



[NB: Decision Notice originally published as part of "[Response to Consultation, Notification of Market Power Determinations and Decision Notice Wholesale fixed markets](#)": Dated 11 September 2012. Standalone Decision Notice published 1 February 2013. With the following alterations: see footnotes 2,3 & 4]

Notification of Market Power Determination: Wholesale Fixed Markets

Decision Notice 2012/02

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 comes into effect on 11 October 2012 and applies to Manx Telecom Limited ("MT"). With reference to Condition 42.7 of the MT Licence, this Decision identifies relevant markets, and makes a market power determination. The Commission has presented its preliminary review of the telecommunications markets¹. The Commission has taken account of the submissions received in response to the June 2011 and the February 2012 consultations in issuing this response to consultation set out above².
- iii. The provisions of the consultation documents and the 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.

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

² [Response to Consultation, Notification of Market Power Determinations and Decision Notice Wholesale fixed markets](#): Dated 11 September 2012

Wholesale fixed markets

Market definition

- iv. Condition 42 of the MT 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 Power ("SMP"). The method to be followed is set out in Condition 42 of the MT Licence.
- v. The relevant wholesale fixed markets which have been identified are:
 - There is a market for **wholesale call origination** for calls services originated on the fixed public telecommunications network.
 - It is proposed that there is a market for **wholesale on-island transit**³.
 - 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 **wholesale on-island dedicated capacity** and **wholesale off-island dedicated capacity**.
- vi. The geographic scope for all wholesale fixed markets is the Isle of Man.

SMP designation

- vii. 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 the MT Licence. Having determined that the wholesale fixed markets are not effectively competitive, MT 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

viii. [deleted]⁴.

³ "transit" inserted to correct omission in originally published notice.

⁴ Paragraph viii deleted post publication of draft notice. Following further analysis the Commission concluded that it will not define a market for wholesale transit in the Isle of Man and therefore MT is not designated as having SMP on such a market and that Decision Notice 2012/02 will not apply to wholesale transit. Ref: [Wholesale Fixed Transit Response to Consultation, Notification of Market Power Determinations 2012](#) issued 31 October 2012.

SMP obligations in relation to wholesale fixed markets

- ix. The Commission reserves the right to give further guidance on the implementation of any proposed measures.
- x. According to Condition 42.14 of the MT Licence, where the Commission has determined that a Communications Provider has SMP on 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.
- xi. Condition 43 of the MT licence provides that MT 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.
- xii. Condition 44.2.1 of the MT 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:-
- promoting efficiency;
 - promoting sustainable competition; and
 - 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.
- xiii. Having considered those objectives, the Commission specifies by direction that the following SMP conditions be imposed in the wholesale fixed markets pursuant to the Conditions of the MT licence:

Obligations to provide access

- xiv. In accordance with Condition 43.1 of its Licence, Manx Telecom Limited is directed to and shall meet all reasonable requests from OLOs for the provision of network access to a relevant network, and the use of a relevant network, in the wholesale fixed markets where Manx Telecom Limited has been designated with SMP.

Access obligations – general conditions attached

- xv. As provided for in Condition 43.4 of its Licence, MT is directed to 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.
- xvi. MT is directed to negotiate in good faith with access seekers.
- xvii. MT is directed not to withdraw access to facilities already granted without justification and consultation.

Obligation of non-discrimination

- xviii. As provided for in Condition 43.2.2 of its Licence, MT is hereby directed not to discriminate unduly in respect of access.
- xix. MT is directed to ensure that it does not discriminate unduly 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 MT provides for itself.

Obligation of transparency

- xx. In accordance with Conditions 43.2.3, 43.2.4, 43.2.5 and 43.2.6 of its Licence, MT shall have an obligation of transparency.
- xxi. Without prejudice to the generality of this obligation, in all of the wholesale fixed markets in which it is designated with SMP, MT is hereby directed to:
- 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 MT's relationship with the OLO. This will include Key Performance Indicators.
 - publish prices and non-price terms and conditions for wholesale products. MT is not obliged to publish prices for wholesale leased lines at or above 155 Mbit/s, but prices shall be notified on a confidential basis to the Commission.

- notify OLOs and the Commission in advance of changes to wholesale prices. Advance notification must give sufficient time to respond to proposed retail price changes.
- notify OLOs and the Commission in advance of the launch of a new wholesale product. The notice period for new wholesale products is 3 months. For all new products, this time period may be varied in agreement with the Commission.

Obligation of accounting separation

- xxii. In accordance with Condition 43.2.7 of its Licence, MT is hereby directed to produce separated accounts. The format, timing and reporting requirements of these accounts will be subject to agreement with the Commission.

Obligations relating to price controls and cost accounting

- xxiii. A price control obligation is proposed in accordance with Condition 44.2.1 such that MT is directed not to cause a margin/price squeeze. This is a proportionate measure designed to address the objectives outlined in Condition 44.3. In accordance with Condition 44.2.2 of its Licence, MT is directed to comply with rules which the Commission may make in relation to the measures imposed under Condition 44.2.1, regarding the recovery of costs and cost orientation.
- xxiv. 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 wholesale 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.