

CABLE AND WIRELESS GUERNSEY RESPONSE TO OUR 06/14  
MOBILE TERMINATION RATES

*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.*

C&W Guernsey supports the view that the DG has the power under both the Telecommunications (Bailiwick of Guernsey) Law 2001 and the licence conditions of mobile operators that have been found to be dominant in mobile termination services.

In the event that the OUR does choose to adopt a method under which each operator had to justify its own rates, then this would mean that each operator would effectively have to undertake a process akin to the delivery of separated accounts in order to provide cost justified rates. C&W Guernsey does not consider that this would be a proportionate manner in which to regulate.

Also, 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. As we will explain in this response, C&W is extremely concerned about the damaging market impact which any move to asymmetric rates will have and urges the OUR to reassure the market immediately by stating that mobile termination rates in Guernsey will be symmetrical between operators.


We note and strongly support the stated intention that any intervention should be proportionate in manner.

*Q2. 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?*

It is essential that 3G MTRs be regulated in the same way as 2G. C&W Guernsey is of the strong opinion that not only should 3G mobile termination rates be considered at the same time as any decision to regulate 2G mobile termination rates, but further that there should be no distinction between the rates.

On the first point, the argument for mobile operators being dominant in mobile termination on their own mobile network stands for 3G in exactly the same way as 2G. Indeed, C&W Guernsey understands that the OUR has made no market distinction between the 2G and 3G markets in its previous consultation paper and hence, C&W Guernsey can see no reason why there should be a distinction. In the United Kingdom, Ofcom have determined that each of the five Mobile Network Operators is, in effect, a monopolist in the supply of termination to its own networks and therefore has

significant market power in the market for termination of voice calls on its network(s), both in 2G and 3G, and hence must be regulated. In Europe, all NRAs (to C&W Guernsey's knowledge Hungary is the only exception) have regulated both 2G and 3G voice termination rates in accordance with Commission Recommendation of 11/02/2003 and in accordance with Directive 2002/21/EC. Given that the OUR have made such extensive reference to U.K. and European precedent throughout the consultation C&W Guernsey cannot see how it would be tenable for the OUR to go against all international best practice and exclude 3G MTRs from ex-ante regulation. The distortion to the market and the detriments that may arise from the exercise of SMP in *either* 2G or 3G termination are well documented, some of which have even been highlighted by the OUR.



On the second point, a calling party has no way of knowing whether they are calling a customer of a 2G or 3G mobile service. This is exactly the same as the point made by the OUR in section 4.1 in relation to the fact that the calling party does not know what network provides the service used by the receiving party. This particularly applies to voice calls where different mobile termination rates depending on 2G or 3G would imply different retail tariffs for calls to those services. It can be argued that mobile retail tariffs are already confusing, making it difficult for customers to recognise the best value services. To introduce the added complexity of different rates depending on whether the called party is a 2G or 3G customer would not be in the interest of the customer. Wave Telecom offers both 2G and 3G services but currently has a single mobile termination rate. This is in line with a technology neutral approach. If this has been acceptable to the OUR and the market to date then C&W Guernsey sees no reason or justification why the situation should change.

Further, international precedent supports the position of regulating a common rate across 2G and 3G network operators i.e. Wave. Ofcom, to whom the OUR make significant reference throughout the consultation, have recently proposed that 'charge controls should be imposed on all Mobile Network Operators and that the controls should apply without distinction to voice call termination whether on 2G or 3G networks'<sup>1</sup>.

C&W Guernsey considers that any decision of the OUR to distinguish between mobile termination rates for 2G and 3G would be fundamentally and legally flawed given that the OUR has previously made no such distinction between 2G and 3G in its market analysis and dominance findings. It would therefore be ultra vires, inconsistent and illogical for the OUR to adopt an approach in relation to mobile termination rates that sought to distinguish between 2G and 3G when there had been no such distinction made by the OUR previously. In the event that such a distinction was drawn, then the OUR would be required to impose SMP conditions on Wave Telecom as it is currently

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<sup>1</sup> Ofcom, Mobile Call Termination. Proposals for Consultation, 13 September 2006.

the only 3G operator in the market and hence all relevant licence conditions (including notification of prices etc) would have to apply.

*Q3. 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?*

Given the views expressed above, C&W Guernsey have few comments in response to this question. However several examples in other international markets warrant a mention here:

- In jurisdictions where robust costing exercises have been carried out i.e. by Ofcom, in the absence of 3G spectrum costs (as per the Guernsey market) 3G-only network operator termination rates are slightly below those of a 2G-only network operator. Hence, operators worldwide are incentivized to migrate to lower cost 3G technology so that they may provide innovative and lower cost services for consumers.
- From a costing perspective different dimensioning rules exist for 2G and 3G network operators. i.e. for an operator with both 2G and 3G networks certain assets and costs (e.g. radio sites) will be shared between the 2G and 3G networks, thus reducing cost for that operator.

Each of these points should be borne in mind by the OUR, particularly if rates will be set on a benchmarked basis in the Guernsey market where some operators are employing combinations of 2G and 3G.

*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.*

C&W Guernsey supports the view of the DG that there are three main ways of setting MTRs. In summary these could be:

- Determination by cost modelling
- Benchmarking
- Operators commit to voluntary measures and binding commitments based on cost-based pricing and efficiently incurred costs

*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.*

C&W Guernsey agrees that a benchmarking approach best fits the specific requirement of the DG to regulate MTRs in a manner that is proportionate to the Bailiwick at this time.

Full cost-modelling by each mobile operator would, in our opinion, impose an unjustifiable burden on the operators and the OUR, both in terms of the time taken by staff to carry out the work (or in the case of the OUR, the review of the output), and also cost. The same would be the case if the voluntary measures and binding commitment approach were to be followed. The OUR has stated that such rates would need to be set by following the accepted principles of cost-based pricing and efficiently incurred costs. It could be argued that full cost-modelling by all operators would also be required to satisfy those principles.

However, great care must be taken in the selection of suitable benchmarks for the Bailiwick. If the benchmarks used are at a rate significantly below the costs incurred by Guernsey operators then investment in the mobile industry will be severely jeopardised, with a longer-term impact on consumer service. Alternatively if the benchmarks used are significantly above the costs incurred then operators will be over compensated, and even in the event of a material waterbed effect, the MTR will not be efficiently set or reflect efficiently incurred cost. Notably Ofcom take the view that there is an asymmetry of risk in setting charges that ultimately are below a mobile operator's actual outturn costs. Charge controls that, in practice, fail to enable recovery of efficient costs may have an adverse impact on investment in mobile services, which ultimately will be detrimental to consumers generally.

*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.*

It is clear from the table provided by the OUR in Appendix 3 of the Consultation Paper that various approaches to set MTRs have been taken by the NRAs in the selected EU member states. It is also clear that these mobile markets are at very different stages of development.



*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?*

C&W Guernsey broadly agrees that, for the purposes of MTRs, Ofcom calculated rates are the most applicable benchmark to set against the Guernsey mobile market. The OUR correctly identifies in the consultation that any benchmarking exercise should

involve an assessment of the quality of the data used. Therefore the use of Ofcom rates does have the benefit of using extremely robust cost modelling, from a country with similar network technology, comparable levels of mobile penetration and cost of labour / living.

However there are other common benchmarking principles that must be borne in mind before directly benchmarking one set of market rates against another. These include 'flexing' benchmark data for:

- scale (network and market)
- customer and market requirements
- economies of supply and distribution

These have not been acknowledged, or adjusted for, in the consultation. At the very highest level it must be noted that the U.K. mobile market is approximately *one thousand times* the size of that of Guernsey. Scale not only increases the ability to recover fixed costs, but also impacts incremental levels cost in a cost modelling exercise i.e. backhaul and transmission configurations. Unfortunately quantifying differences due to scale on calculated MTRs in a LRIC modelling context, is a notoriously difficult task without itself requiring extensive modelling.

C&W Guernsey have noted that Ofcom recently published another MTR consultation paper, where MTRs have been recalculated. While C&W Guernsey is prepared to move forward on a benchmarking basis in this instance, as per the consultation, on the proviso that both 2G and 3G MTRs are included, C&W Guernsey would seek some comfort from the OUR that they don't just keep reducing rates on arbitrary decisions and outcomes in other markets,

During this consultation period C&WG has had the benefit of being able to recalculate its MTR, using data from its 2005/6 model. The Target Average Charge (TAG) proposed by the OUR, using Ofcom benchmarked data, is 6.31ppm. C&WG's own calculation, on a current cost accounting basis, provides an MTR of ppm. However, the Ofcom rate includes an allowance for network externality costs. If the same allowance was given to C&WG our rate would be ppm. if the OUR accepts Ofcom's principle of a network externality charge, we would expect that we be allowed to recover a similar amount, on the basis that:

- C&WG's network externality cost per call minute is likely to be significantly higher than that of UK operators

Whilst C&W is prepared to accept the principle of benchmarking for future MTR rates, [REDACTED]

In summary, C&W accepts the OUR's view regarding Ofcom's MTR benchmarking, but requests that the OUR considers acknowledgement of an additional allowance, providing a minimum mobile termination rate of at least [REDACTED] ppm in Year 1.

*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?*

The limitations of attempting to calculate MTRs through the manipulation of management accounting information have largely been highlighted in the consultation by the OUR. This is a simplistic and unsatisfactory approach, and one that cannot calculate economic cost or one where cost can be allocated with any degree of accuracy. The fact that this approach was abandoned in the Jersey context in favour of benchmarking is evidence of its inadequacy.

Notwithstanding the concerns raised above in questions 5 and 7 regarding the need to flex benchmark data, C&W Guernsey agrees that benchmarking robust data and analysis, i.e. Ofcom MTRs, is likely to provide more accurate outputs.

*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.*

We note that the OUR proposes to review 2G wholesale MTR at the end of the three years and will consider the need to regulate 3G MTR at that time. It is our strong view, as is stated in response to question 2, that there should be no distinction between 2G and 3G MTR, hence it is the single average MTR that should be reviewed in three years time. [REDACTED]

As stated above, C&W Guernsey generally supports the view that the Ofcom average mobile termination rate should be used as a base, but with a suitable allowance to acknowledge the points that we have raised in response to question 7. To reiterate, we believe that a TAC rate of at least [REDACTED] should be allowed in Year 1.

The OUR proposes that the price cap should be imposed for 3 years, with adjustments after the first and second years for inflation. It is unclear from the Consultation Paper how the adjustment for inflation will be applied. [REDACTED]

[REDACTED]