

Annex B WITHDRAWN

Decision Notice 2011/01 is withdrawn pending review. The Communications Commission intends to undertake appropriate processes with a view to issuing three separate Notices respectively covering Retail Fixed Markets, Wholesale Fixed Markets and Mobile Communications Markets.

Decision Notice 2011/01: Notification of Market Power Determinations

Statutory powers

This Notification of Market Power Determinations is issued in accordance with Part 6 "Additional Obligations on Operators with Significant Market Power" of the Licence granted to Manx Telecom Limited under Section 5 of the Telecommunications Act 1984 (of Tynwald) and Part 4 "Additional Obligations on Operators with Significant Market Power" of the Licence granted to Cable and Wireless Isle of Man Limited under Section 5 of the Telecommunications Act 1984 (of Tynwald).

The Commission has presented its preliminary reviews of the telecommunications markets¹, and notified its proposed determinations, as required². The Commission has taken account of the submissions received in response to this consultation. The provisions of the consultation document and of the response to consultation document shall, where appropriate, be construed with this Decision.

This Decision applies to Manx Telecom Limited and Cable and Wireless Isle of Man Limited and comes into effect on 4 October 2011.

Retail fixed markets

Market definition

The **retail access market** is a market for the provision of a physical connection from a fixed location to the public telephone network. This market is separate from the services carried over the physical connection. It includes access from homes and offices.

There is a market for the provision of **retail voice calls from a fixed location**. This market includes all calls from a fixed line, including calls to Isle of Man mobiles and landlines, and calls off-island to fixed and mobile numbers. The market also includes VoIP calls. Calls from both business and residential customers are included in the market, but calls from mobiles are excluded.

There is a market for **retail fixed broadband** which includes ADSL, Fixed Wireless Access and (when and where available) FTTx. It excludes narrowband internet access and leased lines, and excludes mobile broadband.

¹ "Consultation paper on telecommunications market reviews and notification of the proposed determinations", June 2011

² condition 42.7 of the Manx Telecom Limited licence; condition 27.7 of the Cable & Wireless Isle of Man licence.

There is a market for **retail dedicated capacity** (leased lines). The market includes all dedicated capacity which provides broadly symmetric capacity between two points, where there is no switching, and the connection is dedicated to the user. The market definition is technologically neutral and would include SDH, PDH and Ethernet point-to-point services.

In all retail fixed markets, the geographic scope of the market is the Isle of Man.

SMP designation

Having determined that the retail fixed markets are not effectively competitive, Manx Telecom Limited is designated as having SMP on the Markets for:

Retail fixed access
Retail voice calls from a fixed location
Retail fixed broadband
Retail dedicated capacity

SMP obligations in relation to retail fixed markets

Obligation of non-discrimination

Manx Telecom Limited will be obliged not to unduly discriminate between its retail customers.

Obligation of transparency

Manx Telecom Limited shall have an obligation of transparency.

Without prejudice to the generality of this obligation, Manx Telecom Limited shall make publicly available, and keep updated, information as described in Section 9 of its licence.

Any proposed changes to price and non-price terms and conditions should be published 30 days in advance of their coming into effect.

For retail leased lines at or greater than 155Mb/s. Manx Telecom Limited will not be obliged to publish its prices for these services, nor will it be obliged to stick to a price list. However, it will be required to notify its prices for these services to the Commission on a confidential basis, so that it can check that the non-discrimination requirement, which will apply across the board to all leased lines, is being observed.

Obligation of accounting separation

Manx Telecom Limited will be obliged to produce separated accounts. The format and reporting requirements of these accounts will be subject to agreement with the Commission. The Commission expects Manx Telecom Limited to make initial proposals within 3 months of the publication of this Decision.

Obligations relating to price controls and cost accounting

Manx Telecom Limited shall maintain appropriate cost accounting systems in respect of products, services or facilities in the retail fixed markets.

Manx Telecom Limited *shall be obliged not to unreasonably bundle.*

Manx Telecom Limited *shall have an obligation not to cause a margin/price squeeze.*

Wholesale fixed markets

Market definition

*There is a market for **wholesale call origination** for calls services originated on the fixed public telecommunications network.*

*There is a market for **wholesale call termination**.*

*There is a market for **wholesale broadband access**, which includes physical and non-physical access, and which includes access over current and next generation infrastructure.*

*There are separate markets for **on-island dedicated capacity** and **off-island dedicated capacity**.*

The geographic scope for all wholesale fixed markets is the Isle of Man.

SMP designation

Having determined that the wholesale fixed markets for call origination; call termination, broadband access; and on-island dedicated capacity are not effectively competitive, Manx Telecom Limited is designated as having SMP on the Markets for:

Wholesale call origination

Wholesale call termination on its own network

Wholesale broadband access

Wholesale on-island dedicated capacity

SMP obligations in relation to wholesale fixed markets

Obligations to provide access

Manx Telecom Limited shall meet all reasonable requests from OLOs for the provision of access in the wholesale fixed markets where Manx Telecom Limited has been designated with SMP.

Manx Telecom Limited shall be required to negotiate in good faith with OLOs requesting access.

Manx Telecom Limited shall not withdraw access to services and facilities already granted, without justification and consultation.

Conditions attached to the access obligations

Manx Telecom Limited shall behave in a manner which is fair, reasonable and timely in the way in which it deals with access requests, both in terms of responding to requests and in implementing successful requests.

Where a request for the provision of access, or a request for the provision of information is refused or met only in part, Manx Telecom Limited shall provide the objective criteria for refusing same to the OLO which made the request. Manx Telecom Limited's response shall be fair, reasonable and timely.

Obligation of non-discrimination

Manx Telecom Limited shall be required not to discriminate in respect of access.

This means that it shall ensure that it does not discriminate between OLOs in equivalent circumstances providing equivalent services, and that all services and information are provided to OLOs under the same conditions and of the same quality as the services and information that Manx Telecom Limited provides for itself.

Manx Telecom Limited will be required to identify and justify any differences between the wholesale services received by its retail operation and the wholesale services received by OLOs.

Obligation of transparency

Manx Telecom Limited shall have an obligation of transparency.

Without prejudice to the generality of this obligation, in all of the wholesale fixed markets in which it is designated with SMP, Manx Telecom Limited will:

- publish a Reference Offer for each wholesale product, including appropriate technical specifications, and including a mechanism explaining how changes to the Reference Offer will be made and notified
- publish a standard SLA which would govern Manx Telecom Limited's relationship with the OLO. This will include Key Performance Indicators.
- publish prices and non-price terms and conditions for wholesale products. Manx Telecom Limited is not obliged to publish prices for wholesale leased lines at or above 155 Mbit/s, but prices shall be notified to the Commission.
- notify OLOs and the Regulator in advance of the launch of a new wholesale product. The notice period for new wholesale products is three months. For all new products, this time period may be varied in agreement with the Commission.

Manx Telecom Limited will be required to produce a timetable detailing how and when it intends to comply with its transparency obligation, and in particular to explain why any part of this would take longer than 3 months.

Obligation of accounting separation

Manx Telecom Limited *will be obliged to produce separated accounts. The format and reporting requirements of these accounts will be subject to agreement with the Commission. The Commission expects Manx Telecom Limited to make initial proposals within 3 months of the publication of this Decision.*

Obligations relating to price controls and cost accounting

Manx Telecom Limited shall maintain appropriate cost accounting systems in respect of products, services or facilities in the wholesale fixed markets.

Manx Telecom Limited *shall be obliged not to unreasonably bundle.*

Manx Telecom Limited *shall have an obligation not to cause a margin/price squeeze.*

Manx Telecom Limited *shall not offer retail prices which are below its wholesale price for the equivalent product.*

Mobile communications markets

*There is a wholesale market for **mobile access and call origination.***

*There is a wholesale market for the provision of **call termination on a mobile network.***

SMP designation

Manx Telecom Limited has SMP in the wholesale market for mobile access and call origination.

Manx Telecom Limited and Cable and Wireless Isle of Man Limited each has SMP in the wholesale market for the provision of call termination on their respective networks.

The geographic scope of all mobile markets is the Isle of Man.

SMP obligations in relation to wholesale mobile markets

No remedies will be imposed in the wholesale market for mobile access and call origination at this time.

The Commission is imposing SMP obligations on Manx Telecom Limited and Cable and Wireless Isle of Man Limited in relation to wholesale call termination on their respective mobile networks.

Obligations to provide access

Manx Telecom Limited and Cable and Wireless Isle of Man Limited shall meet all reasonable requests for the provision of access to their respective mobile networks.

Obligation of non-discrimination

Manx Telecom Limited and Cable and Wireless Isle of Man Limited shall be required not to discriminate in respect of access to their mobile networks.

Obligation of transparency

Manx Telecom Limited and Cable and Wireless Isle of Man Limited shall have an obligation of transparency.

Manx Telecom Limited and Cable and Wireless Isle of Man Limited shall notify any proposed changes to price and non-price terms and conditions at least 30 days before they are due to come into effect.

Obligation of accounting separation

Manx Telecom Limited *and* Cable and Wireless Isle of Man Limited *will be obliged to produce separated accounts. The format and reporting requirements of these accounts will be subject to agreement with the Commission. The Commission expects Manx Telecom Limited and Cable and Wireless Isle of Man Limited to make initial proposals within 3 months of the publication of this Decision.*

Obligations relating to price controls and cost accounting

Manx Telecom Limited and Cable and Wireless Isle of Man Limited shall maintain appropriate cost accounting systems in respect of products, services or facilities in the wholesale mobile markets.

Manx Telecom Limited *and* Cable and Wireless Isle of Man Limited *shall have an obligation not to cause a margin/price squeeze between their Mobile Termination Rate price and their retail price.*