# Office of Utility Regulation

# Mobile Termination Rates

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## Draft Decision Paper

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# 1. Introduction

In August 2006 the OUR published a consultation paper entitled "Mobile Termination Rates" ("MTRs") (OUR 06/14). MTRs are the fees charged to other telecommunications companies by mobile network operators to terminate calls on mobile networks. Mobile termination is a significant input into the provision of retail fixed-to-mobile and mobile-to-mobile services. Consequently it has implications for the cost of call charges for mobile services.

The purpose of the consultation paper was to consult interested parties on whether regulatory oversight is required and, if so, which method should be used to establish a set of reasonably efficient mobile voice call termination charges. The need to establish whether regulatory intervention is required should be seen against a background of regulators elsewhere either having already acted or recognising that regulatory action is required and the results of the OUR benchmarking which identified Guernsey MTRs as being among the highest of the 31 countries surveyed. It is important that these charges should not be excessive, so that the benefits of having a competitive retail market in mobile telecoms services are not reduced or cancelled out through uncompetitive rates in the wholesale termination market.

To-date, mainly because of network operators having monopolies of termination services on their own networks, regulators in other jurisdictions have considered in detail the level of charges for this service, and a number of regulators have adopted specific price controls for the service. The Director General ("DG") was of the view that, given the rates that currently exist in the Guernsey market as identified in OUR 06/14, consideration should be given to assessing the degree to which the rates are appropriate.

The consultation paper considered in the first instance whether there is any need for the DG to intervene in setting MTRs within the Bailiwick. Should it be decided that regulatory intervention is necessary, the paper went on to set out the options open to the DG in deciding how MTRs should be regulated. Opinions were sought on these options and the DG's proposed method for proceeding.

Responses were received from three parties, with each respondent setting out its views on each of the questions put forward in the consultation paper.

In this draft decision paper, the DG is proposing that regulatory intervention is required and that MTR rates should be regulated. The DG proposes that a benchmarking approach is taken, and that the Ofcom rates be used as the basis for such benchmarking. The DG also proposes that the MTR rates apply to voice termination calls only, on both 2G and 3G networks – this is consistent with Ofcom's approach. Finally, the DG is proposing an MTR of 6.75ppm fixed for three years which will allow all operators time to improve efficiencies over this period.

The DG would now welcome comments on the issues covered by this draft decision. In particular respondents views on the application of the proposed MTR rate to 2G and 3G networks and the period for which it proposed that this rate be set would be welcome. Interested parties are requested to provide comments on the draft decision by 12th January 2007.

*This document does not constitute legal, technical or commercial advice; the Director General 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 Director General to regulate the market generally.*

# 2. Structure of the Decision Paper

## *2.1. Structure of Decision Paper*

The rest of this paper is structured as follows:

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

Section 4: this section looks at respondents' views on whether or not MTRs should be regulated in Guernsey, and the DG's proposals;

Section 5: for ease of reference, this section is included as a brief summary of developments in other markets in regulating MTRs as set out in the consultation paper;

Section 6: considers the options available to the DG in setting MTRs and considers their pros and cons in the context of the Bailiwick, summarizes the views of respondents, and concludes with the DG's proposals for MTRs in the Bailiwick; and

Section 7: sets out the next steps to be taken following this draft decision.

## *2.2. Comments Received*

The invitation to comment on the proposals set out in Document OUR 06/14 was taken up by three parties:

- Wave Telecom;
- C&W Guernsey; and
- Guernsey Airtel.

The DG wishes to thank those who have responded to the consultation paper for their contributions. In accordance with the OUR's policy on consultation set out in Document OUR 05/28 – "*Regulation in Guernsey; Revised Consultation Procedures*", non-confidential responses to the consultation are available on the OUR's website (www.regutil.gg) and for inspection at the OUR's Office during normal working hours.

# 3. Legal Background & Regulatory Framework

## 3.1. Legal Background

Section 5(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (the "Telecoms Law"), provides that the DG may include in licences such conditions as he considers necessary to carry out his functions. The Telecoms Law specifically provides that such conditions can include (but are not limited to):

- conditions intended to prevent and control anti-competitive behaviour; and
- conditions regulating the prices, premiums and discounts that may be charged or (as the case may be) allowed by a licensee which has a dominant position in a relevant market.

Under section 10(2)(c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001, a licensee found to be dominant in a relevant market is obliged to provide interconnection and access on "terms, conditions and charges that are transparent and cost-oriented".

In addition, Section 10(4) of the Telecoms Law provides for the DG to require a licensee to justify the costs of and charges for providing interconnection or access and to show that those charges are derived from actual costs.

These provisions allow the DG to regulate MTRs, should there be a need for regulatory intervention.

## 3.2. Regulatory framework

In OUR 05/12, the DG set out proposed findings on market dominance in Guernsey following a review of the market. He proposed to find both C&WG and Wave dominant in the wholesale mobile telecommunications market on their respective networks.

Following this consultation and the acceptance of this proposed finding by both parties, the DG therefore adopted this conclusion in the final decision, OUR 05/19:

> *"The Director General finds C&W Guernsey Limited dominant in the retail mobile telecommunications market and both C&W Guernsey and Wave Telecom dominant in the wholesale mobile telecommunications market on their respective networks."*

In accordance with these provisions, C&WG's and Wave Telecom's Mobile Telecommunications Licences include the following condition:

> *"The Director General may determine the maximum level of charges the Licensee may apply for Licensed 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 Licensed Telecommunications Services or categories of Licensed Telecommunications Services or any combination of Licensed Telecommunications Service;*
>
> *b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
>
> *c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies."*

This condition therefore allows the DG to regulate the prices that a licensee charges for its telecommunications services in a way and for a time that he deems appropriate, provided the licensee has a dominant position in the relevant market.

An identical clause is included in Guernsey Airtel's recently issued licences. The methodology and logic employed in deeming Wave and C&WG to be dominant on their respective networks would be expected to deliver a similar conclusion for Guernsey Airtel's network, i.e. Guernsey Airtel once it commences the provision of mobile services, will be dominant in the wholesale mobile telecommunications market on their network. In advance of publishing any decision on the issue of Guernsey Airtel's dominance, the DG invites comments on the proposal that Guernsey Airtel should be deemed to be dominant (for the same reasons as apply to C&WG and Wave) on its network for the purposes of regulating MTRs.

The DG notes that Guernsey Airtel's response assumes that the MTR will apply to its tariffs, thereby implicitly assuming that the licence clause cited above will be put into effect.

# 4. The Case for Regulating MTRs in the Bailiwick

## 4.1. Is there a need for Intervention?

The consultation paper outlined the history of regulation of termination charging, with respect to the development of the mobile market. In the early days of mobile telephony, mobiles were regarded as a 'luxury'. In these circumstances network operators could set these unregulated charges high and both they and fixed-line operators could pass these costs on to callers, who accepted them as reasonable for the new services.

Since then mobile telephony has become a very standard element of daily life, with near total penetration rates in developed countries. However, while most countries have several network operators competing for customer subscriptions, this competition does not necessarily extend to termination rates. There are several reasons for this:

- firstly, termination charges are generally passed on to the calling party in the cost of their call (under the arrangement known as 'calling party pays' or "CPP") and so do not affect a subscriber being called and therefore do not have a direct effect on the subscriber's decision on which network to subscribe to;

- secondly, callers have no control over which network the person they are calling belongs to; and

- finally, while reciprocated high termination charges will affect the called party indirectly, if all mobile networks have similarly high termination rates then the net uncompetitive effect of these will be neutralised.[1]

Thus, it can be the case that, even in a mature market with significant levels of competition, there remains scope for the tacit maintenance of high mobile termination rates, sustained by the potential losses caused by unilateral deviation from these. While there is often the argument made that the excess returns generated from high termination charges are competed away through low (or even subsidised) prices on handsets and monthly line rental, and that any lowering in termination charges will have a corresponding upwards pressure on another part of the price structure (known as the 'water-bed effect'), such situations are at best opaque and it is generally not satisfactorily demonstrated that this is the most efficient way of structuring charges.

## 4.2. MTRs in the Bailiwick

[1] Other effects, such as handset subsidisation for subscribers through high termination rates for off-network callers, will also be attractive to network operators, although again these will cancel each other out when applied by all network operators, resulting in high termination rates all round.

The consultation paper set out the current MTRs for C&WG and Wave. These are shown in Table 1 below.

**Table 1: Mobile Termination Rates (ppm)**

| **Time of Day** | **Wave GSM** | **C&WG GSM** |
|---|---|---|
| Daytime | 12.60 | 12.60 |
| Evening | 9.84 | 9.84 |
| Weekend | 6.82 | 6.82 |

Source: Operators.

The table shows that the two operators' mobile termination rates are identical. Based on information received to date from the Bailiwick's mobile operators, the DG had concerns that these rates are not necessarily cost based. Operators were invited to provide updated information to show the extent to which the rates charged are indeed based on costs incurred.

As noted in section 3.2 both C&WG and Wave were found to be dominant in the wholesale mobile telecommunications market on their respective networks and the CPP arrangements in place would indicate that the potential for pricing above cost exists for both mobile operators. Furthermore, the mobile termination rates in the Bailiwick reveal a similarity in the amounts charged that does not necessarily suggest a high level of competitive forces operating in these markets.

The consultation paper included graphs showing the Peak and Off-Peak[2] MTRs for a number of jurisdictions including those within the IRG study described in section 5.2. For the Peak charges, C&WG and Wave had the third highest MTR of the 31 jurisdictions. For the Off-Peak charges, C&WG and Wave had the ninth highest MTR of the 31 jurisdictions.

Experience in other markets has demonstrated the need for regulators to intervene directly in the setting of MTRs. In particular, the DG has noted the views of the ERG in this regard as summarised in section 5.2 below.

In addition, it is clear that it has been seen as necessary to regulate MTRs in most European jurisdictions. It would seem reasonable to conclude that the possibility of excessive mobile termination rates is a widespread issue for regulatory authorities. Given this, and in light of the levels of rates prevalent in the Bailiwick in comparison with those in other European countries, the DG therefore proposes to intervene in a proportionate manner in the setting of MTRs by the two 2G mobile operators within the Bailiwick.

[2] For the two Bailiwick operators, Off-peak rates were calculated as a straight average of Evening and Weekend rates, with the Total figures calculated as an average of Peak and Off-peak rates.

In the consultation paper, the DG invited comments on a number of questions raised on these matters. The responses to each of these questions are summarized and followed by the DG's proposed position.

***Q1. Do respondents agree with the DG's proposal to intervene in a proportionate manner in the setting of MTRs for the two 2G mobile operators within the Bailiwick? If not, please state your reasons for disagreeing in as full and comprehensive manner as possible.***

***Responses:***

Two of the respondents agreed with the DG's proposal to intervene, while the third respondent strongly supported the intention that any intervention should be proportionate in manner.

One respondent was of the view that implementing cost-based MTR would benefit the market in two ways; incentives would be created for operators to improve efficiencies, while subscribers would benefit through more competitive pricing of mobile services.

One respondent also stated that requiring a separate analysis of cost for each network would be a break with conventional regulatory principles which requires that a single efficient cost standard is used to create reciprocal rates. Any move away from these principles could create an asymmetry in the market tilting the playing field unfairly towards operators with higher costs. The respondent was of the view that any move to asymmetric rates would have a damaging market impact.

**DG's Position:**

Based on the DG's assessment of the market, and in light of the response to the consultation, the DG will intervene in the market, in a proportionate manner, and set market MTR rates. He also believes it appropriate to apply the same MTR rates to all market operators.

***Q.2 Do respondents agree that the regulation of the 3G mobile termination rates should be considered at the same time as any decision to regulate 2G mobile termination rates?***

***Responses:***

One respondent was of the view that 3G MTRs should be regulated in the same way as 2G and that there should be no distinction between the rates. The main points made by this respondent included:

- The argument for dominance for MTR applies to 3G in an identical manner to 2G.

- International practice regards operators as dominant for termination of voice calls on their networks.
- Calling parties have no way of knowing if they are calling a 2G or a 3G mobile service, and the current 3G operator has a single termination charge.
- Ofcom have recently proposed that controls should apply to voice call termination without distinction between 2G and 3G.
- Any distinction by OUR of termination rates for 2G and 3G services would be legally flawed, given that no previous distinction has been made and dominance findings.

Another respondent stated that the regulation of 3G mobile termination rates should be considered at the same time as any decision to regulate 2G mobile termination rates.

A third respondent had a different view, arguing that market forces should dictate 3G rates. The OUR should fix MTR for 2G, and 3G operators should be allowed to mutually agree cost-oriented 3G services using the methodology and process adopted by OUR for the 2G MTRs.

The DG has assumed that this third respondent is in favour of having different 3G MTRs (compared to 2G MTRs) for all 3G services, including voice call termination.

***Q.3 What additional factors with respect to the 3G market should be considered by the DG in considering any regulation of mobile termination rates in the 3G market given market developments elsewhere?***

***Responses:***

One respondent believed that the market should be designated by service type, rather than by network type, i.e. 2G or 3G. This respondent proposed that MTRs should be regulated for voice calls only, at this stage. They also stated that non-voice 3G services only make up a small volume of total traffic, and that each of these services uses different network elements, meaning the cost base is likely to change.

This respondent agreed with the view of another respondent, that network operators should be allowed to mutually agree on the non-voice wholesale prices they wish to charge. This other respondent however stated that this agreement should be a cost-oriented MTR for 3G services using the methodology and process adopted by the OUR for the 2G MTRs.

A third respondent, in addition to the points made to question two (see bullet points above), noted that where robust costing exercises have been carried out (i.e. by Ofcom), 3G-only network termination rates are slightly below 2G rates, incentivizing operators to migrate to lower cost 3G technology. They also added that for operators with 2G and 3G networks, certain assets will be shared between the networks thereby reducing costs for that operator.

**DG's Position on Questions 2 and 3:**

The DG is of the view that the same MTRs should apply equally to voice call termination on both 2G and 3G networks. This is consistent with the approach taken by Ofcom.

The DG also agrees with the respondent who pointed out that the caller, who is ultimately the paying party, is unaware of whether the call will be terminated on a 2G or a 3G network. A differential MTR would most likely be reflected in the retail tariff to the caller, which is a position that the DG would not support from a consumer interest perspective.

The DG does not consider that intervention is required for non-voice offered on 2G or 3G networks. Since mobile operators face competitive pressures to increase take-up of these services, and since these services are relatively new to the market, represent a low proportion of overall traffic and are still developing, the DG does not consider it appropriate to intervene in the pricing of such services at this time.

In conclusion, the MTRs included in this draft decision paper will apply to voice calls terminated on both 2G and 3G networks, and the same rate will apply regardless of the network type the call is terminated on.

**Proposed Decision**

**The DG proposes to set MTR rates for voice calls terminated on both 2G and 3G networks, and the same rate will apply regardless of the network type the call is terminated on.**

# 5. Mobile Termination in Other Jurisdictions

The DG has considered carefully the approach to be followed in assessing and determining appropriate rates.

The consultation paper set out the way in which MTRs have been determined in other jurisdictions. While the DG is aware that significant work has been undertaken by regulators in a wide range of countries, the focus of the consultation document was on regulatory measures in countries with regulatory regimes more closely aligned with Guernsey. Therefore, the consultation paper focussed on:

- the current regulatory approach adopted by Ofcom in the UK;
- the approach of the European Commission and NRAs in European countries; and
- the approach taken to the regulation of MTRs in Jersey.

The main points of the consultation paper are summarized below; the consultation paper should be referred to for full details.

## 5.1. The UK Approach

Ofcom's current position on market definitions and SMP can be summarised as follows:

- There are separate markets for mobile voice call termination on the networks of each of the UK MNOs (i.e. Vodafone, O2, T-Mobile, Orange and Hutchison 3G UK); and

- The evidence suggests that each of these mobile operators has significant market power on its own network.

Ofcom's current estimates of cost based mobile termination rates for 900MHz and 1800MHz mobile network operators are 5.63 ppm and 6.31ppm respectively.

## 5.2. European MTRs

The European Regulators' Group[3], in its document "*ERG Common Position on the approach to appropriate remedies in the new regulatory framework*" states:

> *Market power on individual termination markets is likely to result in excessive pricing of the termination service which will lead in turn to*

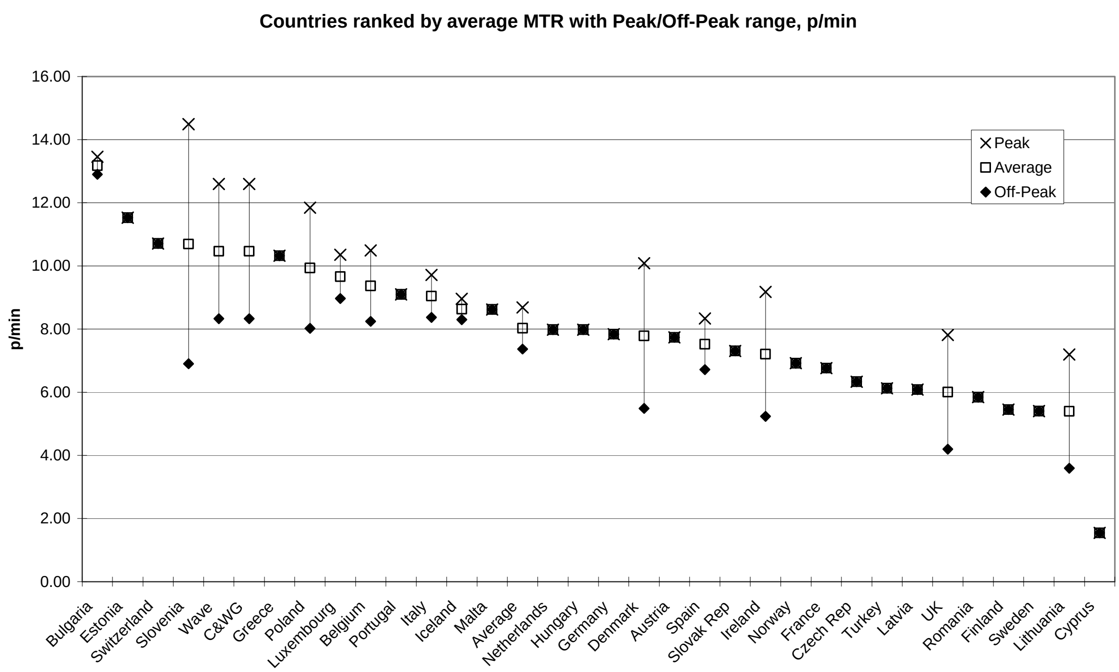
[3] The European Regulators Group for electronic communications networks and services was set up by the European Commission (by Commission Decision 2002/627/EC, adopted on 29 July 2002)

*allocative inefficiencies and a distorted pricing structure. This holds even true if the profits made are competed away on the retail market.*

Thus, the view that individual network operators' dominance in providing termination services on their respective networks can lead to excessive pricing is widely held amongst European NRAs.

In January 2006, the IRG[4] published a comparison of actual 2G MTRs in 31 European countries as of January 2006[5]. These were aggregated to national levels according to market share per operator (and a few basic assumptions where time of day data was unavailable). The rates and their relative rankings are shown in the chart in Figure 1 below. The consultation paper contained further details of the data used and an overview of the position on regulation of MTRs in selected EU Member States.

**Figure 1 IRG MTR Comparisons with Bailiwick Operators**




[4] The Independent Regulators Group (IRG) was established in 1997 as a group of European National Telecommunications Regulatory Authorities (NRAs) to share experiences and points of views among its members on issues of common interest.

[5] For details, see http://irgis.anacom.pt/admin/attachs/456.pdf.

## 5.3. Jersey's Approach

In a consultants' report for the Jersey Competition Regulatory Authority ("JCRA") in February 2004[6], Coleago used data from the incumbent mobile operator's management accounts to develop cost figures for the company's mobile termination services on its 2G network. The paper made the following conclusions:

> *"On a FAHC basis the cost of termination for JT* [Jersey Telecom] *and for the UK operators as a group are to be broadly in line, once definitional differences have been taken into account. Given the potential underestimation of true economic costs and exclusion of customer acquisition costs from the estimates based upon JT's management accounts, we believe the UK benchmarks provide the most appropriate basis for price control.*
>
> *The most practical way to implement a control based on the UK benchmark would be simply to apply the UK price control to JT. There are effectively two price controls in the UK, for GSM 900/1800 operators and for GSM 1800 operators. We would suggest applying a simple average of the two controls."*

The paper concluded, following an examination of the fully-allocated historic costs of the Jersey incumbent mobile operator, Jersey Telecom ("JT"), that the company's mobile termination costs bear sufficient resemblance to those of the UK mobile operators, and proposed the use of these latter figures as the basis for its termination rates determination. The actual rate proposed was a simple average of the two UK figures for GSM 900/1800MHz and 1800MHz operators, mentioned in the section on Ofcom's regulation above.

[6] http://www.jcra.je/pdf/040318%20Coleago%20JT%20Price%20Control%20Final%20Report%20cc%20v1.2%20MDU.pdf

# 6. Options for Setting MTRs in Guernsey

The consultation paper outlined the regulatory initiatives that have occurred or are planned in other jurisdictions, and outlined the information currently publicly available with respect to MTRs and the various approaches that have been followed by regulators in other countries.

The question arises as to the most appropriate means of determining rates for Guernsey mobile operators that are cost reflective.

In the DG's view there are three main options open to the DG in determining what should be the appropriate levels for mobile termination in Guernsey namely:

- determination by cost modelling, where network operators will be asked to supply detailed information to justify the levels they charge for termination on their networks;

- benchmarking, where levels set by regulators in other jurisdictions (often through cost-modelling exercises) are examined and an appropriately-judged level for the jurisdiction in question is developed from these; and

- Operators could take voluntary measures and propose binding commitments on mobile termination rates. These would be acceptable to the DG if they can be demonstrated to follow accepted principles of cost-based pricing and efficiently-incurred costs.

In the consultation paper, the DG invited comments on the options available. The responses to the questions are summarized and followed by the DG's proposed position.

***Q4. Do respondents agree with the DG that there are three main ways for setting the MTRs for the two existing 2G operators within the Bailiwick? If not, please state your reasons for your position in as full and comprehensive manner as possible.***

***Responses:***

All three respondents agreed that there are three main ways for setting the MTRs, as set out in the consultation paper.

**DG's position:**

The DG has noted the agreement of the respondents.

## *6.1. Appropriateness for the Guernsey Market*

The options requiring regulatory intervention (i.e. cost modelling and benchmarking) have features and aspects that make them more or less suitable for use in the case of establishing reasonable MTRs for Guernsey. In the consultation paper the DG put forward the advantages and disadvantages of each approach, and considered the appropriateness of the approaches for the Guernsey market. Interested parties may wish to consult that paper for a more details on the DG's views.

In light of the possible approaches available to the DG, he was minded, in the event that regulatory intervention would be required, to adopt a benchmarking method for setting MTRs in Guernsey.

In the consultation paper, the DG invited comments on a number of questions raised on these matters. The responses to each of these questions are summarized and followed by the DG's proposed position.

***Q5. Do respondents agree that in principle benchmarking is the appropriate and proportionate approach to setting MTRs for mobile operators in the Bailiwick? If not, please state your preferred approach and the reasons for this view.***

***Responses:***

All three respondents agreed that benchmarking is the most appropriate and proportionate approach to setting MTRs for mobile operators in the Bailiwick.

One respondent added that full cost modelling would impose an unjustifiable burden on operators and the OUR, and that this would also apply to voluntary measures as they would need to be based on principles of cost-based pricing. This respondent added that great care must be taken in the selection of suitable benchmarks - if the benchmark rates were set too low, then investment in the mobile industry would be severely jeopardised, whereas if they were set too high, then operators would be over compensated and the MTR not efficiently set. They noted Ofcom's view that there is an asymmetry of risk in setting charges that are ultimately below an operator's actual outturn costs.

**DG's position:**

The DG notes the agreement that benchmarking is the appropriate and proportionate approach to setting MTRs for mobile operators in the Bailiwick, and therefore intends to follow a benchmarking approach.

**Proposed Decision**

**The DG proposes to use benchmarking as the mechanism for determining MTRs to be applied by mobile operators in the Bailiwick.**

### 6.2. Benchmarking – Using the Appropriate Data Set

The OUR identified three main data sets for using as benchmarks in setting MTRs for the Bailiwick's mobile operators (subject to any views on the issue raised in section 3.2 above). These were:

- European IRG study rates;
- UK Ofcom-set rates;
- Jersey rates.

**Details on each of these benchmarks were outlined in the consultation paper.**

Using the average figures from the IRG study, the MTR ppm rates for mobile operators on Guernsey would be:

**Table 2: Mobile Termination Rates with IRG average (ppm)**

| | Rates using IRG Benchmark Data [7] | Current C&WG | Current Wave |
|---|---|---|---|
| Daytime | 8.4360 | 12.60 | 12.60 |
| Evening | 7.3078 | 9.84 | 9.84 |
| Weekend | 7.3078 | 6.82 | 6.82 |

**Ofcom-set rates**

The Ofcom charge control is on the average of all of an operator's MTR charges for terminating voice calls on their 2G networks (i.e. daytime, evening and weekend charges), weighted by the relative call volumes (in minutes) on their network in the previous year. The charge controls required that, during each period of the control, the Average Interconnection Charge ("AIC") set by the each operator should not exceed the Target Average Charge ("TAC") set by the regulator. Operators can set different termination charges for different times of the day or week, providing the weighted average (AIC) of these falls below TAC.

The TACs set by Ofcom were 5.63ppm for 900/1800MHz operators and 6.31ppm for 1800MHz operators (in 2005/06 terms), according to the long-run incremental cost of the provision of mobile termination on each of the UK's mobile networks. Given that the 2G operators in Guernsey use 900 and 1800MHz spectrum it would be proposed that the TAC for Guernsey mobile operators should be the higher of the two rates, i.e. **6.31ppm**.

[7] Since the IRG study only involved peak and off-peak rates, the evening and weekend rates for Bailiwick operators would require further disaggregation under this option, according to a methodology approved by the DG.

Using the Ofcom rates, ppm MTRs on the Bailiwick would be set at the following:

**Table 3: 2G Mobile Termination Rates with the Ofcom rate (ppm)**

| | New Rates; Target Average Charge | Current C&WG | Current Wave |
|---|---|---|---|
| Daytime | **TAC: 6.31** | 12.60 | 12.60 |
| Evening | | 9.84 | 9.84 |
| Weekend | | 6.82 | 6.82 |

Thus, under this scheme, mobile operators should ensure that the average MTR charge on their network (weighted according to the prior year's call traffic) is equal to or lower than 6.31ppm.

**Jersey**

As mentioned above, the JCRA commissioned an investigation into the mobile termination prices of its incumbent mobile operator, JT. The investigation concluded that the UK's estimation of mobile termination rates (having, as they did, more accurate costing, as well as explicit inclusion of benefits such as network externalities) would be better figures to use than either figures from JT's own management accounts or those of the European IRG study.

In the consultation paper, the DG invited comments on the use of an appropriate data set. The responses to each of these questions are summarized below and followed in each case by the DG's proposed position.

***Q6. Do respondents believe that using the European IRG Study rates as the basis for setting MTRs in the Bailiwick is appropriate? If not, please state your reasons for your position.***

***Responses:***

All three respondents believed that the MTRs in the IRG study were not appropriate benchmarks for setting MTRs in the Bailiwick. They respondents cited differences in terms of geography, size, and level of market development, and therefore all respondents felt that the Ofcom rates would be amore appropriate basis.

**DG's position:**

The DG agrees with the respondents and therefore does not propose to use the European IRG rates as a benchmark.

***Q7. Do respondents believe that using the MTR rates set (and indexed for future years) by Ofcom would provide a good benchmark for use in setting limits for MTR rates in Guernsey?***

***Responses:***

All three respondents agreed that the MTRs rates set (and indexed for future years) by Ofcom were the most appropriate benchmark.

One respondent stated that other benchmarking principles should be borne in mind, including flexing benchmark data for scale, customer and market requirements and economies of supply and distribution. They noted that the U.K. mobile market is approximately one thousand times the size of that of Guernsey, but acknowledged that quantifying differences due to scale is a very difficult task. An uplift percentage was suggested to reflect the scale differences.

This respondent also provided a figure for MTR costs based on its own recent calculations, on a current cost accounting basis, which was not dissimilar to the proposed Ofcom benchmarked data. The respondent suggested that an additional allowance for network externality costs be added to the benchmarked figure, since the respondent's network externality cost per call per minute is likely to be higher than that of U.K. operators.

**DG's position:**

The DG will use the MTR rates set by Ofcom as the basis for setting limits for MTR rates in Guernsey. The DG notes the argument regarding an allowance for higher network externality costs.

**Proposed Decision**

| |
|---|
| **The DG proposes to use the MTR rates set by Ofcom as the basis for setting limits for MTR rates in Guernsey** |

***Q8. Do respondents believe that using the mobile termination rates set (and indexed for future years) by Ofcom would provide a better benchmark for use in setting limits for MTR rates in Guernsey than those that would be produced by an examination of the management accounts of the mobile operators in the Bailiwick?***

***Responses:***

One respondent was of the opinion that cost modelling is the ideal option for setting MTR, as it produces accurate results based on audited management accounts of operators. The respondent felt however, that in view of the concerns regarding costs involved in such an exercise, that the next best alternative is to adopt benchmarks from comparable markets.

Another respondent also reflected the view that an examination of accounts would require considerable time, and that a benchmarking exercise based on Ofcom MTR rates would be best use of operators' and OUR's time. They were of the view that this approach should come out with a similar figure to an examination of the management accounts.

A third respondent agreed with the limitations of an approach based on management accounting information, as highlighted by the consultation document. The respondent believed it to be a simplistic and unsatisfactory approach, and took the abandonment of this approach in Jersey as evidence of its inadequacy. As a result, the respondent agreed that benchmarking using Ofcom MTRs would be more likely to provide more accurate outputs (notwithstanding their previous comments on benchmarking).

***Q9. Do you agree with the approach and rates proposed by the DG in this section? If not, respondents are invited to set out fully the arguments against such an approach and what alternative approach you believe is appropriate.***

All respondents agreed with the approach used, i.e. the use of Ofcom MTR rates as the basis for setting MTRs in the Bailiwick.

One respondent agreed with the rates proposed of 6.31, while another agreed with the approach and therefore the DG has assumed agreement with the proposed rate of 6.31.

The third respondent supported the use of the Ofcom average termination rate, but with a suitable allowance in recognition of the points made in response to question seven (i.e. allowances for network scale and network externality costs). The respondent was unclear as to how the inflation adjustment would be applied.

**DG Position:**

The DG notes the consensus on using Ofcom MTR rates as the basis for setting MTRs for the Bailiwick and he proposes to adopt this approach for the Bailiwick's market.

## 6.3. Proposed MTRs for Bailiwick Operators

Given the arguments for and against each of the benchmarking options, and the views expressed by the respondents, the DG sees it as appropriate to adopt the mobile termination rates recommended by Ofcom as a basis for setting MTR rates for the Bailiwick. This is for a number of reasons:

- Firstly, the rates proposed by Ofcom have been calculated using widely-accepted techniques. Model-based estimation of the long-run incremental cost of providing mobile termination is a rigorous and reliable way of establishing a figure as close to the actual cost as is possible.

- Secondly, the Ofcom rates were calculated for operators in a country with a similar mobile network technology to that of the Bailiwick. In addition, living standards are very similar in the two jurisdictions and so mobile penetration and service consumption will also be comparable.

- Thirdly, imposing the same limit on termination rates will import to Guernsey the levels of efficiency currently maintained in the UK mobile markets through, amongst other things, wholesale price regulation.

- Fourthly, adopting rates already carefully established by the UK regulator offers a far lighter-touch method of regulating the mobile termination markets in Guernsey than going into large amounts of detail with each mobile network operator to establish rates.

The DG has also noted the comments of the respondents regarding additional allowance for network externality costs to be added to the benchmarked figure, since the respondent's network externality cost per call per minute is likely to be higher than that of U.K. operators.

The DG also noted the comments of one respondent who stated that conventional regulatory principles require that a single efficient cost standard is used to create reciprocal rates.

The DG agrees that a single efficient cost standard be used and equally applied to all operators. The DG therefore proposes a starting level of 6.75ppm, above the 6.31ppm initially proposed, in order to ensure that initial MTRs are unlikely to be below any operators cost (including an additional network externality costs). However, in order that an efficient cost standard is used, the DG proposes that the rate does not change with inflation. This reflects the fact that two operators were of the view that 6.31ppm was an acceptable rate, which the DG assumes would not be acceptable to these operators if they felt that such a rate would be below cost. A rate of 6.31ppm can be therefore be assumed to be closer to a single efficient rate. A fixed rate of 6.75ppm over three years will allow all operators time to improve efficiencies in line with this rate over the three year period. A rate of 6.31ppm inflated over two years would be close to the 6.75ppm rate, giving operators three years to improve efficiencies if required.

The DG also proposes to use the Target Average Charge approach as used by Ofcom.

**Table 4: Proposed Mobile Termination Rates (ppm)**

| | **New Rates; Target Average Charge** | **Current C&WG** | **Current Wave** |
|---|---|---|---|
| Daytime | **TAC: 6.75** | 12.60 | 12.60 |
| Evening | | 9.84 | 9.84 |
| Weekend | | 6.82 | 6.82 |

It is proposed that this price cap be imposed for a period of three years from the start date, with no adjustments after the first and second years for inflation.

The DG proposes to review wholesale mobile termination rates at the end of this period, and will also consider whether other mobile services (beyond voice) require regulatory intervention at that time. The DG will be guided by developments in the market in this regard.

**Proposed Decision**

**The DG proposes to set Target Average Charge for MTRs for mobile operators in the Bailiwick of 6.75ppm. This rate will be fixed for three years.**

## 7. Next Steps

As already noted, regulators in most jurisdictions have or are in the process of considering the appropriateness of the rates charged by mobile operators for this service. Significant reductions in rates have been or are planned in a number of countries and the DG is of the view that, in light of the analysis in the consultation paper and the responses received, regulatory intervention is required.

Subject to any comments that interested parties may wish to make on these proposals, the DG intends to confirm this proposal in February 2006 for the introduction of MTRs for mobile operators in the Bailiwick.

Any comments on the proposed decisions set out in the paper should be sent to the OUR by 5pm on Friday 12th January 2007.

Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential.  However, the DG regrets that he is not in a position to respond individually to the responses to this draft decision.

Following consideration of those responses the DG will publish details of his final decision on these issues.

**ENDS**