



Sure's response to CICRA's Draft Decision re Mobile Termination Rates

Sure (Guernsey) Limited and Sure (Jersey) Limited (collectively referred to here as "Sure") is submitting this single response to the two separate CICRA documents: "2018/9 Review of Mobile Termination Rates in Guernsey – Draft Decision" (CICRA Document 19/31) and "2018/9 Review of Mobile Termination Rates in Jersey – Draft Decision" (CICRA Document 19/32). These are collectively referred to below as the "Draft Decision". Both documents were published by CICRA on the 4th July 2019.

This is the **non-confidential** version of our response, which we are happy for CICRA to share with other parties and publish on its website.

Sure notes that no specific questions have been raised by CICRA within its Draft Decision and we have therefore chosen to group our comments and set out our concerns in the context of Section 5 – the Draft Decision itself (as per page 43 of each document):

5.1 (Directions under relevant licence conditions)

CICRA proposes to issue a direction to a number of operators. In the case of Jersey, it refers to specific operators, while in Guernsey it refers to unnamed MNOs (Mobile Network Operators).

In both islands, we believe that consideration must be given by CICRA to its current omission of Clear Mobitel as a relevant licensee. We note that whilst Clear Mobitel has yet to launch mobile services in the Channel Islands, according to its website¹, it intends to do so next year in Guernsey (along with Alderney and Sark), followed by Jersey in 2021. Based on CICRA's definition of dominance in a mobile market², we believe that Clear Mobitel should be deemed to hold a position of Significant Market Power in relation to the termination of calls on its mobile network as soon as it launches its services, and this should be made clear in CICRA's final decision. It would be discriminatory, were relevant MTR related obligations not to be applied consistently to all local MNOs, as well as counter to practice we see elsewhere, including in larger jurisdictions such as the UK.

5.2 (Proposed ex ante obligations)

We respond to each of CICRA's proposed requirements:

- A requirement to provide network access on reasonable request;

We note that in the context of each operator's licence, such a request can only be made by an OLO (being an operator, licensed by CICRA, and listed on its website³). We support this position.

- A requirement not to unduly discriminate;

¹ <http://clearmobitel.com/>

² As set out in <https://www.cicra.gg/media/597685/t1236gj-final-notice-mobile-call-termination-2017-market-definition-and-dominance.pdf>

³ www.cicra.gg/licensees-and-licences/?sectorId=1136

Sure supports CICRA's proposed requirement, but this can only apply in equivalent circumstances. For example, if an OLO chooses to interconnect directly with an MNO's switch, the regulated call termination rate will apply. However, if an OLO chooses not to interconnect directly with the MNO's switch then, in addition to the MTR, any other relevant MNO or OLO should have the right to charge for any on-island transit (either fixed or mobile) required to physically link the originating operator with the terminating MNO. Otherwise, this could be seen as discriminatory towards OLOs that do interconnect directly (and impose lower costs) which would be paying the same price as those OLOs that interconnect indirectly (and impose additional costs).

- A requirement to publish applicable MTRs;

As confirmed by CICRA to Sure in an email of 29th July 2019, the form of publication must be, as a minimum, an operator's Reference Interconnect Offer or Reference Offer (depending on the operator) and it is then for MNOs to decide what other forms of publication (if any) may be appropriate. Sure supports this view.

- A requirement that MTRs should not exceed the set rate.

Sure appreciates that CICRA has taken on board our proposals for a glide path. We note that CICRA's intention is that the rate will reduce to 0.7ppm (by April 2022). In paragraph 4.56 of its Draft Decision CICRA sets out how it arrived close to that rate (0.68ppm) through LRIC benchmarking of the seven smallest EU countries by population and separately, through analysis of an amended UK LIRC model, at a rate of 0.688ppm.

We are concerned that in paragraph 3.31 CICRA asserts that Sure had agreed with CICRA's provisional findings on the justification for a LRIC approach to the setting of the MTR. We completely refute that statement. What we had said was that we saw 'no rationale for the imposition of LRIC-based MTRs in the Channel Islands', but that were CICRA to 'proceed to impose a LRIC-based MTR then Sure believes that it is critical for CICRA to take the utmost care to ensure that the resulting MTR is reasonable and proportionate'⁴. We note, however, that CICRA at least took on board one of our proposals, being that if LRIC benchmarking were to be considered it should be limited to the 7 smallest countries (by population) in the EU.

As a matter of principle, Sure does not consider LRIC to be an appropriate costing methodology for the pricing of regulated telecoms services in the Channel Islands. Our reasons have been made clear to CICRA on several occasions and many of our concerns are set out in our previous MTR related responses, as published on CICRA's website.

For clarity, while Sure is willing to accept a glidepath reduction in the MTR to 0.7ppm, we do not support an association of that rate with any LRIC costing methodology, whether referenced from the UK or elsewhere.

5.3 (Proposed glidepath for MTR charges)

As per above, Sure is grateful that CICRA has agreed to a glidepath methodology for the reduction in the MTR. We would intend to comply with the application of the stipulated rates and make them available to OLOs.

⁴ Page 7 of www.cicra.gg/media/598068/mtr-draft-decision-sure-response.pdf

5.4 (On-island transit charge)

Whilst we have received clarity from CICRA on this point, we consider that CICRA's text in this paragraph is still open to interpretation. We therefore set out our understanding of the meaning of two of CICRA's conveyance related sentences and go on to provide two practical examples, based on that understanding. Should this not be in line with CICRA's expectations we would request that it further clarifies to Sure the intended meaning prior to it completing its review of responses received in relation to this Draft Decision, as we may feel the need to reconsider our position in this regard.

Paragraph 5.4 states: 'There shall be no additional charge (other than the MTR) applied by the relevant mobile network operator for any on-island transit of a call to be terminated on a mobile network.'

An associated paragraph (3.21) provides an answer from CICRA to a previous request by Sure for clarity. CICRA confirmed that the MCT (Mobile Call Termination) service does not encompass the conveyance elements of a call prior to its receipt on an MNO's on-island switch.

CICRA confirmed, in its email to Sure of 29th July 2019, that paragraph 5.4 relates to on-island transit from handover at the local switch (which Sure understands to be the MNO's switch), whereas paragraph 3.21 expressly relates to all conveyance elements prior to handover. CICRA went on to say that 'the two paragraphs make clear that transit following handover cannot be subject of any separate or additional conveyance charge, whereas transit prior to handover may be separately charged'.

Taking the above into account, we consider that it may be helpful for us to set out two scenarios to CICRA, which we hope appropriately reflect the consensus of thinking on these topics.

Mobile Number Portability (MNP) – calls originating off-island

When UK operators send traffic to the Channel Islands, they have no visibility as to which MNO each local customer is with at the time of each call, as the customer could have ported their number to another MNO. Therefore, the UK operators pass their traffic to the relevant 'point code' operator – being the operator for whom Ofcom allocated the particular number range (e.g. for Sure, 07781 in Guernsey and 07700 in Jersey). Thus, there is a requirement for a local transit provider to forward the call to the particular MNO relevant to that subscriber.

It should be noted that Sure sees no scenario under which an MNO would first transit and then terminate traffic within its own network – thus we remain confused as to the relevance of paragraph 5.4 (in the context of what CICRA has recently clarified to us). We do absolutely see the relevance of paragraph 3.21 in the above scenario though and we would intend to recognise the cost of a transit service (which may be performed either by a local fixed or MNO – the type of transit provided being the same in both instances).

Local transit

The requirement to provide local transit can still exist, outside of any MNP scenarios. For example, one MNO ('Operator A') may choose to interconnect directly with another MNO ('Operator B'), but a third MNO ('Operator C') may have chosen not to interconnect with Operator B. Thus, in this three-operator scenario, Operator C is reliant on Operator A to deliver

calls to Operator B. This will lead to differential interconnect charges, as Operator A pays Operator B just for mobile call termination, whereas Operator C pays Operator A for both transit of Operator A's network and mobile call termination on Operator B's network. In all instances though, the MTR itself will be consistently applied.

From our understanding, the above scenario should be seen as entirely appropriate from CICRA's perspective, as it fits with its views as set out in paragraph 3.21.

5.5 (Per second billing)

Sure supports CICRA's proposal that the MTR should continue to be applied on a per second basis, effective from the first second.

5.6 (No discrimination by technology or origin)

Sure agrees that the MTR should apply on a technology neutral basis.

With regard to CICRA's proposal to apply the charge 'irrespective of the origin of the traffic', we would reiterate our understanding of this, which is as follows:

- MNOs are required to provide direct access to the regulated MTR for any OLO with whom they interconnect;
- If an OLO chooses to provide interconnect (in this case, transit) services to any other party, then this has no impact on the MTR that they pay to the MNO; and
- Importantly, there is no requirement for any MNO to provide direct access to the regulated MTR for any party that is not an OLO.

Again, should this not be in line with CICRA's expectations, we would request that it further clarifies to Sure the intended meaning prior to it completing its review of responses received in relation to this Draft Decision, as we may feel the need to reconsider our position in this regard.

[Redacted]

5.7 (Proposed timings)

Sure has no comment to make in relation to the proposed start and finish dates of the MTR glidepath.

In addition:

We wish to comment on one other aspect of CICRA's Draft Decision – its consideration, in paragraph 3.65, of potential changes to the incumbent operators' (Sure in Guernsey and JT in Jersey) price control framework. This mechanism is intended to provide regulatory certainty for incumbent operators that they can set their fixed network retail charges based on their commercial preferences, as long as the total value for the basket of services remains less than or equal to the annual regulatory price cap.

Very late in this MTR review process and with no prior warning, CICRA is now suggesting that it may look to intervene to specifically limit incumbent network operators' retail pricing of local fixed to mobile calls, as a result of the planned cost savings through the reduction in the MTR of each MNO. Sure would see such an intervention by CICRA as inconsistent with its previous regulatory position,

unless it were also prepared to take account of the significant increases in interconnect costs that incumbent operators have been faced with for a number of major international call destinations. We do not believe it appropriate for CICRA to cherry-pick where to apply changes within the basket of services; rather that any such proposals should be considered in the context of all relevant price fixed network control changes and subject to a separate regulatory consultation process.

Sure (Guernsey) Limited & Sure (Jersey) Limited

9th August 2019