an associated outbound call to facilitate the customer's requirement for forwarding. This should, however, only include calls which qualify under one of the above categories.
Calls to Jersey number roaming abroad	YES	Sure agrees with this view as the incoming call is terminated by the MNO with it then creating an associated outbound call to reach the network on which the particular mobile subscriber is roaming. This should, however, only include calls which qualify under one of the above categories.
Calls to non-Jersey numbers roaming in Jersey	NO	Sure agrees with the view set out by the JCRA.

<u>Airtel's Response</u>

4.75 Airtel agrees to all calls as listed in Table 1 except for Call Forwarding (including international) and Calls to Jersey numbers roaming abroad. In both these scenarios, calls need to be carried over international links which presently are not regulated by CICRA.

JCRA ANALYSIS

4.76 Sure in its response has provided a detailed assessment of each of the call types that the JCRA included in its Consultation. This has been very helpful to ensure an informed outcome and the JCRA has amended its approach as a result of this new evidence.

4.77 However, the evidence has not in the JCRA's view altered the position that once a call is connected to the mobile network of the terminating operator, only that operator can terminate that call, for which it charges an MTR.

4.78 As the JCRA stated at the outset of this document, this review is only considering the termination service and not any other origination and transit type conveyance charges. The types of calls relevant to wholesale call termination within the relevant product market are considered below.

4.79 Regarding the Ported IN and Ported OUT numbers, Sure has clarified the position regarding Ported IN and Ported OUT numbers. In the case of a Ported IN number (a situation where a recipient operator has acquired a customer/mobile number that was originally with another donor operator that holds a different number block allocated by Ofcom) the recipient operator will charge an MTR irrespective of whether the call originated from an operator licensed in either of the Bailiwicks or outside the Bailiwicks. Where a call, originating from a licensee in either Jersey or Guernsey is terminated on a number that is ported to another locally licensed operator, the originating operator is able to route the call to the correct network first time following interrogation of the MNP database. This is different from the routing of a call originating internationally, in that it is passed to the original number block owner and if the number has been Ported OUT, the donor operator will then convey the call to the operator that has that customer/mobile number. That recipient operator will then terminate the call and charge the appropriate MTR. A conveyance charge could be appropriate for the conveyance of the call from the donor operator but that is not part of this review. Therefore, in summary the table should show that a Ported IN number does incur an MTR and the table should show a 'YES'. The Consultation had set this to 'NO' which was incorrect.

4.80 Since all inter- and intra- Bailiwick calls will be correctly routed first time, there is no requirement for a Ported OUT call type to exist as this scenario would not occur. The table should therefore show a 'NO'. The Consultation had set this to 'YES' which was incorrect.

4.81 Finally, as stated in the table of call types, if the call is an On-Net call then an MTR is not appropriate.

JCRA CONCLUSION

4.82 The following calls are included in the relevant wholesale product market encompassing the range of services listed below :

Call Type	JCRA Position
Voice calls	Terminated on a mobile number
Off-net	YES
On-net	NO
Ported In	YES
Ported Out	NO
Calls to voicemail	YES

Voice calls to mobile numbers terminating on IP	YES
Call forwarding (including international)	YES
Calls to Jersey number roaming abroad	YES
Calls to non-Jersey numbers roaming in Jersey	NO

Geographic market

4.83 As set out in the JCRA Consultation, at the wholesale level, mobile termination services need to be accessed in order to terminate a call. The competitive conditions for the service of wholesale termination of the call did not appear to differ irrespective of the various handover points en route. This suggested that it is appropriate to consider the geographic market as the area for which the MNO can determine the MTR in relation to a Jersey number, and the JCRA's provisional view was that this area lies within Jersey.

4.84 The JCRA in its Consultation asked the following question :

Question 4 : Does the respondent agree with the JCRA's provisional views relating to the geographic market for the wholesale market ? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment of this market.

RESPONSES

Sure's Response

4.85 Sure agrees with the JCRA that the market is Jersey and that any calls covered by this market review must be handed over directly to the network of the relevant MNO in Jersey. It notes in its response that only operators qualifying as an Other Licensed Operator (OLO) have the right to interconnect in Jersey.

4.86 Sure expressed concerns regarding the way that the JCRA has described the interconnection between Sure and OLOs in Jersey. To date, Sure has not been requested by an OLO to provide direct interconnection to its mobile network so, instead, Sure accepts calls to its mobile customers across its points of fixed network interconnection with OLOs and then transits the calls through the Sure fixed network to reach Sure's mobile network. The JCRA's reference to a 'relevant handover point on the terminating MNO's 'network' is therefore not considered correct as the interconnection to Sure's mobile network is achieved indirectly via a transit through Sure's fixed network. Sure however also says it intends to progress a facility for direct interconnection to its mobile network in order to improve routing efficiencies and to ensure compliance with its licence obligations.

4.87 Sure opposes the inclusion of calls originating outside Jersey in this market definition. Sure reiterates its view that the geographic market is the Bailiwick of Jersey, with the need for points of interconnection to be in Jersey (and the restriction within the Jersey licensing regime, that only a provider licensed to operate in Jersey has the right to interconnect in Jersey). In its view this further supports the argument that the relevant market cannot include calls originating outside Jersey that are handed to Sure outside Jersey.

4.88 Sure considers that a market for calls made by any caller across the world who makes a call to a Jersey mobile number for which there is a retail charge which would represent '*an extraordinarily vague and broad market definition'.* Sure does not consider that the JCRA has the required duties and powers in relevant legislation to allow for an action of this scale and scope.

4.89 Sure therefore considers that the market definition should make it clear that the market covers only calls to numbers allocated to mobile operators in Jersey.

4.90 Sure's response states that pricing of off-island initiated calls was applied on a commercially negotiated basis prior to the inception of the JCRA in 2001 and this position has not changed. It believes it is not within the JCRA's remit to regulate such charges.

Airtel's Response

4.91 Airtel agrees provisionally with the JCRA's conclusions. However, it recommends that both Bailiwicks of Jersey and Guernsey should be considered as one market and, if required, CICRA could define a transit charge between the two Bailiwicks.

JCRA ANALYSIS

4.92 At a number of points in its response to the Consultation, Sure raises the issue of whether the JCRA has jurisdiction to regulate MTRs in respect of calls that originated outside of Jersey. Sure argues that the JCRA does not have such jurisdiction. We understand Sure's reasoning to be as follows :

(a) The JCRA only has the power to regulate the telecoms activities of operators who are licensed in Jersey by the JCRA;

(b) Only telecommunications operators who are licensed in Jersey have the right to interconnect in Jersey;

(c) If the physical point of interconnection between Sure's network and the network on which a call originated is outside of Jersey, the JCRA does not have jurisdiction to regulate an MTR applied by Sure in respect of that call.

4.93 The JCRA does not agree with this analysis which appears to be based on a mistaken conflation of two distinct concepts, namely interconnection and call termination.

4.94 As set out in telecommunications licences issued in Jersey 'interconnection' means the connection of two 'Licensed Telecommunications Systems'[19], where Licensed Telecommunications System means 'the system for the conveyance of messages through the agency of energy which the licensee is authorised to establish, operate and maintain in the Bailiwick of Jersey'[20].

4.95 By contrast, mobile call termination is a service provided by a telecoms operator which enables a call to be handed over to a customer who uses a number on that operator's network. This is explained by Ofcom in its '*statement on the markets, market power determinations and remedies'* made in the context of its 2015-2018 Mobile Call Termination market review, which states that:

> '*One of the services that network operators offering voice services provide to each other is call termination – that is, the completion of a call from a customer of another network.* ***MCT[21] is the service provided by an MCP[22] necessary for an originating CP[23] to connect a caller with the intended mobile call recipient on that MCP's network.'[244]*** *(emphasis added)*

4.96 A termination charge is the charge levied by an MCP for providing the service of terminating a call to a number on its network.

4.97 It is clear that the provision of a service which establishes the final connection between a calling party and a receiving party (ie, the act of 'completing the call') and in respect of which a charge is levied is entirely distinct from the concept of 'interconnection' of telecoms networks as defined in the telecommunications licence of Jersey telecommunications operators. In other words, irrespective of the physical point at which the call may be deemed to be handed over from the network on which the call was initiated to the network on which the call will be terminated, the call will not be 'completed' (ie, terminated) unless the network operator provides the service of call termination. The point of interconnection may be inside or outside of Jersey; the service of termination (ie, completing the call to the number of the Jersey customer) is always provided within Jersey.

4.98 Therefore, in reply to the points in response to the Consultation, the JCRA considers that:

(a) In regulating the price that an MNO charges for terminating mobile calls on its network, the JCRA is not seeking to regulate the telecoms activities of operators who are not licensed by the JCRA in Jersey. Rather, the JCRA is regulating the way in which a Jersey licensed operator provides mobile termination services within Jersey;

[19] Licence condition1
[20] Licence condition 1
[21] Mobile call termination
[22] Mobile communications provider
[23] Communications provider
[24] https://www.ofcom.org.uk/_data/assets/pdf_file/0029/76385/mct_final_statement.pdf

(b) It is not necessary for the mobile operator on whose network the call originated to interconnect (in the sense defined by Jersey telecommunications licences) in Jersey in order to be provided with call termination services on a Jersey network and so Sure's point regarding the inability of non-Jersey licensed operators to interconnect in Jersey is not relevant.

4.99 As an alternative line of argument, the JCRA understands that Sure is stating that the only basis on which the JCRA is able to regulate call termination charges in Jersey is through a Reference Interconnect Offer framework set out in the licensee's licence. Sure's licence does not currently contain an obligation to publish a Reference Interconnect Offer and therefore, it argues, the JCRA has no jurisdiction to regulate MTRs applied by Sure in Jersey.

4.100 The JCRA disagrees with this analysis. Class II[25] and Class III Jersey telecommunications licences include a condition[26] that where the JCRA has determined that the licensee possesses Significant Market Power (SMP) in a relevant market, then the licensee shall comply with any direction issued by the JCRA for the purposes of preventing any market abuse or any practice or arrangement that has the object or effect of distorting competition. A direction regarding the level at which MTRs are set has the clear purpose of preventing market abuse and/or a practice or arrangement which has the object or effect of distorting competition and can therefore be given by the JCRA.

4.101 It is therefore clear that if the JCRA determines that a licensee has SMP on a market for the provision of mobile termination services, the JCRA has jurisdiction to regulate the charges that applies for those services.

JCRA CONCLUSION

4.102 Based on its assessment and of the views provided in the course of this Consultation, the JCRA's position is that the relevant geographic market for call termination services for the termination of voice calls to Jersey mobile numbers is the Bailiwick of Jersey. This entirely consistent with the previous decision making practice of the JCRA.

Market definition - conclusion

4.103 In its Consultation, the JCRA consulted on the appropriateness of the following market definition[27]:

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25 Sure holds a Class II licence in Jersey

26 Licence Condition 27

27 The 2007 EC Recommendation identifies the mobile call termination market is a market which is susceptible to *ex ante* regulation in the following terms : 'Voice call termination on individual mobile networks'. We consider that our proposed definition is consistent with that of the EC. This is because, by definition, the mobile numbers allocated to an MNO identify those calls that are switched to, and routed by, the recipient's network. Therefore, a reference to a mobile number range necessarily refers to the activity of the relevant individual mobile network (as the MNO provided termination must have some form of switching and routing). However, given that there is scope for confusion in the use of the word 'network' (which in some contexts might be interpreted as a reference only to radio access network) we have not used the word 'network' in the proposed market definition. Market evidence in the UK suggests that the ownership or operation of what has been traditionally understood in a mobile network (eg, a 2G, 3G or 4G radio access network) is not essential to whether an MTR can be set to interconnecting operator (origination or terminating traffic to the operator in question).

'Termination services that are provided by [named mobile communications provider] (MNO) to another communications provider, for the termination of voice calls to Jersey mobile numbers allocated to that MNO by Ofcom in the area served by that MNO and for which that MNO is able to set the termination rate.'

4.104 The JCRA in its Consultation asked the following question :

Question 5 : Does the respondent agree with the JCRA's provisional views relating to the proposed market definition ? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment of this market.

RESPONSES

Sure's Response

4.105 Based on its responses to the previous questions, Sure does not support the JCRA's proposed market definition, as it believes that it is materially incorrect.

4.106 Sure does not believe that it is possible or appropriate to try to define the MTR market in one sentence and proposes that the definition is supported by a table to specifically set out the relevant call types that need to be included or excluded.

Airtel's Response

4.107 Airtel does not agree with the definition provided. Each MNO should not be taken as a separate market. The logic and basis for coming to this conclusion is in its view flawed and incomplete. Other factors like incumbency need also to be taken into cognisance.

JCRA ANALYSIS

4.108 For the reasons already set out in its Consultation and that the JCRA has repeated where appropriate in this Initial Notice, the JCRA remains of the view that the appropriate definition is essentially as proposed by the JCRA in its conclusion. However, for the reasons set out above, the removal of text referring to the allocation of numbers by Ofcom gives rise to a more precise definition. The market definition has therefore been amended on that basis.

4.109 The JCRA agrees with the view of Sure that the definition should be supported by a table of call types that are included as part of the definition.

JCRA CONCLUSION

In addition, we note that the revised EC Recommendation on relevant markets also recommends a technology neutral approach to market definition in the wholesale mobile call termination markets. It suggests that the market for mobile termination is composed of the markets for termination offered by each MNO. It notes that, in line with the technology neutral approach, this comprises termination on all network technologies. It also includes call termination irrespective of where the call originates. It states that the geographic scope of each market coincides with the geographic coverage of the network concerned and is usually national.

4.110 By removing the reference to numbers allocated by Ofcom, the revised definition to be applied for the Mobile Call Termination services is:

'Termination services that are provided by [named mobile communications provider] (MNO) to another communications provider, for the termination of voice calls to Jersey mobile numbers in the area served by that MNO and for which that MNO is able to set the termination rate.'

4.111 The following table describes the call types that are and are not included in this definition :

Call Type	JCRA Position
Voice Calls	Terminated on a mobile number
Off-net	YES
On-net	NO
Ported IN	YES
Ported OUT	NO
Calls to voicemail	YES
Voice calls to mobile numbers terminating on IP	YES
Call forwarding (including international)	YES
Calls to Jersey number roaming abroad	YES
Calls to non-Jersey numbers roaming in Jersey	NO

4.112 The JCRA identified a total of four separate markets for wholesale mobile call termination services. The table below lists the MNOs we proposed to include, as well as the number ranges allocated to them by Ofcom:

Mobile Network Operator	Mobile Number range/s currently allocated	Provision of mobile call termination
Jersey Airtel Limited	07829 7xx xxx, 07829 8xx xxx and 07829 9xx xxx	YES
JT (Jersey) Limited	07015 xxx xxx, 07059 xxx xxx, 07797 xxx xxx, 07937 xxx xxx	YES

Marathon Telecommunications	07911 0xx xxx, 07911 91x xxx, 07457 2xx xxx, 07458 5xx xxx	YES
Sure Jersey Limited	07700 3xx xxx, 07700 7xx xxx, 07700 8xx xxx	YES

4.113 The JCRA in its Consultation asked the following question :

Question 6 : Does the respondent agree with the JCRA's provisional views relating to the proposed mobile call termination markets ? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment of this market.

RESPONSES

Sure's Response

4.114 Sure disagrees with the JCRA's provisional views relating to the proposed relevant mobile call termination markets. It has made the point that following the introduction of MNP it is no longer appropriate to associate an allocated number range from Ofcom.

Airtel's Response

4.115 Airtel does not agree with the JCRA's provisional views relating to the proposed relevant mobile call termination markets. In its view MNO's Mobile Number ranges should not be taken as a separate market and the only definition of market should be the Bailiwick of Jersey and Jersey combined as one geographic market.

JCRA ANALYSIS

4.116 The above views have been assessed and the JCRA's reasoning has been set out in other sections of this document. As already stated, by taking into account responses to earlier Consultation questions, the JCRA intends to remove the listing of telephone numbers and rely on the definition that relates to the ability of the mobile operator to impose an MTR.

JCRA CONCLUSION

4.117 An analysis of telephone numbers allocated to each of the MNOs is not required and the JCRA will rely on the definition provided below:

'**Termination services that are provided by [named mobile communications provider] (MNO) to another communications provider, for the termination of voice calls to Jersey mobile numbers in this area served by that MNO and for which that MNO is able to set the termination rate.'**

SMP Analysis

4.118 Under the European Framework Directive an undertaking is considered to have SMP if :

> *'either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say, a position of economic strength of affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.'*[28][28]

4.119 Based on the JCRA's assessment of the market and in line with standard principles each MNO has 100% of the relevant market. The JCRA has therefore considered whether there is compelling evidence to suggest that, despite these very high (monopoly) market shares, the MNOs should be considered not to have SMP on those markets. It has done so by examining whether :

(a) Barriers to entry are low; and,

(b) Countervailing Buyer Power (CBP) is likely to exist.

Are barriers to entry low?

4.120 In the Consultation the JCRA stated that if MNOs could quickly and easily invest in further infrastructure that enabled provision of mobile call termination on another MNOs network, this would indicate that barriers to market entry were low[29]. This is considered unlikely to be a realistic possibility within the short to medium term for two reasons. Firstly, MNOs, which each have 100% of their own relevant market, would not have strong incentives to co-operate to forego the monopoly profit that can be earned from mobile call termination. Secondly, no infrastructure mechanisms are expected to be available to allow market entry and no evidence to suggest that this is feasible has been provided.

Is there countervailing buyer power?

4.121 The JCRA stated in its Consultation that it does not consider that there is any evidence of countervailing buyer power in this market. The JCRA was therefore of the view that each of the four MNOs have SMP in the relevant market.

4.122 The JCRA in its Consultation asked the following question :

> **Question 7 : Does the respondent agree with the JCRA's provisional views relating to the barriers to entry and countervailing buyer power ? If the respondent does not agree with the JCRA's provisional view the respondent should provide all of its analysis and assessment of this market.**

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[28] Article 14(2) of the Framework Directive

[29] This appears to be no more than a theoretical possibility. It involves rival operators acquiring SIM registrations and proprietary technology that would allow a calling operator to choose that provider to terminate a call to a customer held by another operator.

RESPONSES

Sure's Response

4.123 Whilst Sure agrees that there are substantial barriers to entry in the market for termination of conventional voice calls on mobile networks, it is critical that the *JCRA understands that the increased use of OTT platforms on mobile devices is increasingly offering a viable (and often very attractive) alternative.* With regards to countervailing buyer power, Sure is confident that mobile operators outside Jersey could exert countervailing buyer power in the wholesale market for termination of mobile calls (originating outside Jersey) in Jersey. This is an additional reason why Sure firmly believes that such calls cannot and should not form part of the relevant market.

4.124 In relation to how the JCRA perceives the dynamics of the Channel Islands' mobile termination markets, it is Sure's view that it is unhelpful that these are referred to as 'monopolies' when there is clear evidence of consumers switching to OTT platforms. This type of language indicates that the JCRA does not understand how markets are developing, nor the speed with which that is happening.

Airtel's Response

4.125 Airtel does not concur with the JCRA's provisional views relating to the barriers to entry and countervailing buyer power. Neither did it agree to the definition of market as derived by JCRA (number ranges of MNOs) and takes the view that the SMP analysis is based on this derivation and hence incorrect.

JCRA ANALYSIS

Are Barriers to Entry Low ?

4.126 If MNOs could quickly and easily invest in further infrastructure that enabled provision of mobile call termination on another MNO's network, this would indicate that barriers to market entry were low. The JCRA has received no further evidence on this issue and therefore it remains of the view that this is unlikely to be a realistic possibility within the short to medium term for two reasons. Firstly, MNOs, which each have 100% of their own relevant market, would not have strong incentives to co-operate to forego the monopoly profit that can be earned from mobile call termination. Secondly, no infrastructure mechanisms are expected to be available to allow market entry.

4.127 Sure's response discusses barriers to entry for substitution of retail and wholesale services for parts of the overall call but does not specifically address the Mobile Call Termination part of the call, which is the specific focus of this market review and covered in some detail earlier in this Initial Notice.

Is there countervailing buyer power ?

4.128 Countervailing buyer power is the degree of restraint that a purchaser is able to place on the seller by imposing an effective counter to any attempt by the seller to set its prices above the competitive level. In order to rebut the strong presumption of SMP arising from the very high market shares and barriers to entry that are evident in the markets for MCT, it is not sufficient for a buyer to have some degree of CBP. The buyer must be able to exert sufficient CBP that a seller is unable to act to an appreciable extent independently of its competitors, customers and ultimately consumers.

4.129 If an operator sought a lower rate from the terminating operator and the terminating operator refused then the only other alternative for the operator requesting lower MTRs is to route the call via an international transit operator which would not be economically feasible, not least because this alternative channel would attract the same mobile termination charge. It is therefore not evident how countervailing buyer power would act to constrain pricing by an MNO terminating a call on its network.

4.130 The JCRA does not consider that there is any evidence of CBP in this market for the Mobile Call Termination Service.

JCRA CONCLUSION

4.131 There is no evidence to indicate that each MNO is not dominant on the market for the provision of MCT on its own network. Each has 100% share of wholesale call termination on their networks and each is acting as a monopoly in the provision of that service.

5. Initial Notice

The JCRA proposes to find that:

- A relevant market exists for termination services that are provided by [named mobile communications provider] (MNO) to another communications provider, for the termination of voice calls to Jersey mobile numbers in this area served by that MNO and for which that MNO is able to set the termination rate.

- Each MNO is dominant on the market for the provision of MCT on its own network. Each has 100% share of wholesale call termination on its network and each is acting as a monopoly in the provision of that service