

Proposed Order

Order made under s.11 of the Telecommunications Act 1984

30th January 2020

(OR/01/2020)

Statutory Powers

1. Section 11 of the Telecommunications Act 1984 (*the Act*) sets out the provisions under which the Communications Commission (*the Commission*) may secure compliance with licence conditions. It provides that, where it appears to the Commission that a licensee is contravening, or has contravened and is likely to again contravene, any of the conditions of his licence, the Commission may by an Order make such provision as is requisite for the purpose of securing compliance with that condition.
2. An Order under Section 11 will require the operator to do, or refrain from doing, certain things or classes of things as specified in the Order. The Order will take effect at the end of a reasonable period which is specified in the Order itself, and may be revoked at any time by the Commission.
3. Before making such an Order the Commission is required to publish a notice stating that it proposes to make an Order and set out the effects, stating the relevant conditions of the licence and the acts or omissions which, in its opinion, constitutes or would constitute contravention of it, and allowing a minimum of 28 days in which representations or objections may be made. The proposed Order in this instance is set out at paragraph 9 below. For the avoidance of doubt, this document constitutes the required Notice (see Summary of Commission Decision (DN/01/2020)).

Reasons for Proposed Order

4. The Commission has decided that based on analysis of the information received from Manx Telecom, and its own analysis of the tender bid submitted for the ConnectMann contract, that Manx Telecom in fulfilling the bid on the terms contained within its tender document would:
 - 4.1. be in breach of its Price Control Obligation as it would create a margin squeeze, particularly in the Point-to-Multi-Point Carrier Ethernet (P2MP CE) market segment, that would likely have the effect of restricting competition and foreclosing the market for P2MP CE services;

4.2. be in breach of its Non-Discrimination obligations as it would ostensibly be providing one of its retail customers with terms that were outside of a normal market offering; and,

4.3. be in breach of the Fair Trading Condition of its licence as it was abusing its dominant position in the marketplace.

The obligations on Manx Telecom under its licence conditions are further specified in the Notifications of Market Power Determinations and Decision Notices which were in place at the time that Manx Telecom tendered for the ConnectMann contract.

5. Notification of Market Power Determination: Wholesale Fixed Markets; Decision Notice 2012/02¹:
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."

6. Notification of Market Power Determination: Retail Fixed Market Decision Notice 2012/01²:

"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 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."

7. Notification of Market Power Determination: Retail Fixed Market Decision Notice 2012/01³:
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.

¹ <https://www.iomcc.im/media/1144/notification-of-market-power-and-decision-notice-2012-02.pdf>

² <https://www.iomcc.im/media/1149/notificaiton-of-market-power-and-decision-notice-retail-fixed-markets-2012-01.pdf>

³ *ibid*

8. **Fair Trading Condition (Condition 21)**

Manx Telecom are in breach of condition 21.3

The Communications Provider shall not make (including implement) any agreement, comply with any decision of any association of undertakings or carry on any concerted practice with any other undertaking which is or is intended to be implemented in the Island and which:

21.3.1 may affect trade within the Island;

*21.3.2 has the object or effect of preventing, restricting or distorting competition within the Island;
and,*

21.3.3 relates to activities connected with telecommunications matters.

And condition 21.4 “The prohibitions in paragraph 21.3 applies, in particular, to agreements, decisions or practice which...21.4.4 apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage”

The Proposed Order

9. The Commission intends to issue an Order under s.11 of the Act that, **without prejudice to any further bid, Manx Telecom is prohibited from fulfilling the ConnectMann LOT 1 contract, or part thereof, under the terms submitted in its tender for that contract.**

Next steps

10. Manx Telecom has been provided with a full statement of the Commission’s reasoning. The Commission has published a Summary of its Decision.
11. Representations and objections to the Proposed Order may be made in writing by 5pm on 2nd March 2020 to the contact details below. The Commission will consider any representations or objections received by that deadline and will make a final Order. Any final Order will take effect at the end of a reasonable period after it is issued.

Please address any representations to:

Ms. Laura Balmer

Communications Commission,
Murray House,
Mount Havelock,
Douglas.
IM1 2SF

Email: laura.balmer@iomcc.im