



2018/9 REVIEW OF MOBILE TERMINATION RATES IN JERSEY

INITIAL NOTICE

Jersey Competition Regulatory Authority

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1. EXECUTIVE SUMMARY

- 1.1 The Jersey Competition Regulatory Authority (**Authority**)¹ is issuing this Initial Notice which sets out the revised price control applicable to Jersey MTRs so as to bring MTRs down to a level that, based on the available evidence, is likely to be a much closer approximation of Jersey MNO's LRIC costs and is more closely aligned with the prevailing level of MTRs in the UK and other European countries.
- 1.2 This Initial Notice sets out the decision of the Authority. In due course, the Authority may issue a Final Notice or a new Initial Notice if responses are received, following the process outlined in Article 11 of *Telecommunications (Jersey) Law 2002 (Law)*.

2. STRUCTURE OF THIS DOCUMENT

- 2.1 This document sets out the conclusions which the Authority has reached, having taken full account of the comments provided to CICRA 19/32 – Mobile Termination Rates – Draft Decision – Jersey - 4 July 2019.
- 2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Sets out the Statutory Notice of a Decision
Section 5	Sets out the next steps

3. LEGISLATIVE AND LICENSING BACKGROUND

Legal Background

- 3.1 In considering the regulation of MTRs, including the level at which it should be capped and whether to apply a glide path to reach a proposed final MTR, reference is made to the JCRA's statutory duties as identified below.
- 3.2 The statutory duties of the JCRA are defined in Article 7 of the Telecoms Law, and include '*a primary duty to perform his, her or its functions under this Law in such manner as each considers is best calculated to ensure that (so far as in his, her or its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising.*'
- 3.3 In addition to the primary duty, relevant duties of the JCRA include the following:
- It must act in such manner as it considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and perform them, wherever it considers it appropriate, by promoting competition among

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. However, for the purposes of this document, the Authority refers to the JCRA only as the Decision relates to Jersey only.

persons engaged in commercial activities connected with telecommunications in Jersey (Article 7(2)(a) Telecoms Law).

- It must perform its functions in such manner as it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey (Article 7(2)(b) Telecoms Law) so as to further the economic interests of Jersey (Article 7(2)(c) Telecoms Law).
- These actions should be best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with telecommunications in Jersey (Article 7(2)(d) Telecoms Law).

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

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

Regulatory Framework

Finding of SMP

3.5 In October 2017, following a review of the mobile market, the JCRA made a decision with respect to the existence of SMP in the markets for mobile call termination. That decision found that each mobile operator has SMP in the market for terminating calls on its own network.

3.6 MNOs, in their responses to the Call for Information, confirmed that they considered that the October 2017 decision of JCRA still stands.

Licence Conditions - JT

3.7 Condition 33.2 of the licence issued to JT provides that:

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

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

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

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

“The Licensee shall: ...

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

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

Licence Conditions – Other MNOs

3.11 As noted above, Airtel Vodafone, Sure and Marathon have also been found in October 2017 to be dominant (i.e. to possess SMP) in the provision of termination services on their networks. Part IV of their licences provide for the JCRA to impose further obligations in the event the JCRA determines the operator has SMP in a specific market. Those obligations include a Fair Competition condition (Condition 27), part of which is in the same terms as Condition 34.1 (c) of JT’s licence, set out immediately above. This condition allows the JCRA to give directions to Airtel Vodafone, Sure and Marathon, including in relation to the prices that it charges.

Approach to setting MTRs

3.12 The EC Recommendation² expects that termination rates are set based on the costs incurred by an efficient operators, and that this is based on bottom-up modelling using LRIC as the most appropriate costing methodology.

3.13 Mindful of its statutory duties, the JRCA adopts a proportionate approach to the analysis of MTRs, bearing in mind the comparatively small scale of the regulated markets and the resources it has available.

4. INITIAL NOTICE OF A DIRECTION

4.1 For the reasons set out in the draft decision entitled “2018/19 Review of Mobile Termination Rates in Jersey”, published on 4 July 2019; and in the final decision entitled “2018/19 Review of Mobile Termination Rates in Jersey”, published on 23 September 2019, the Jersey Competition Regulatory Authority (**Authority**) proposes to issue a direction (**Direction**) to each of the following licensees, in the form set out below:

- JT (Jersey) Limited (**JT**) pursuant to Condition 34.1(c) of its licence; and
- the other operators licensed to provide mobile telecommunications services in Jersey, listed in the schedule hereto, under Condition 27.1(c) of their respective licences.

4.2 Before exercising a regulatory function, the Authority is required to give ‘Initial Notice’. This Initial Notice gives notice that the Authority intends to make the following Direction.

4.3 The Authority intends to make the following Direction on or about 18 March 2020.

² Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

DIRECTION

1. This Direction shall, except where specified otherwise, apply from 1 June 2020; and shall remain in force until a further decision of the Authority.
2. For the purposes of these Directions:
 - a. **“call”** means a voice call which originates on a public electronic communications network (whether fixed or mobile) and which is terminated to a mobile number within a number range allocated to the Licensee, for which the Licensee is able to set the call termination charge;
 - b. **“call termination charge”** means either a fixed-to-mobile call termination charge or a mobile-to-mobile call termination charge;
 - c. **“fixed-to-mobile call”** means a Call originating on a fixed public electronic communications network;
 - d. **“fixed-to-mobile call termination charge”** means the charge made by the Licensee to terminate a fixed-to-mobile call;
 - e. **“Authority”** means the Jersey Competition Regulatory Authority;
 - f. **“Licensee”** means each of the licensees listed in the schedule hereto;
 - g. **“mobile number”** means a telephone number that is designated under the UK’s National Telephone Numbering Plan (NTNP) for use in connection with Mobile Services (as that term is defined in the NTNP);
 - h. **“mobile-to-mobile call”** means a Call originating on a mobile public electronic communications network of another mobile communications provider;
 - i. **“mobile-to-mobile call termination charge”** means the charge made by the Licensee to termination a mobile-to-mobile call;

- j. **“pence per minute”** means the sum in pence charged for a minute of a Call;
3. The Licensee shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the mobile call termination service.
 4. The Licensee shall ensure that for each Call received on any day after 31 May 2020 the call termination charge (which shall be expressed in pence per minute) does not exceed the following charge ceilings:
 - a. For the period from **1 June 2020 to 31 May 2021: 3.11 pence per minute;**
 - b. For the period from **1 June 2021 to 31 May 2022: 1.11 pence per minute;**
 - c. For the period commencing on **1 June 2022: 0.7 pence per minute.**
 5. Without prejudice to the Authority’s statutory information gathering powers, the Licensee shall provide to the Authority in writing any information reasonably required by the Authority for the Licensee to demonstrate compliance with this Direction at any time upon reasonable notice.
 6. Unless the Authority otherwise consents in writing, the Licensee shall publish its call termination charge.
 7. The Licensee shall publish each proposed amendment to the call termination charges not less than twenty eight days before the date that any such amendment comes into effect.
 8. Publication for the purposes of paragraphs 6 and 7 above shall be effected by –
 - a. Sending a copy of such information or any appropriate parts of it to any person who may reasonably request such a copy; and
 - b. Placing a readily accessible copy of such information on a relevant and publicly accessible website operated or controlled by the Licensee or on behalf of the Licensee.

SCHEDULE

The Direction is issued to the following licensees:

1. JT (Jersey) Limited
2. Sure (Jersey) Limited
3. Airtel Vodafone (Jersey) Limited
4. Marathon Telecom Limited

5. NEXT STEPS

5.1 This is Initial Notice of an intended Direction of the Authority. If representations from the licensee are received before 17 March 2020 regarding the proposed decision, the Authority will consider them and either decide not to issue this Direction, to issue a new Initial Notice, or to issue a Final Notice confirming the Direction. If no responses are received, the Direction will be made on or about 18 March 2020. At such time as any statutory final decision takes effect, it becomes binding on all parties.