



(NB Document originally published as part of [Mobile Communications Markets Response to Consultation and Notification of Market Power Determinations and Decision Notice 2012/03](#), published on 31 October 2012. Standalone Decision Notice published 1 February 2013. Paragraphs are now numbered for ease of use and new Footnote 2 added)

Notification of Market Power Determination: Mobile Communications Markets Decision Notice 2012/03

Statutory powers

- i. This Notification of Market Power Determinations is issued in accordance with “Additional Obligations on Operators with Significant Market Power” Part 6 of the Licence granted to Manx Telecom Limited, and Part 4 of the Licence granted to Cable and Wireless Isle of Man Limited, under Part 5 of the Telecommunications Act 1984 (of Tynwald).
- ii. This Decision comes into effect on 30 November 2012 and applies to Manx Telecom Limited (“MT”) and to Cable and Wireless Isle of Man Limited (“C&WIOM”). With reference to Condition 42.7 of the MT Licence, and Condition 27.7 of the C&WIOM 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 consultation and to the May 2012 consultation in issuing the 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 above explains the reasoning behind and for making the proposals and indicates the effects the proposals are expected to have.

¹ “ Consultation paper on telecommunications market reviews and notification of the proposed determinations”, June 2011, and “ Consultation Paper and notification of proposed determinations , Mobile communications markets”, 18 May 2012

² [Mobile Communications Markets Response to Consultation and Notification of Market Power Determinations and Decision Notice 2012/03](#), published on 31 October 2012

Mobile Communications Markets

Market definition

- iv. Condition 42 of the MT Licence and Condition 27 of the C&WIOM Licence requires that, before making a market power determination, the Commission must identify relevant markets, and in accordance with Condition 42.5 (MT) and Condition 27.5 (C&WIOM) 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 and Condition 27 of the C&WIOM Licence.
- v. The relevant mobile communications markets which have been identified are:
 - There is a market for **retail mobile communications**.
 - There is a market for **wholesale mobile access and call origination**.
 - There is a market for **wholesale mobile call termination**.
- vi. The geographic scope for all mobile communications 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, and Conditions 27.5 and 27.6 of the C&WIOM Licence.
- viii. No operator is designated with SMP on the retail mobile communications market.
- ix. No operator is designated with SMP on the wholesale market for mobile access and call origination.
- x. MT and C&WIOM are designated as having SMP on the market for wholesale mobile call termination on their respective networks.

SMP obligations in relation to mobile communications markets

- xi. The Commission reserves the right to give further guidance on the implementation of any proposed measures.
- xii. According to Condition 42.14 of the MT Licence, and Condition 27.14 of the C&WIOM 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.
- xiii. Condition 44 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 44.2, and 44.3. Condition 28 of the C&WIOM Licence provides that C&WIOM shall comply with such conditions as the Commission may specify by direction in accordance with Condition 27 and paragraphs 28.2 and 28.3.
- xiv. Condition 44.2.1 of the MT Licence and Condition 28.2.1 of the C&WIOM licence provide for the Commission to direct price controls, as long as this is done in a way consistent with the provision in Condition 44.3 (MT) and Condition 28.3 (C&WIOM), 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.
- xv. The Commission specifies by direction that the following SMP conditions be imposed on the wholesale market for mobile call termination pursuant to the Conditions of the MT licence and to the Conditions of the C&WIOM Licence:

Obligations relating to price controls

- xvi. A price control obligation is imposed in accordance with Condition 44.2.1 (MT) and Condition 28.2.1 (C&WIOM) such that MT and C&WIOM are directed to comply with MTRs as notified in writing by the Commission. The Commission will work with operators and other interested parties on the detailed implementation of this obligation.