



2018/9 REVIEW OF MOBILE TERMINATION RATES IN GUERNSEY

FINAL DECISION

Channel Islands Competition and Regulatory Authorities

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1. INTRODUCTION

- 1.1 Telecommunications networks, both fixed and mobile, need to be connected to one another in order that customers of those different networks are able to call each other. Telecommunications regulators around the world have a role in ensuring the adequate connection of those networks.
- 1.2 To support the connection of those networks, one of the services that network operators offering voice services provide to each other is call termination. Call termination means the completion of a call from a customer of another network. Mobile Call Termination (**MCT**) is a particular type of call termination service provided by a Mobile Network Operator (**MNO**). It enables the originating network operator, which could be fixed or mobile, to connect a call through to a customer of an MNO. The originating operator pays an amount, known as the mobile termination rate (**MTR**), to the MNO providing the wholesale MCT service.
- 1.3 Regulators in many European countries have identified a need to ensure that MTRs are set at a level that reflects the efficient costs of providing those services because MNOs typically have the ability and incentive to raise charges above that level, to the potential detriment of consumers calling the MNOs' networks. The European Commission has set out its view that there is a significant benefit in national regulatory authorities (**NRAs**) moving towards setting MTRs based on the long run incremental cost (**LRIC**) of provision¹.
- 1.4 The European Commission notes that high termination rates are ultimately recovered through higher call charges to end-users; and can also give rise to competition problems. It takes the view that harmonized termination rates based on an efficient cost standard (which it equates with LRIC) would promote efficiency, sustainable competition and maximise consumer benefits in terms of price and service offerings².
- 1.5 In Guernsey, the Office of Utility Regulation (**'OUR'**) carried out two separate reviews of MTRs between 2006 and 2011. The first review determined that an average MTR of 6.75 ppm should be put in place from 1 April 2007 and a further review in 2009 resulted in all Guernsey MNOs being found to hold significant market power (**'SMP'**) and applying MTRs at a flat rate of 4.11 pence per minute (**'ppm'**) (including transit charges).
- 1.6 4.11ppm is now very significantly higher than other countries in Europe; and, given studies elsewhere, is likely to be well in excess of the efficient costs to MNOs of providing those services, as measured by the LRIC standard.

¹ Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (**Commission Recommendation**).

² Commission Recommendation, recital (7).

- 1.7 In October 2017 the GCRA issued a Final Decision in Guernsey following a market review (CICRA 17/27) (the **2017 Final Decision**). The Final Decision again found that there were distinct markets for the termination of calls of each of the mobile networks in Guernsey and that each MNO held SMP for the termination of traffic on its own network.
- 1.8 In December 2018 the GCRA commenced its review into MTRs by issuing a Call for Information (CICRA 18/51) (the **Call for Information**). Responses were received from four operators. In July 2019, the GCRA reported on its provisional conclusions following its consideration of the responses to the Call for Information. Those conclusions formed a non-statutory Draft Decision³ (the **Draft Decision**), on which all interested parties were invited to express their views.
- 1.9 Three operators responded to the consultation following the publication of the Draft Decision. This non-statutory Final Decision considers those responses and concludes the Authority's non-statutory process.
- 1.10 As explained below, the GCRA provisionally concludes that an approach based on a LRIC cost measure, as recommended by the European Commission and adopted in the great majority of European countries, can be expected to bring benefits to local consumers and businesses in Guernsey and is the right approach to take. In a competitive retail market, we would expect reductions in MTRs to be passed on, in whole or in part, to those who call mobile numbers. This may in turn increase their willingness to call mobile numbers and the length of such calls, bringing benefits to called parties in Guernsey. It is for reasons of this kind that regulators across Europe have reduced MTRs markedly over the last decade. By contrast, Guernsey MTRs have remained static since 2010, and are now many multiples of the rates prevailing in most other European countries.
- 1.11 The Authority therefore proposes to revise the existing price control applicable to Guernsey 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 Guernsey MNO's LRIC costs and is more closely aligned with the prevailing levels of MTRs in the UK and other European countries.
- 1.12 In developing this proposal, the Authority has taken careful account of the comments already received from operators. We have, for example, included a proposal to apply a glidepath, so as to allow time for operators to implement the new MTRs in a phased manner. We believe that the package of measures proposed in this document represents a reasonable and proportionate intervention, and accords with our statutory duties, some of which are set out in Annex A.
- 1.13 Having considered the consultation responses received following publication of the Draft Decision, the Authority continues to adhere to, and expressly relies upon, without repeating, the reasoning and analysis contained in the Draft Decision. This Final Decision should therefore

³ Mobile Termination Rates – Draft Decision – Guernsey, CICRA 19/31, 4 July 2019

be read as expressly incorporating that reasoning and analysis, as well as the further reasons set out below.

- 1.14 The approach set out in this Final Decision is intended to apply until 31 March 2023. The Authority will consider during the course of 2022 whether the MTR rate for 2022/23 should be extended over subsequent years or should be revised; and will in either event consult on a further decision regarding the future regulation of MTRs in Guernsey.

2. PURPOSE AND STRUCTURE OF THIS FINAL DECISION

- 2.1 Following extensive consultation with the operators particularly during the course of 2018, which in turn resulted in a Call for Information and a Draft Decision, the Authority is issuing this non-statutory Final Decision (the **Final Decision**)⁴ with regard to MTRs applied by MNOs in Guernsey.
- 2.2 In the Call for Information, the Authority consulted on a reduction to the current MTR level of 4.11ppm. The Authority received four submissions. Having considered those representations, assessed the economic rationale for reviewing MTRs and analysed what an appropriate MTR level is for Guernsey, the Authority remained of the view that the MTR of 4.11ppm is significantly higher than many other countries and is likely to be significantly above the efficient costs of providing a service, judged by the LRIC standard.
- 2.3 Accordingly, the Draft Decision consulted on proposed reductions in the level of MTRs over a three year period, starting from 1 January 2020. The proposal was to introduce the reductions in a phased and gradual manner on the basis of the following schedule or “glidepath”. The glidepath is set out in the following table:

Effective Date	MTR Rate (ppm)
Current rate	4.11
1 January 2020	3.11
1 January 2021	1.11
1 April 2022	0.7

Table 1: Proposed MTR rate

- 2.4 The remainder of this Final Decision is structured as follows:
- First, we address responses received to the Draft Decision ([section 3](#));
 - Second, based on the analysis undertaken we set out the direction as proposed by the Authority ([section 4](#));
 - Third, we set out the next steps ([section 5](#)).
- 2.5 The Final Decision is also accompanied by the following annex:
- [Annex A](#) explains the legislative and licensing background;
- 2.6 In this Final Decision we refer to the JCRA and CICRA as “**the Authority**”, save for where specific reference to the JCRA or CICRA is required.

⁴ For further information on the CICRA consultation process see Section 6

2.7 **Disclaimer** – *This document does not constitute legal, technical or commercial advice; the GCRA 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 GCRA to exercise regulator powers generally.*

3. DRAFT DECISION RESPONSES

Introduction

- 3.1 A total of three responses were received to the Draft Decision – from JT (Guernsey) Limited (**JT**), Sure (Guernsey) Limited (**Sure**) and Guernsey Airtel Limited (**Airtel**).⁵
- 3.2 In this section we address the submissions made by those parties to the Draft Decision and, based on our assessment, set out our considered conclusion.

Application of an MTR

- 3.3 Sure in its response to the Jersey Draft Decision raised the concern that, in the Jersey Draft Decision, the Authority did not explicitly state that the proposed MCT obligations were to include the operator Clear Mobitel.
- 3.4 The Authority considers that any MNO in the Channel Islands is deemed to hold a position of significant market power in the termination of calls on its own mobile network. Therefore the proposed remedies would apply to Clear Mobitel as well as to any other MNO that was minded to provide a termination service in the Channel Islands.
- 3.5 The Draft Direction set out in section 4 below makes clear that it is to apply to all of the MNOs that are currently licensed in Guernsey.

Ex-Ante Obligation

- 3.6 Sure provided its comments on the proposed ex ante obligations.

A requirement to provide network access on reasonable request

- 3.7 Sure supports the Authority's position and notes that such a request can only be by an OLO (being an operator, licensed by CICRA and listed on its website).
- 3.8 The Authority agrees with Sure that such a request can only be made by an operator licensed by the Authority and as such listed on its website. For the avoidance of doubt, an OLO may purchase MCT from an MNO in respect of calls not originating on their own network.

A requirement not to unduly discriminate:

- 3.9 Sure stated:

"...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

⁵ Each party is a licensed operator in Guernsey, with JT, Sure and Airtel being three mobile operators currently providing mobile services.

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).

- 3.10 The Authority understands that historically Sure only interconnected its own fixed switch with its mobile switch and therefore **all** traffic to the Sure mobile switch would have to first pass through the Sure fixed switch.
- 3.11 The Authority understands that this situation has changed, however, it might not yet be the case that all mobile traffic destined for the Sure mobile switch is handed over to that switch by a direct interconnection.
- 3.12 All operators should, under this direction, be allowed to directly interconnect at the Sure mobile switch. However, it might be the case that operators who have historically interconnected at the Sure fixed switch have not completed the implementation of a new interconnect to the Sure mobile switch.
- 3.13 So far as the Authority is aware, this issue is specific to Sure, and does not arise in relation to any other operators.
- 3.14 In order to ensure that operators have the opportunity to complete a migration from the Sure fixed switch to the Sure mobile switch, the Authority is minded to propose the following process.

Interconnect Scenario	Applicable Charge
Operator directly interconnects with Sure's mobile switch	MTR only
New operator that chooses to interconnect at Sure's fixed switch and Sure provides onward transit to the mobile switch	MTR plus on-island transit
Existing operator that is currently interconnected at Sure's fixed switch and has the option to interconnect directly to Sure's mobile switch	MTR only (for 12 months from 1 January 2020) (After 12 months if the operator has not completed a direct interconnect to the Sure's mobile switch then that Sure would be entitled to charge the additional on-islands transit until such time that the interconnect was completed)

Table 2: Interconnection Scenarios

A requirement to publish applicable MTRs

- 3.15 Sure considers that 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 the MNOs

to decide what other forms of publication (if any) may be appropriate. Sure supports that position.

- 3.16 The Authority agrees with Sure's opinion that at a minimum the MTRs should be published in operator's Reference Interconnect Offer (**RIO**) or Reference Offer (**RO**). To ensure compliance, the Authority will be writing separately to all MNOs to request copies of their revised RIOs/ROs.
- 3.17 As this is a regulated rate, the Authority will also be publishing the MTR on its website in the form of its respective Final Notice and Final Decision.

A requirement that MTRs should not exceed the set rate

- 3.18 Sure in its response to the Draft Decision appreciates that CICRA has taken on board its proposals for a glidepath.
- 3.19 Sure notes that CICRA's intention is that the rate will reduce to 0.7 ppm 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 LRIC model, at a rate of 0.688 ppm.
- 3.20 Sure is 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. Sure completely refutes that statement. What Sure had said was that it 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"*. Sure notes, however, that CICRA at least took on board one of its proposals, being that if LRIC benchmarking were to be considered it should be limited to the 7 smallest countries (by population) in the EU.
- 3.21 Sure states that "as a matter of principle" it does not consider LRIC to be an appropriate costing methodology for the pricing of regulated telecoms services in the Channel Islands. Its reasons have been made clear to CICRA on several occasions and many of its concerns were set out in our previous MTR related responses, as published on CICRA's website.
- 3.22 Sure concludes that it is willing to accept a glide path reduction in the MTR to 0.7 ppm, however, it does not support an association of that rate with any LRIC costing methodology, whether referenced from the UK or elsewhere.
- 3.23 The Authority notes Sure's position, including its acceptance of the glide path reduction to the MTR of 0.7 ppm as stated in its Draft Decision. The Authority understands that Sure should not be taken to have endorsed the application of a LRIC costing methodology, whether referenced from the UK or elsewhere. The level of MTR to apply in subsequent periods will be assessed by CICRA on its own merits and based on the methodology that CICRA considers to be most appropriate at that time. Sure will be free to make such representations as it considers appropriate in the consultations preceding CICRA's future decisions on the regulation of MTR.

Consumer Benefits

3.24 In its response to the Draft Decision, JT states that it is “... *generally supportive of lower MTRs for Jersey and Guernsey*”; but indicates that it is unconvinced that the consumer welfare benefits cited by the Authority (pages 23 – 25 of the Draft Decision) will occur as a result of a reduction in MTRs. JT considers that this is because the majority of consumers in Guernsey purchase a bundle of minutes, texts and calls and budget their mobile usage based on a fixed price per month. JT therefore does not believe that many consumers break their bundle and experience out of bundled call rates. Consequently, JT is not persuaded that the “deadweight loss” argument put forward at 4.15⁶ is relevant.

3.25 The Authority remains of the view that a reduction in MTRs can be expected to result in consumer welfare benefits in Guernsey. The Authority set out its reasoning in its Draft Decision. The Authority’s assessment mirrors that of the European Commission and regulatory authorities across Europe as to the likely benefits of setting MTRs close to incremental costs. In many other European countries, including the UK, consumers generally purchase bundles of minutes, texts and calls. Ofcom and other national regulators have nonetheless opted in favour of LRIC-based MTRs. In the responses received to the Draft Decision, the Authority has not identified any reason to believe that the economic principles underlying the broad consensus in favour of LRIC-based MTRs should not also apply to the Channel Islands.

3.26 Airtel in its response reiterates its position that “*there is no market need for review of MTRs in Channel Islands*”, stating that:

Channel Islands consumers and businesses already derive benefits in the way of:

- *Three best in class networks;*
- *Over 97% 4G+ coverage;*
- *Unlimited calls to CI & UK offered by Airtel for as low as £7.49 per month, and*
- *Low roaming rates (despite MNO’s weak bargaining power due to low traffic volumes).*

3.27 The Authority has previously recognised the fact that there is excellent mobile service in the Channel Islands. However, the reasons cited by Airtel do not detract from the analysis set out in the Draft Decision.

3.28 Airtel also states that “*CICRA has continuously failed to give any empirical evidence of the benefit, either to Channel Islands customers or economy in general, which it has repeatedly claimed will be borne by the proposed changes. However, Airtel has provided evidence of all costs and revenue it incurs/derives from MTR. This allows the Authority a clear view of the losses a challenger telco like Airtel will incur due to the proposed lowering of MTRs.*”

⁶ Paragraph 4.15 of the Draft Decision

3.29 The Authority considers that the reasoning set out in its Draft Decision provides a sufficient basis in support of its conclusion as to the benefits that can be expected to flow from reduced MTRs. A necessary consequence of reduced MTRs is that MNOs will obtain reduced MTR revenues. The Authority has taken this reduction of revenues into consideration, but for the reasons set out in the Draft Decision, does not consider that it provides a compelling reason for permitting MNOs to exploit their monopoly position for the termination of calls on their own networks.

Reduction of Revenues for MNOs

3.30 JT believes that MNOs that are currently net receivers of MTR revenue are likely using that revenue to reinvest in their networks and to maintain competitive retail offerings and that excess profits are in fact being passed onto consumers through the retail offerings in the market. JT therefore agree with the points made by Sure at 3.63⁷.

3.31 The Authority in its Draft Decision has set out in length why it considers that the setting of MTR based on the efficient cost of termination of a mobile call can be expected to provide benefits by avoiding excessive pricing to the potential detriment of consumers calling MNOs' networks. Such excessive pricing may be harmful to particular groups of consumers, and may distort the behaviour of other consumers, irrespective of whether MNOs' excess profits are passed on, in whole or in part, to MNOs' retail subscribers.

Impact on calls received from the UK

3.32 JT does not believe that a reduction in MTRs will have the effect of ensuring that calls to Channel Islands mobile numbers are included in the call bundles offered by UK MNOs. JT considers that the Authority recognises that in 3.56⁸.

3.33 The Authority reiterates what it stated in paragraph 3.56 of its Draft Decision. The Authority remains of that opinion.

"The Authority notes that a reduction in call charges for UK phone users to call the Channel Islands is not the primary driver for the Authority in considering a reduction of MTRs in the Channel Islands. The Authority has in the past argued that the inclusion of calls to the Channel Islands in UK call bundles could provide an economic benefit by increasing the use made of Channel Island mobile services, and benefiting Channel Islands consumers and businesses, who could in that case expect to receive more calls from UK mobile numbers. However, the Authority's primary focus is upon reducing the MTR rate charged between operators on the Channel Islands, and the associated economic benefits. These benefits are set out in more detail in Section 4 of [this] Draft Decision."

⁷ Ibid

⁸ Ibid

Adoption of LRIC model/benchmarking

- 3.34 Airtel stated that the adoption of LRIC model/benchmarking citing other European Countries is not relevant as the factors concerning the Channel Islands are different from other countries. Airtel goes on to state that *“Being small islands, the benefits of magnitude of scale is not relevant in case of the islands where the geography is small and provision of different services require full additional investments rather than any incremental ones”*.
- 3.35 In section 4 of its Draft Decision, the Authority considers that it specifically took into account factors relating to the Channel Islands, including but not limited to the scale of the islands. Specifically starting at paragraph 4.70 of its Draft Decision the Authority considered and applied adaptations to the UK LRIC model to take into account *“specific conditions applicable in the Channel Islands”*. Airtel does not engage with the detail of those adaptations.
- 3.36 Airtel also considers that *“it is evident that the review of MTRs even if it is done should be on Fully Allocated Cost (FAC) basis wherein the operator is compensated entirely for the cost of the call in its network rather than the incremental costs.”*
- 3.37 The Authority has previously responded to Airtel as to why it considers that FAC is not the appropriate cost measure to aim for in regulating MTRs in the Channel Islands. Instead, in common with the European Commission and regulators across Europe, the Authority considers that a LRIC costs measure is more appropriate. Airtel does not engage with the reasoning in the Draft Decision in support of a LRIC cost measure, or seek to explain why the Authority’s approach is incorrect.

Impact on MNOs

- 3.38 Airtel identifies the following adverse effects which it considers likely to result from the Authority’s proposed lowering of termination charges which is said to be already *“below-cost”*:
- [X] CONFIDENTIAL
 - [X] CONFIDENTIAL
 - [X] CONFIDENTIAL
 - [X] CONFIDENTIAL
- 3.39 The various alleged adverse effects all derive from the reduced revenues that MNOs can expect to obtain as a result of the proposed reductions in the level of MTRs, and the alleged adverse impacts on investment that can be expected to flow. In the Draft Decision, the Authority considered the impact of MTR reductions on MNOs’ revenues. It referred to its own previous analysis of commercially sensitive data which gave it comfort that MTRs are a relatively small element of operators’ overall revenues; and that the net impact of reduced MTRs should therefore be relatively easy for operators to accommodate without risking their financial stability or substantially adjusting their retail tariffs. It noted that Airtel’s allegations that the reduction in MTRs could cause material harm to its business were not supported by any specific evidence: see Draft Decision, paragraphs 4.89-4.92. In its response to the Draft Decision, Airtel’s

concerns are stated at the same high level of generality as previously. No additional evidence is provided in support of the harms that it is alleged will flow from reduced MTRs. In the circumstances, the Authority does not consider that the concerns are sufficient to outweigh the various reasons identified in the Draft Decision in support of reducing the level of MTRs in the Channel Islands.

Impact of MTRs on international traffic

- 3.40 Airtel considers that, in respect of international calls, the Authority has *“mentioned that the originating operator be offered the same call termination charges and other conveyance elements are not part of the same. In this regard, it is submitted that the termination rates for international calls should not be regulated. Any mandated international termination charges limit the domestic operator’s capability to negotiate better rates for international calls originating from the islands. In case of a regulated international termination rate, while the calls from outside the islands will be terminated at a cheaper rate, the islands customers will be required to shell out greater amount while calling to that destination. Hence, island customers will subsidise the calling costs for international originating operators.”* Airtel therefore recommends that the international termination rates be left for mutual negotiations with the originating operator.
- 3.41 The regulation of MTRs proposed by the Authority, as with the existing regulation of MTRs, applies to all MCT services provided by an MNO, regardless of the location of the calling party. Termination is a separate and distinct service from conveyance of calls to the Channel Islands.
- 3.42 Airtel’s suggestion that Guernsey customers *“will be required to shell out greater amount while calling that destination”* is not understood. MCTs are subject to regulation in all other European countries, and are fixed by regulation at levels very significantly below those applied in the Channel Islands. It is therefore incorrect to contend that the MCTs payable by Channel Islands MNOs when their customers place calls to networks in other European countries are subject to *“negotiation”* with those networks, or that MNOs will be *“limited”* in their *“capability”* to negotiate better rates.
- 3.43 Airtel’s contention that island customers will *“subsidise the calling costs for international originating operators”* is similarly misplaced. The Authority has carefully calibrated the proposed level of MTRs with a view to covering the efficient LRIC of providing mobile call termination. Insofar as the efficient incremental costs of terminating a call are covered, there is no need for any *“subsidy”*. Airtel presents no evidence to substantiate a claim that the proposed MTRs would involve any such subsidy of calling costs, whether the calling party is located on or off island.

Introduction of a glide path

- 3.44 Airtel welcomed the glide path approach as proposed by the Authority. However, it is Airtel’s proposal that the glide path be modified as shown below and applicable to local mobile terminating traffic between MNOs in the Channels Islands.

Effective Date	Maximum Mobile Termination Rate (ppm) proposed by the Authority	Maximum Mobile Termination Rate (ppm) proposed by Airtel
Current MTR	4.11	4.11
1 January 2020	3.11	3.11
1 January 2021	1.11	2.11
1 April 2022	0.7	1.11
1 April 2023	[to be determined]	0.7

Table 3: Airtel's proposed glide path

3.45 Sure states that it is grateful that CICRA has agreed to a glide path methodology for the reduction in the MTR. Sure would intend to comply with the application of the stipulated rates and make them available to OLOs.

3.46 The Authority has noted Airtel's request for a longer glidepath. The Authority does not consider that it would be appropriate to lengthen the glidepath in the manner requested:

- The MTR has remained high in the Channel Islands for a number of years and it is important to bring the rate in line with other jurisdictions within a sensible timeframe;
- In the Authority's judgement, its proposal should allow MNOs sufficient time to adjust their businesses as necessary to reflect the reduction in the level of MTRs. Airtel has not presented any specific evidence as to why a longer adjustment period is required; and
- A longer glidepath would delay the potential consumer welfare benefits that can be expected to eventuate from reduced MTRs, as set out in the Draft Decision.

3.47 The Authority concludes that the glidepath should remain as stated in the Draft Decision.

On-island transit charge

3.48 Sure in its response states that it has received clarity from CICRA on this point. However, it still considers this paragraph in the Draft Decision to be open to interpretation.

3.49 In its response, Sure sets out its understanding of two of CICRA's conveyance-related sentences and provides practical examples based on Sure's understanding. Sure requests that if its understanding is incorrect, further clarification should be provided by the Authority.

3.50 Sure highlights paragraph 5.4 of the Draft Decision, which 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."

- 3.51 Sure goes on to state that an associated paragraph (3.21) provides an answer from CICRA to a previous request by Sure for clarity. CICRA there confirms that the MCT service does not encompass the conveyance elements of a call prior to its receipt on an MNO's on-island switch.
- 3.52 Sure considers that *"CICRA confirmed, in its email to Sure of 29 July 19, 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 any 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"*.
- 3.53 Sure considers that taking the above into account that it might be helpful for it to set out the two scenarios to CICRA, which it hopes appropriately reflect the consensus of thinking on these topics.

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

- 3.54 Sure's first scenario relates to MNP in the case of calls originating off-island. Sure notes that 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 (eg. 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.
- 3.55 Sure does not explain what clarification it seeks in relation to the above scenario. The Authority notes that in this scenario, the MNO to which the ported number was originally assigned would not provide MCT and would not be entitled to receive an MTR in respect of the call. MCT would instead be supplied by the MNO which provided service to the called party following the porting of the number.
- 3.56 This scenario is therefore fully consistent with the position as set out in paragraph 5.4 of the Draft Decision: it would not involve any entitlement on the part of the terminating MNO to receive an on-island transit charge in addition to the MTR due on the call.
- 3.57 Sure appears to agree, stating in its response that it *"sees no scenario under which an MNO would first transit and then terminate traffic within its own network"* (Sure Draft Decision response, 7th unnumbered sub-paragraph of §5,4 on p.3).

Local transit

- 3.58 Sure also identifies a second scenario which it considers to show that the requirement to provide local transit can still exist in conjunction with MCT. 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 Operators 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.

- 3.59 Sure states that from its understanding, the above scenario should be seen as entirely appropriate from CICRA's perspective, at it fits with its views as set out in paragraph 3.21.
- 3.60 It is unclear whether Sure's scenario is intended to relate to any existing real-world practice in the Channel Islands, and thus whether it is of any practical relevance. In monitoring compliance with the proposed direction, the Authority will of course need to consider any situation on its merits after a full consideration of the factual context. Based on the stylised example offered by Sure, it appears, however, that the scenario would involve – for reasons that are unclear - an operator A choosing not to interconnect directly with the terminating MNO (operator C) but instead using another operator B for intermediate transit. In this scenario, the Authority can see no reason why operator B would not be entitled to levy a transit charge.
- 3.61 The Authority notes that this scenario is again fully consistent with paragraph 5.4 of the Draft Decision: in such a case, the relevant terminating operator (operator C) would not be entitled to levy any additional charge for on-island transit following delivery of the call for termination to its on-island switch. Any transit charge levied by operator B would be prior to the handover of the call to the relevant mobile network operator.
- 3.62 It may be that Sure has some existing arrangement in mind. If that is the case, the Authority would be happy to advise it based on a full and specific account of the relevant facts. Insofar as Sure has in mind a specific scenario where operator B would be the 'fixed operator' and operator C would be the 'mobile operator' of the same legal entity or group of legal entities (e.g. where the routing is via Sure's fixed switch to get access to termination on Sure's mobile switch), the Authority has set out above the approach that it is minded to apply.

Per second billing

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

No discrimination by technology or origin

- 3.64 Sure agrees that MTRs should apply on a technology neutral basis.
- 3.65 As regards CICRA's proposal to apply the charge *'irrespective of the origin of the traffic'*, Sure reiterates its understanding of this, 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.

3.66 If this is not in line with CICRA’s understanding, Sure requests further clarification.

3.67 The Authority has reviewed Sure’s understanding as stated above. As regards the second point, the Authority wishes to make clear that the OLO would pay the MTR to the MNO for the termination of the call. Subject to that clarification, Sure’s understanding of the position is correct.

3.68 [X] CONFIDENTIAL

3.69 Under the direction proposed by the Authority, each MNO is required to offer MCT on reasonable request. While the Authority would need to consider each case on its merits, the Authority considers that MNOs are thereby required to offer MCT on reasonable request separately from any other transit services; and that an MNO could not, compatibly with its regulatory obligation, refuse to supply MCT to a given operator in respect of a call that did not originate on its own network.

Proposed timings

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

Retail price control

3.71 Sure in its response to the Draft Decision adds as follows: *“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 preference, as long as the total value for the basket of services remains less than or equal to the annual regulatory price cap.”*

3.72 Sure states that *“[v]ery 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 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.”*

3.73 The Authority notes Sure's position. Any change to the regulation of retail prices in Guernsey would require a separate decision of the Authority, and will be subject to consultation at the appropriate time. Sure will be able to express any concerns that it has in relation to the interaction between the regulation of MTRs and the regulation of retail prices as part of that process; and the Authority will respond as needed then.

4. FINAL DECISION

- 4.1 The Authority proposes to issue a direction to JT under condition 34.1(c) of JT’s licence, and directions to other MNOs under Conditions 27.1(c) of their respective licences, as set out below.
- 4.2 The Authority proposes that the direction should enshrine the following ex ante regulatory obligations:
- a requirement to provide network access on reasonable request;
 - a requirement not to unduly discriminate;
 - a requirement to publish applicable MTRs; and
 - a requirement that MTRs should not exceed the rate set out below.
- 4.3 The rate charged by the relevant licensee for its mobile termination rate shall be reduced over a three year period commencing on 1 January 2020:

Effective Date	Maximum Mobile Termination Rate (ppm)
Current rate	4.11
1 January 2020	3.11
1 January 2021	1.11
1 April 2022	0.7ppm

Table 4: MTR rate – Final Decision

- 4.4 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.
- 4.5 The MTR shall be billed on a per second basis effective from the first second.
- 4.6 The MTR shall apply with respect to all voice calls terminated by the relevant mobile network operator in Guernsey on a technology neutral basis and irrespective of the origin of the traffic.
- 4.7 The directions shall be deemed to have come into effect on 1 January 2020, with the final rate applying from 1 April 2022. The directions shall remain until a further decision is made by the Authority.

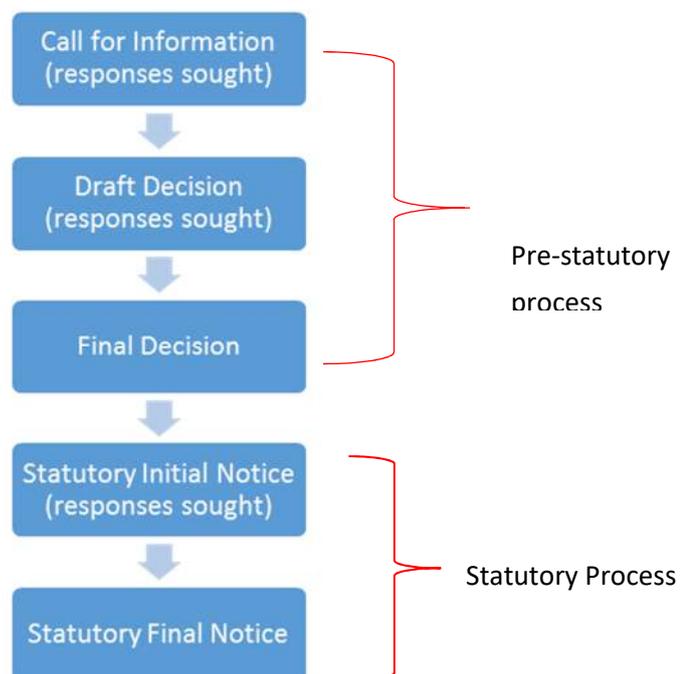
5. NEXT STEPS

Next Steps

- 5.1 The Authority will now progress to its statutory Initial Notice. This will give notice to MNOs of the regulatory function which the Authority intends to exercise.
- 5.2 If no written responses are received from MNOs within the specified period of time, the Authority will issue the Direction to the MNOs. If responses are received, the Authority will consider these and either issue a Final Decision or a new Initial Notice or decide not to take the proposed action.
- 5.3 While the Authority considers any decision made as part of the pre-statutory process, including this decision, to be as a statement of its current expectations, this is not binding on any party until such time as the Direction has been issued in line with the Law.

Consultation Process

- 5.4 The Authority has recently introduced a revised process for consultations. The Information Notice, CICRA 18/29 “Regulatory Consultation Process” published in July 2018 outlines the new process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process. This process is set out below in diagrammatical form:



- 5.5 Under the new process there is a new non-statutory process which is to be undertaken prior to the statutory process. The non-statutory process consists of a Call for Information, a Draft Decision and a Final Decision. Responses are sought from stakeholders at the Call for Information and Draft Decision stage, following which a Final Decision is issued. This Draft decision is thus the second stage of the pre-statutory process.

- 5.6 Whilst the Authority considers any decision made as part of the pre-statutory process to be the starting point for the statutory process and as a statement of its expectations, the Pre-Statutory Final Decision (i.e. stage 3 of the above diagram) is not binding where there is a requirement to undertake a statutory process.
- 5.7 After the non-statutory process has been completed, the statutory process will commence by issuing a Statutory Initial Notice. Responses are sought at the Statutory Initial Notice stage, following which the Statutory Final Notice is issued, such decision being final and binding.

ANNEX A - LEGISLATIVE AND LICENSING BACKGROUND

Legal Background

Section 5(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001 (the 'Telecoms Law'). Provides that the Authority may include in licences such conditions as it considers necessary to carry out its 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 changed 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-orientated".

In addition, Section 10(4) of the Telecoms Law provides for the Authority 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 Authority to regulate MTRs, should there be a need for regulatory intervention.

Regulatory Framework

FINDING OF SMP

6.1 In October 2017, following a review of the mobile market, the GCRA 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.

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

LICENCE CONDITIONS - MNOS

6.3 Condition 28.2 of the licence issued to JT, Sure and Airtel provides that:

"The GCRA may determine the maximum level of charges the Licensee may apply for 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 services or any combination of 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."*

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

6.5 Condition 29.1(b) of MNO's licence is designed to protect fair competition in the markets in which the MNO operates, and provides as follows:

"The Licensee shall: ...

(c) comply with any direction issued by the GCRA for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Mobile Telecommunications Networks or the provision of Mobile Telecommunications Services."

6.6 This condition allows the GCRA to give directions to an MNO, including in relation to the prices that it charges.

APPROACH TO SETTING MTRS

6.7 The EC Recommendation⁹ 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.

6.8 Mindful of its statutory duties, the GRCA 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.

⁹ Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU