Mobile Termination Rates and Fixed Interconnection Rates in Jersey and Guernsey

____

Consultation Document

Document No: CICRA 14/32 **20 June 2014**

Guernsey Competition & Regulatory Authority
Suites B1 & B2, Hirzel Court,
St Peter Port, Guernsey, GY1 2NH
Tel: +44 (0)1481 711120
Web: www.cicra.gg

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier, Jersey, JE2 3RF
Tel: +44 (0)1534 514990
Web: www.cicra.je

Contents

1. Introduction

Telecoms operators, both fixed and mobile, pay other network operators for the use of their networks. Mobile network owners charge a Mobile Termination Rate (MTR) to operators for termination of calls on their network. Fixed network operators the network owners charge a Fixed Interconnection Rate (FIR) which includes origination, termination and transit charges.

The charges for both MTRs and FIRs are the same in Jersey and Guernsey and are a key component of the retail charge that customers ultimately pay for calls. To ensure that customers receive value for money it is therefore important that the rates set between operators are set at an appropriate level.

CICRA sets the price for both MTR's and FIRs. In Jersey the existing price controls for MTRs and FIRs expire at the end of September 2014[1]. In Guernsey, the current rates were set for MTRs and FIRs in 2009 and 2010 respectively[2]; given the length of time that has passed since rates were last assessed there is a question as to whether these rates reflect a fair price.

Each mobile operator has significant market power (SMP) in the market for terminating calls on its own network - each controls 100% of the share of supply.

The incumbent telecoms operators in Jersey, JT (Jersey) Limited, and Guernsey, Sure (Guernsey) Limited have been found to have SMP in the markets for originating and terminating calls on their networks.

Having SMP means that the operators in question have control over the market to the detriment of consumers, for example by restricting supply or increasing price. In this case our concern is around pricing rather than supply. Regulatory oversight of MTRs and FIRs is required to ensure that the rates set between operators are set at an appropriate level.

We are therefore consulting on the appropriate regulatory approach for setting MTRs and FIRs. Your views are sought on whether a detailed cost model exercise should be carried out to ensure charges are set at fair levels, or whether a benchmarking exercise is a more proportionate approach to take.

---

[1] See CICRA website www.cicra.je for documents CICRA 13/37 and CICRA 13/36 respectively.
[2] See CICRA website www.cicra.je for documents CICRA 09/07A and CICRA 10/09.

2. Structure of Consultation

This document is structured as follows:

Chapter 1: provides an introduction

Chapter 2: sets out the structure of the consultation

Chapter 3: sets out the key matters on which CICRA is consulting; and

Annex A: sets out the legal and regulatory background to the proposals for regulating mobile termination charges and fixed interconnection charges.

3. Timetable for Responses

Responses to this consultation should be submitted in writing and should be received by CICRA by 5pm on 4th[th] July 2014. Written comments should be submitted to:

Guernsey Competition and Regulatory Authority Suites B1 & B2, Hirzel Court St Peter Port Guernsey GY1 2NH Email: *info@cicra.gg*	Jersey Competition Regulatory Authority 2nd Floor, Salisbury House 1-9 Union Street St Helier Jersey JE2 3RF Email: *info@cicra.je*

Or by email to **lisa.white@cicra.gg**

In line with CICRA's consultation policy, we intend to make responses to the consultation available on our 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. We regret that we are not in a position to respond individually to the responses to this consultation.

4. Regulation of MTRs and FIRs

CICRA proposes to set new caps on MTRs and FIRs in both Jersey and Guernsey through issuing a Direction to operators. We are therefore seeking views on the most proportionate way forward that best protects the interests of consumers while setting a fair rate for operators.

In setting MTRs and FIRs there are two main approaches that we could adopt, namely

a. Fully cost justified charges
b. Benchmarking

Fully cost justified charges

EU regulators have typically set MTRs and FIRs using cost-based models and are moving increasingly to rely on more sophisticated costing models, for example Long Run Incremental Cost, upon which to base more cost-reflective charges. Given the nature of the market in the EU, whereby only the calling party is charged for the services provided, SMP fixed and mobile network operators do not have an incentive to reduce rates for call termination services. The same applies, for fixed network operators only, for origination services, as the network operators have no incentive to reduce the cost of origination and therefore the cost of fixed line calling services for an operator it is in competition with.

The benefits of a cost-based model can be extensive in terms of ensuring rates are set at a level that is reflective of the efficient cost. However, the regulatory burden is also extensive. We consider that there may be merit in adopting a cost-based approach to setting MTRs and FIRs. However, these models are costly and time consuming to develop and would require significant input from the incumbent operators in each island as well as a number of high level assumptions concerning forecasts of traffic on the network and/or the price trends of specific network elements. We therefore we wish to assess whether, in the context of the Jersey and Guernsey markets, the development of such costing models would be proportionate.

Benchmarking

Benchmarking is already used by a number of National Regulatory Authorities in Europe to set MTRs and this may also be a feasible approach to set FIRs as an alternative to detailed cost modelling.

Rates can be benchmarked and set based on other jurisdictions which have undertaken full costing and calculations for the same range of services. If we were to adopt this approach we would not require any detailed analysis of the incumbents' costs. We would instead ensure that the incumbent's MTRs and FIRs reflected the cost of an efficient operator proving the same services. An advantage of this approach is that it would ensure that rates in the Channel Islands were in line with rates set by regulators in other countries and we could formalise the process so that the rates would be linked to the benchmark countries as their rates change going forward.

Questions for respondents – in respect of MTRs

Question 1- Given the need to balance the benefit to consumer against the proportionality of the burden on operators do respondents agree that MTRs should be set with reference to appropriate benchmarks? If not, what alternative approach do you propose and why?

Question 2 – The benchmarking approach, if adopted, will require us to establish appropriate benchmark. Respondents are asked which to suggest and justify which countries they believe should be used as appropriate benchmarks for us to consider using to setting MTRs.

Question 3 – Respondents are asked to suggest and justify an appropriate time horizon for the length of the price control on MTRs.

Questions for respondents – in respect of FIRs

Question 4 - Given the need to balance the benefit to consumer against the proportionality of the burden on operators do respondents agree that FIRs should be set with reference to appropriate benchmarks? If not, what alternative approach do respondents propose and why?

Question 5 –The benchmarking approach, if adopted, will require us to establish appropriate benchmarks. Respondents are asked which to suggest and justify which countries they believe should be used as appropriate benchmarks for us to consider using to setting FIRs.

Question 6 – Respondents are asked to suggest and justify an appropriate time horizon for the length of the price control on FIRs.

Annex A – Legal Background & Regulatory Framework

Responses to this consultation will be considered and stakeholders will be consulted appropriately depending on the approach taken by CICRA to assess these charges.

Mobile Termination Rates

Jersey

Article 16 of the Telecommunications (Jersey) Law 2002 (the Jersey Law)provides that the JCRA may include in licences such conditions as it considers necessary to carry out its functions. The Jersey 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.

A Class III licence also includes conditions relating to the requirement to provide interconnection services and the production of a reference interconnection offer (RIO). JCRA has previously issued Directions to JT on the production of a RIO.

In April 2010, following a review of the markets for telecoms services in Jersey, JCRA made the following decision with respect to significant market power (SMP) in markets relevant to this Consultation:

- *Call origination on the public telephone network provided at a fixed location: **JT has SMP in this market***;
- *Call termination on individual public telephone networks provided at a fixed location: **JT has SMP in this market***;

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 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 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.

Guernsey

Section 10 of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (the Guernsey Law) sets out the GCRA powers with regard to interconnection and access and describes the requirements that the GCRA may impose on inter alia any licensee whom it determines has a dominant position in a relevant market. The GCRA has determined (Documents OUR 01/14 and 08/07), that Sure has a dominant position both in the fixed telecommunications network and services market and in the mobile telecommunications network and services market. The GCRA further informed Sure that the provision of section 10(2) of the Guernsey Law would apply to it, thus requiring it in due course to;

(*a) make its procedures for the provision of interconnection and access publicly available on a non-discriminatory basis in a manner that is to the reasonable satisfaction of the GCRA;*

(b) offer a standard interconnection and access agreement (referred to as the "Reference Offer") which is available under non-discriminatory terms, conditions and charges, and on a non-discriminatory basis, no less favourable than that offered to -

(i) any of Sure's own services; or

(ii) any associated company of Sure's or services of such a company;

(c) provide interconnection or access on terms, conditions and charges that are transparent and cost-oriented having regard to the need to promote efficiency and sustainable competition and maximise consumer benefits;

(d) provide interconnection or access at any technically feasible point in its telecommunications network; and

(e) provide interconnection or access in a manner that is sufficiently unbundled so that the person requesting interconnection or access does not pay for telecommunications network components or telecommunications services that he does not require.

The legal responsibility is on Sure to ensure that it provides such information as is necessary to fully demonstrate that any proposed charges for its interconnection and access services comply with its obligation under theGuernsey Law.

Fixed Interconnection Rates

Jersey

Article 16 above of the Jersey Law also applies to mobile termination rates in Jersey and a Class III licence also includes conditions relating mobile termination rates.

Guernsey

Section 5(1) of the Guernsey Law provides that the GCRA may include in licences such conditions as it considers necessary to carry out its functions. The Guernsey 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 Guernsey Law, 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 Guernsey Law provides for the GCRA 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 GCRA to regulate MTRs, should there be a need for regulatory intervention.