



[NB: Decision Notice originally published by the Communications Commission as part of "[Response to Consultation and notification of market power Determinations and Decision Notice Retail fixed markets](#)" on 11/09/12. This standalone version of the Decision Notice was published on 01/02/13 with the addition of footnote 2.]

Notification of Market Power Determination: Retail Fixed Markets

Decision Notice 2012/01

Statutory powers

- i. 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 Part 5 of the Telecommunications Act 1984 (of Tynwald).
- ii. This Decision Notice comes into effect on 11 October 2012 and applies to Manx Telecom Limited ("MT"). With reference to Condition 42.7 of Manx Telecom Limited's Licence, this Decision identifies relevant markets, and makes a market power determination. The Commission has presented its preliminary reviews of the telecommunications markets¹. The Commission has taken account of the submissions received in response to these consultations in issuing this Response to consultation set out above².
- iii. The provisions of the consultation documents and this Response to Consultation shall, where appropriate, be construed with this Decision. The analysis set out through the consultation process explains the reasoning behind the proposals, and indicates the effects the proposals are expected to have and gives reasons for making the proposal.

Retail fixed markets

Market definition

- iv. Condition 42 of Manx Telecom Limited's Licence requires that, before making a market power determination, the Commission must identify relevant markets, and in accordance with Condition 42.5 assess whether a Communications Provider has Significant Market

¹ "Consultation paper on telecommunications market reviews and notification of the proposed determinations", June 2011 and "Consultation paper and notification of proposed determinations: retail fixed markets", February 2012

² Response to Consultation and notification of market power Determinations and Decision Notice Retail fixed markets: 11 September 2012 is available at: <http://www.gov.im/lib/docs/cc/consultations/retailfixeddecisionfinal1191.pdf>

Power (SMP). The method to be followed is set out in Condition 42 of Manx Telecom Limited's licence.

- v. The relevant retail fixed markets which have been identified are as follows:
- vi. The **retail fixed 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.
- vii. 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.
- viii. There is a market for **retail fixed broadband** which includes xDSL, Fixed Wireless Access and (when and where available) FTTx. It excludes narrowband internet access and leased lines, and excludes mobile broadband. This market is not considered susceptible to *ex ante* regulation.
- ix. 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.
- x. In all retail fixed markets, the geographic scope of the market is the Isle of Man.

SMP designation

- xi. The assessment of market power was carried out in accordance with generally accepted principles, and took into account relevant factors as provided for in Conditions 42.5 and 42.6 of Manx Telecom Limited's Licence. 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 dedicated capacity

SMP obligations in relation to retail fixed markets

- xii. The Commission reserves the right to give further guidance on the implementation of any proposed measures.
- xiii. According to Condition 42.14 of Manx Telecom Limited's Licence, where the Commission has determined that a Communications Provider has Significant Market Power in a market, the Commission may consider proportionate and objectively-justified SMP

obligations, taking into account such of the following objectives as appear to the Commission to be appropriate:

- ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such Electronic Communications Services as satisfy all reasonable demands for them;
 - ensuring that users derive maximum benefit in terms of choice, price and quality;
 - ensuring efficient investment in infrastructure and promoting innovation;
 - encouraging the efficient use and effective management of radio frequencies and numbering resources; and
 - ensuring efficient and sustainable competition.
- xiv. Condition 43 of Manx Telecom Ltd's licence provides that Manx Telecom Ltd shall comply with such Conditions as the Commission may specify by direction in accordance with Condition 42 and paragraphs 43.2, 43.3 and 43.4.
- xv. Condition 44.2.1 of Manx Telecom Limited's licence provides for the Commission to direct price controls, as long as this is done in a way consistent with the provision in Condition 44.3, such that it appears to the Commission, from the market analysis carried out for the purpose of setting that condition, that there is a risk that the Communications Provider might sustain prices at an excessively high level or apply a price squeeze to the detriment of End Users; and it appears to the Commission that any such conditions are proportionate and appropriate for the purposes of: (i) promoting efficiency; (ii) promoting sustainable competition; and (iii) conferring the greatest possible benefits on the End-Users having taken account of the extent of the investment by the Communications Provider in the matters to which the condition relates.
- xvi. Condition 46 of Manx Telecom Limited's licence provides specifically that where the Commission has made a determination that the Communications Provider has Significant Market Power in a market for a Relevant Retail Service identified in accordance with Condition 42, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 42 and paragraphs 46.2 and 46.3 in respect of a Relevant Retail Service. Paragraph 46.2 states that any conditions imposed under Condition 46 must be proportionate and appropriate, and could not be met under Conditions 43, 44 or 45.
- xvii. Condition 47 of Manx Telecom's Limited's licence provides that the Commission may specify by direction conditions in respect of Relevant Leased Lines.
- xviii. Having considered those objectives, the Commission specifies by direction that the following licence conditions be imposed in the retail fixed markets where MT has been designated with SMP pursuant to the Conditions of the MT licence:

Obligation of non-discrimination

- xix. In accordance with Condition 43.2.2 of its Licence, Manx Telecom Limited is hereby directed not to unduly discriminate between its retail customers.

Obligation of transparency

- xx. In accordance with Condition 43.2.3 of its Licence, Manx Telecom Limited shall have an obligation of transparency.
- xxi. Without prejudice to the generality of this obligation, Manx Telecom Limited is directed to make publicly available, and keep updated, information as described in Conditions 8 and 9 of its Licence.
- xxii. Any proposed changes to price and non-price terms and conditions should be published 30 days in advance of their coming into effect.
- xxiii. For retail leased lines at or greater than 155Mbit/s. Manx Telecom Limited will not be obliged to publish its prices for these services. However, it will be required to notify its prices for these services to the Commission on a confidential basis, so that the Commission can check that the non-discrimination requirement, which will apply across the board to all leased lines, is being observed.

Obligation of accounting separation

- xxiv. In accordance with Condition 43.2.7 of its licence, Manx Telecom Limited is directed to produce separated accounts. The format and reporting requirements of these accounts will be subject to agreement with the Commission.

Obligations relating to price controls and cost accounting

- xxv. In accordance with Condition 44 of its Licence Manx Telecom is directed to comply with the following price controls:
- xxvi. Manx Telecom Limited is directed not to unreasonably bundle. This is a proportionate measure designed to address the circumstances outlined in Condition 44.3, and therefore justifies the obligation imposed under Condition 44.2.1.
- xxvii. Manx Telecom Limited is directed not to cause a margin/price squeeze. This is a proportionate measure designed to address the circumstances outlined in Condition 44.3, and therefore justifies the obligation imposed under Condition 44.2.1.
- xxviii. In accordance with Condition 44.2.3 of its Licence, MT is hereby directed to maintain appropriate cost accounting systems in respect of the price controls imposed in accordance with Condition 44.2.1 regarding products, services or facilities in the retail fixed markets. In accordance with Condition 44.2.3 (a) and (b), MT is required to make publicly available a description of the cost accounting system, including details of (i) the main categories under which costs are brought into account for the purposes of that system; and (ii) the rules applied for the purposes of that system with respect to the allocation of costs.