



Response to Consultation and Decision on Increasing ISP Licence Fees

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Executive Summary

This response to consultation follows up on the Communication Commission's proposal to increase the licence fee paid by the Isle of Man's ISPs (Internet Service Providers). The Commission published a consultation setting out its proposal on 12 September 2014 (12 September Consultation). Consultation responses were received from Domicilium, Manx Telecom and two members of the public. Non-confidential versions of these responses are available on the Commission's website. The Commission thanks all respondents for their comments.

Following consideration of all responses, the Commission has made the following decisions:

1. The license fee for ISPs on the Isle of Man will be increased to £500 per annum plus 0.5% of Turnover exceeding £100,000. Turnover refers to revenue generated from licensed activities in the most recent financial year (as explicitly defined in the licence). The new fee will come into effect from April 2015.
2. The Commission will conduct a review of the activities of ISPs as well as Full Operators, and will further consult on the telecommunications licensing regime. The use of numbers and spectrum will be closely examined.

1. Introduction

- 1.1. The Isle of Man's telecommunications providers are licensed by the Communications Commission to provide telecommunications services of any kind (Full Operators), or to provide only internet and internet-related services (ISPs). When the 12 September Consultation was published, Manx Telecom and Sure were licensed as Full Operators, while five operators (Domicilium, Manx Computer Bureau, BlueWave, Continent 8 and Wi-Manx) were licensed as ISPs. However, Wi-Manx became a Full Operator on 5 November 2014 after applying for a licence modification.
- 1.2. Full Operators are currently charged higher licence fees than ISPs. This is due to what historically has been a key distinction between the two classes of operators—Full Operators are licensed to provide fixed/mobile voice services as well as data services, while ISPs are only licensed to provide data services.
- 1.3. The significance of this licensing distinction is rapidly diminishing as all telecommunications services increasingly take the form of data. Next-generation network (NGN) technology, currently being rolled out worldwide, uses the same network to transport all information and services (voice, data, and all sorts of media such as video) in the same way—as data 'packets'. For example, VoIP (voice over IP) is a form of voice communication that uses data packets to deliver voice telephony services, and is considered a data service. Thus, ISPs can compete with full operators in the fixed-line voice market, although they do not have direct access to geographic number ranges.
- 1.4. The historically limited scope of ISP activities also meant that ISP licences were simpler and involved less time and resources to administer. This may have been an additional justification for lower licence fees.
- 1.5. Because ISPs can now compete in markets that were previously only accessible to Full Operators, the disparity in licence fees creates a non-level playing field, potentially putting Full Operators at a disadvantage. The increasing scope and complexity of services offered by ISPs also weakens the argument that lower ISP licensing fees are justified by lower administrative cost.
- 1.6. This response to consultation is concerned with the Commission's proposal, as set out in the 12 September Consultation, to increase the licence fee paid by the Island's ISPs. Consultation responses were received from Domicilium, Manx Telecom and two members of the public. Non-confidential versions of these responses are available on the Commission's website. The Commission thanks all respondents for their comments. This response to consultation takes into account all comments made by respondents. A summary of respondents' views is provided, followed by the Commission's reasoning and conclusions.

2. Legal and Regulatory Background

- 2.1 Section 1 of the Telecommunications Act 1984 (Act) directs the Communications Commission to act in the best interests of Isle of Man consumers with respect to telecommunications on the Island. The Commission is responsible for issuing

telecommunications licences in accordance with section 5 of the Act. Section 10 of the Act allows the Commission to modify licence conditions subject to appropriate notice and consultation.

- 2.2 A Full Operator licence states in the 'Communication Provider's Network' section that the licensee's network 'may be comprised of telecommunications systems of every description within the Island.'¹ This broad statement authorizes Full Operators to provide all manner of mobile, fixed line and data services.
- 2.3 The equivalent section in an ISP license states that the licensee's Network may be comprised of telecommunications systems that 'provide only Internet and Internet related services', with the Internet defined as 'the global association and network of computers that carries data in digital form and makes the ubiquitous exchange of information possible.'² Hence, ISPs can provide all manner of data services, but cannot provide fixed and mobile services over the public switched telephone network (PSTN).
- 2.4 As they are not authorized to provide services over the PSTN, ISPs do not have direct access to Isle of Man geographic number ranges from Ofcom and have limited access to spectrum. In addition, ISPs do not have access to wholesale products that can be used for the provision of fixed voice services, such as carrier pre-select (CPS) and wholesale line rental (WLR). ISPs do have access to wholesale products that are used for data services, such as wholesale private circuits.
- 2.5 Full Operator and ISP licences contain a 'Payment of Fees' section that lays out the fees to be paid by the licensee as a percentage of Turnover with a minimum payment. Turnover is defined as 'the total revenue generated by the provision of Electronic Communications Networks and Services under [the] Licence for the financial year ending immediately before the due date for payment of the fee.'³ Thus, Turnover refers to revenue generated by licensed activities.
- 2.6 The 'Payment of Fees' section also states that the percentage of Turnover 'may be modified by the Commission with the consent of the Treasury, in order to reflect current regulatory costs.'⁴ This authorization within the licence for the Commission to change license fees is in addition to the Commission's general right to modify licence conditions under section 10 of the Act.

3. Current Licence Fees

- 3.1 In accordance with the 'Payment of Fees' section of their licence, Full Operators currently pay an initial fee of £5,000 upon granting of a licence. Starting from the first anniversary of the licence, there is an annual fee of £5,000 plus 0.5% of Turnover in excess of £1,000,000. As explained above, Turnover refers to revenue generated from licensed

¹ See Full Operator licence.

² See ISP licence.

³ See Full Operator or ISP licence.

⁴ *Ibid.*

activities. Since £5,000 is 0.5% of £1,000,000, Full Operators with £1,000,000 or more in Turnover pay a total licence fee of 0.5% of Turnover. Restated simply, the Full Operator annual licence fee is 0.5% of Turnover with a minimum payment of £5,000.

- 3.2 Under the 'Payment of Fees' section of their licence, ISPs pay an initial fee of £300 upon granting of a licence. Starting from the fifth anniversary of the licence, and every 5 years thereafter, there is a licence fee of £300 plus 0.5% of Turnover in excess of £60,000 from the most recent financial year. Again, Turnover means revenue from licensed activities. Note that £300 is 0.5% of £60,000. Hence, in the year that the licence fee is due, an ISP's licence fee can be stated as 0.5% of Turnover with a minimum payment of £300.
- 3.3 If it is assumed that an ISP's Turnover changes little from year to year, the ISP fee can be divided by five and restated as an annualized fee. The annualized ISP licence fee is 0.1% of Turnover with a minimum payment of £60. Comparing the Full Operator licence fee of 0.5% of Turnover to the annualized ISP licence fee of 0.1% of Turnover shows that the percentage of Turnover payable by a Full Operator is 5 times the percentage payable by an ISP (i.e. 400% more).

4. Comparison with Other Jurisdictions

- 4.1 The table below compares the Isle of Man's current licence fees to the fees charged in the Channel Islands, Gibraltar and UK.

Isle of Man License Fees Compared to Fees in Other Jurisdictions*

| | Isle of Man | Jersey | Guernsey | Gibraltar | UK |
|---------------------------------|-------------------------------|-------------------|-------------------|---|---|
| Population | 85k | 99k | 63k | 30k | 63,182k |
| GDP | £3.8b | £3.6b | £2b | £1.2b | £1,600b |
| Application Fee | 0 | £1,500 | £2,500 | 0 | 0 |
| Full Operator Annual Fee | 0.5% of turnover | 0.75% of turnover | 0.75% of turnover | (turnover) x (total cost of regulation) / (turnover of all providers) | 0.0833% of lowest turnover within band (no fee if turnover < £5m) |
| Full Operator Min. Fee | £5,000 | £500 | £500 | £55,000 | 0 |
| ISP Annual Fee | 0.1% of turnover (annualized) | 0.75% of turnover | 0.75% of turnover | £2,000 (increased by 4% cumulatively each year) | 0.0833% of lowest turnover within band (no fee if turnover < £5m) |
| ISP Min. Fee | £60 (annualized) | £500 | £500 | £2,000 | 0 |

*Based on information from regulator and government sources in April 2014.

- 4.2 The UK is included in the comparison because of its close relationship with the Island. However, due to its size, the UK has significant regulatory economies of scale and many large operators. Thus, Ofcom can use a very low percentage of turnover in fee calculations, and exempt operators with turnover below £5m from fees. This model would not suit the Isle of Man, as most operators might be too small to pay a fee, which would mean ISPs did not pay for the cost of their regulation.
- 4.3 The Channel Islands and Gibraltar are more similar to the Island in terms of population and GDP. Jersey and Guernsey charge a higher percentage of turnover (0.75%) than the Isle of Man (0.5%) as the fee for Full Operators. Jersey and Guernsey do not distinguish between ISPs and Full Operators, and thus charge ISPs the same high percentage of turnover (0.75%). The Island's annualized ISP license fees are a much lower percentage of turnover (0.1%).
- 4.4 Gibraltar draws a distinction between 'network providers' and 'service providers'. For purposes of comparison, the Isle of Man's ISPs can be considered service providers. Gibraltar's service providers pay an initial annual fee of £2,000, which increases by 4% cumulatively each year. This (almost) flat fee is more than the annualized amount currently paid by any of the Island's ISPs.
- 4.5 Also note that other jurisdictions charge fees on an annual basis. The Isle of Man's once-per-5-years fee schedule for ISPs is unusual.

5. Options for ISP Fees

- 5.1 One option would be to maintain the status quo of charging ISPs a once every 5-years fee of £300 plus 0.5% of Turnover in excess of £60,000 from the most recent financial year. This roughly equates to an annualized fee of 0.1% of Turnover with a minimum payment of £60. However, as discussed earlier, charging ISPs a much lower fee than Full Operators creates an uneven playing field and does not let the Commission recover its administrative costs. Therefore, if fees are not equalized, pressure will increase to define permissible ISP activities more restrictively. In an environment of rapid technological and market changes, this approach may be impractical and could reduce competition and innovation.
- 5.2 Another option would be to license all licensees as Full Operators and charge all operators the same annual license fee (i.e. 0.5% of Turnover). Under this approach, all of the Island's licensees would be able to engage in telecommunications activities of any description, and would therefore have access to limited resources such as geographic number ranges. This creates risk because assigning a limited resource such as geographic numbers to a licensee constrains the use of that resource by other licensees. If a licensee does not use a limited resource efficiently and effectively, the overall quality of telecommunications on the Island may suffer. Regarding geographical numbers (which are associated with the Isle of Man), reputational risk for the Island also arises due to potential misuse. In addition, if a Full Operator undertaking large scale activities on the Island is unable to financially support its service, market failure and consumer harm could result.

- 5.3 Future technology and market developments could help mitigate the above risks. However, at present, a practical means of risk reduction is to differentiate between Full Operators and ISPs.
- 5.4 A third option is to increase the ISP license fee in recognition of the broadening scope of activities that can be undertaken by ISPs and the increasing resources needed for ISP regulation. As ISPs tend to operate on a smaller scale than Full Operators and are subject to certain license restrictions, it would also be appropriate—especially with respect to smaller ISPs—to maintain a lower minimum fee payment for ISPs. This pragmatic approach would achieve a more equitable competitive environment and alleviate pressure to restrict ISP activities. As discussed in more detail below, this option can be implemented by charging ISPs an annual license fee of £500 plus 0.5% of Turnover exceeding £100,000.

6. Commission’s Proposal

- 6.1 The 12 September Consultation stated the Commission’s proposal that ISPs be charged an annual license fee of £500 plus 0.5% of Turnover exceeding £100,000. This can also be phrased as 0.5% of Turnover with a minimum payment of £500. Charging 0.5% of Turnover (rather than 0.1%) reflects that an ISP comparable in size to a Full Operator can engage in increasingly comparable activities and requires a comparable amount of regulatory effort. An annual fee schedule (rather than once-per-5-years) allows for easier forecasting and calculation of fee amounts.
- 6.2 The low minimum payment of £500—versus £5,000 for a Full Operator—recognizes that the Island’s ISPs tend to operate on a smaller scale than Full Operators. Based on the most recent fee amounts paid by the Island’s ISPs, smaller ISPs would pay significantly less than £5,000 per annum under the new fee schedule. The tendency of ISPs to pay a lower amount than Full Operators also reflects the fact that ISPs continue to have certain licence restrictions.
- 6.3 It is also important to note that ISPs (and potential new entrants) can choose to apply for a Full Operator license if they wish to engage the market as a Full Operator. For example, Wi-Manx, formerly an ISP, recently became a Full Operator through a modification of its licence.

Proposal: The license fee for ISPs on the Isle of Man will be increased to £500 per annum plus 0.5% of Turnover exceeding £100,000. Turnover refers to revenue generated from licensed activities in the most recent financial year (as explicitly defined in the license). The new fee would come into effect from April 2015.

7. Summary of Consultation responses

- 7.1 In its consultation response, Domicilium took issue with the scale of the proposed fee increase, and challenged the assertion that the regulatory effort required for ISPs

approaches the effort required for Full Operators. Domicilium also argued that the restrictions on ISP activities with respect to voice services justify lower ISP fees, particularly for ISPs that do not plan to offer services that compete with traditional voice.

- 7.2 Manx Telecom was positive about the Commission modifying licence fees to level the playing field among ISPs and Full Operators, but suggested that a wider review of ISP activities and overall licensing is also required. Manx Telecom also mentioned some issues that were not directly related to the consultation (e.g. the status of e-llan) and some issues that have already been addressed (e.g. an explicitly defined licence application process and availability of current licence fee information).
- 7.3 The two members of the public who responded expressed concerns that a fee increase should not force innovative ISPs out of business, and that a fee increase should not be passed on to consumers.

8. Analysis

- 8.1 The Commission acknowledges Domicilium's concerns and its important presence in the Isle of Man market. The Commission notes that the current licence fee is very low, and that the increase, while high in percentage terms, is not large in absolute terms. The increased fee also remains low versus fees levied in comparable jurisdictions. Therefore, the fee increase should not pose an undue burden on ISPs and the Island will continue to be a jurisdiction with low-cost licence fees. In addition, due to the lower minimum fee payment for ISPs (£500) versus Full Operators (£5,000), most ISPs are likely to pay a total licence fee that is lower than the minimum payment of a Full Operator.
- 8.2 With respect to regulatory effort, there have been several instances over the past year that demonstrate the increasing regulatory burden associated with ISPs—even those not expanding the scope of their traditional services. For example, significant regulatory effort was required to adjust the Broadband Migration Code of Practice in order to meet the needs of some ISPs.
- 8.3 The Commission notes Manx Telecom's concern about the ambiguities in connection with the allowed activities for ISPs, and its questions about overall licensing. Such issues have also recently been highlighted at the Other Licensed Operators forum (OLO forum). The Commission intends to conduct a review of the activities of ISPs as well as Full Operators, and to further consult on licensing issues. The use of phone numbers and spectrum is especially important.
- 8.4 Regarding the comments from members of the public, the Commission notes that the actual fee increase will be low in absolute terms, especially for smaller ISPs. For example, the current annualized minimum fee payment is £60, and the proposed minimum fee payment is £500. A fee increase of £440 should not threaten the business viability of a newly entering or small ISP.

9. Commission's Decisions

9.1 The Commission's decisions are formally stated below.

Decision 1: The license fee for ISPs on the Isle of Man will be increased to £500 per annum plus 0.5% of Turnover exceeding £100,000. Turnover refers to revenue generated from licensed activities in the most recent financial year (as explicitly defined in the license). The new fee will come into effect from April 2015.

Decision 2: The Commission will conduct a review of the activities of ISPs as well as Full Operators, and will further consult on the telecommunications licensing regime. The use of numbers and spectrum will be closely examined.

10. Next Steps

- 10.1 To implement Decision 1, the Commission must formally modify the licences held by ISPs. Under Section 10 of the Act, the Commission must give public notice of a licence modification. The Commission will soon issue the required notice.
- 10.2 As part of Decision 2, the Commission's next step is to conduct a survey of licensed telecommunications operators with respect to licensed activities.