



*Assessment of the Impact of the National
Broadband Plan on Telecoms Regulation*

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1. Background

- 1.1. The Communications Commission (the Commission) is the statutory body responsible for economic regulation of the telecoms sector in the Isle of Man. The Commission's main focus is to facilitate sustainable competition within the telecoms markets on the Island; ultimately competition is assessed on the benefits, or otherwise, that it may bring for consumers.
- 1.2. In order to achieve its aims the Commission regulates the telecoms sector on an ex-ante basis – putting in place regulatory obligations and remedies to prevent any parties from abusing a dominant position in the market¹. While it does not rule out regulatory interventions at the retail level if required, most of the obligations and remedies focus on the wholesale markets. The Commission is of the view that, given the size and scope of the Isle of Man telecoms markets, facilitating access to existing infrastructure on a cost oriented, non-discriminatory basis allows competitors to make more efficient investments in their core networks to allow for greater differentiation from the incumbent.
- 1.3. However, there are some areas of the Island where it is likely that an operator could not make a sufficient return on investment to justify rolling out next generation fibre infrastructure. To overcome this problem the Government has committed to supporting and facilitating investment in these areas through the National Broadband Plan (NBP). The Commission is supportive of this initiative and believes any measures that further the rollout of next generation services are likely to be positive.
- 1.4. The Commission's aim in publishing this paper is to ensure that there is regulatory certainty; it is of the view that operators with an interest in competing in the Isle of Man telecoms markets benefit from having clarity around the regulatory environment in which they operate. The Commission still considers this to be a living document and will release updated versions if and when developments arise that may cause it to change its thinking. However, as it stands the Commission is satisfied that the views set out in this version of the paper are an accurate reflection of its current thinking.
- 1.5. The NBP has the potential to impact on competition, at the very least in the intervention areas. Therefore, in line with its regulatory remit and the National Telecommunications Strategy, the Commission believes it is important now that the NBP has been awarded to Manx Telecom, to make its views on regulation clear to all in the interest of providing regulatory certainty.
- 1.6. This is an updated version of the document published on 13/09/2019 (document reference number 08/19), prior to the award of the NBP. The Commission will continue to monitor developments in relation to the NBP and reserves the right to publish further updates. The Commission also reserves its right to revisit and amend any obligations or remedies in response to competitive developments in the best interests of the Manx consumer and economy.

¹ These obligations are contained in the operators' licences issued under the Telecommunications Act 1984. The obligations will be replicated in the Communications Bill 2018 when it is enacted following its passage through the Legislative Branches.

1.7. The Commission believes that the success of the NBP will be demonstrated through the impact it has on the wholesale markets, thereby offering greater choice and value for consumers in the retail markets. To ensure this occurs it is essential that all operators can gain access to the infrastructure that the Government is subsidising on a cost oriented, non-discriminatory basis, and that all reasonable access requests are facilitated.

2. Outcome

- 2.1. Manx Telecom is the only successful bidder for the NBP and no Alternative Technology Providers have been selected.
- 2.2. The NBP is a gap funding arrangement intended to facilitate investment in areas that would not be economically viable to serve otherwise. The Government is not directly investing in, or retaining control of any network, or part thereof. The Commission is of the view that, from a regulatory perspective, it would be appropriate to treat Manx Telecom's network as an all-Island network regardless of the State subvention in some areas.
- 2.3. The only exception to the above would be the Cost Orientation remedies, where subvented assets would not form part of the price for wholesale offerings.

3. Regulating the National Broadband Plan

- 3.1. There will not be a material change to the telecoms markets in terms of Significant Market Power (SMP), based on the award of the NBP. There is no requirement to put in place any new obligations as Manx Telecom is already subject to the following obligations in markets where it has been deemed to have SMP, including the wholesale broadband market:
 - a) **Non-Discrimination** – the incumbent is not permitted to discriminate between its own retail operation and other operators, or to discriminate between its retail customers;
 - b) **Access** – all reasonable requests for products or access to its networks must be facilitated and Manx Telecom cannot withdraw access already granted without the approval of the Commission;
 - c) **Price Controls** – Manx Telecom must not create a price squeeze or margin squeeze between markets and products to prevent competition;
 - d) **Accounting Separation** – as the incumbent Manx Telecom must account for its wholesale and retail operations separately, and across regulated markets; and,
 - e) **Cost Orientation** – Manx Telecom is obliged to provide access to its network and products at the wholesale level on a cost oriented basis, only the cost for providing the service and the Weighted Average Cost of Capital (WACC) can be included in wholesale offers.

- 3.2. In addition to publishing formal decisions to give effect to the obligations outlined above², the Commission also provides operators with, and publishes as appropriate, guidance notes on the specific remedies that stem from the obligations. For example, the Commission has published guidance notes on Cost Orientation and Accounting Separation³, and Margin Squeeze⁴, and these documents are periodically reviewed and updated as required. It also publishes the details and findings of any investigations into alleged non-compliance with regulatory obligations.
- 3.3. It is important to note that while the obligations on Manx Telecom will apply across the Island, the specifics with regard to demonstrating compliance with them are likely to change. As stated in the previous section, being the successful bidder in the NBP will clearly have an impact on demonstrating compliance with the Cost Orientation obligation. Manx Telecom will have to demonstrate there are no instances of cross subsidisation between NBP intervention areas and parts of the network that are not in the intervention areas.
- 3.4. The Commission welcomes the Government's decision to exclude any obligations that could duplicate the regulatory obligations from the NBP contract and instead, has opted for independent regulation of the sector.

4. Conclusion

- 4.1. As part of the NBP process, the requirement to ensure that no abuse arises as a result of the award of the contract is balanced with the regulatory and contractual obligations, which are not without their cost. The Commission is of the view that the current regulatory framework is sufficient to do this, and this will only be strengthened by the enactment of the Communications Bill, which has nearly completed its passage through the Legislative Branches.
- 4.2. The Commission will continue to monitor competition in the telecoms sector on a proactive basis, and will ensure that appropriate interventions are made to ensure no issues arise. This includes consulting on and implementing changes to the regulatory framework, as required, to ensure it is fit for purpose.
- 4.3. Finally, the Commission would like to reiterate its support for the National Telecommunications Strategy, and the NBP process, which it believes will be a positive investment in the Island's future, and of net benefit to consumers.

²<https://www.iomcc.im/media/1060/notification-of-market-power-determination-wholesale-fixed-markets-decision-notice-2012-02.pdf> and <https://www.iomcc.im/media/1057/notification-of-market-power-determination-retail-fixed-markets-decision-notice-2012-01.pdf> for further information.

³ <https://www.iomcc.im/media/1330/information-notice-on-cost-orientation-assessments-june-2019.pdf>

⁴ <https://www.iomcc.im/media/1218/guidelines-on-assessment-of-margin-squeeze.pdf>