



**Response to the Consultation Paper 2009 – T3  
“Review of the Telecommunication Market in Jersey”**

**and**

**Decision on the Holding of Significant Market Power  
in Various Telecommunications Markets**

1. On 27 November 2009 the JCRA issued a consultation paper<sup>1</sup> on its review of the telecommunications market in Jersey, this consultation closed on 5 February 2010. There were six responses to this consultation from Clear Mobitel Jersey Limited ('CMJ'), Cable & Wireless Jersey Limited ('CWJ'), Jersey Airtel Limited ('JAL'), Jersey Telecom Limited ('JT'), Newtel Limited ('Newtel') and Nitel Limited. The JCRA had previously carried out a review of a number of telecommunications markets in 2004 and had issued a Direction declaring JT to be dominant in six identified markets<sup>2</sup>
2. The consultation paper reviewed the markets based upon those defined in the EC Recommendation of December 2007 as suggested should be done in the Review of the Jersey Telecom Limited Separated Accounts and Wholesale Access Provision which was conducted by the telecommunications consultants, Regulaid. These markets are defined as:
  1. Access to the public telephone network at a fixed location for residential and non-residential customers;
  2. Call origination on the public telephone network provided at a fixed location;
  3. Call termination on individual public telephone networks provided at a fixed location;
  4. Voice call termination on individual mobile networks
  5. On island wholesale leased lines;
  6. Off island wholesale leased lines; and
  7. Wholesale broadband services provided on fixed line network.
3. In addition to these markets the JCRA also proposed to review the retail mobile market which had been included in the 2004 Direction<sup>3</sup> and in respect of which JT had also been designated as holding significant market power (SMP).
4. The purpose of the consultation was to determine whether the telecommunications market had changed since 2004 as a result of the introduction of competition and also to assess the impact of new technological development on telecommunications services and providers of telecommunications services.
5. Each of the markets defined above received comments in most of the respondents' submissions and the summary of these will be considered below.

---

<sup>1</sup> JCRA Review of the Telecommunication Market in Jersey Consultation Paper 2009 - T3 available at: <http://www.jcra.je/pdf/090817%20Regulaid%20Review%20of%20Jersey%20Telecom%20Ltd%20REDACTED.pdf>

<sup>2</sup> 2004-1 Telecommunications Market Dominance Decision Paper and Direction - available at: <http://www.jcra.je/pdf/040429%20Decision%20on%20JT%20Dominance.pdf>

<sup>3</sup> 2004-1 Telecommunications Market Dominance Decision Paper and Direction - available at: <http://www.jcra.je/pdf/040429%20Decision%20on%20JT%20Dominance.pdf>

## **Market 1 - Access to the public telephone network at a fixed location for residential and non-residential customers**

6. Most of the responses were in agreement with the conclusion in the consultation paper, that is, JT retains SMP. Only one response, from JT, sought to disagree with this conclusion. JT said that whilst it agreed that for the provision of fixed lines it was dominant, there were now new options that mimicked fixed line telephony such as the wireless geographic number provision offered by JAL that could be considered as a substitute. It further suggested that fixed line telephony can also be substituted by mobile as a means of originating traffic (although this is dealt with more fully in the appropriate market below) and that as a consequence the number of fixed lines is in decline and that there is a trend towards 'mobile only' households.
7. While the JCRA agrees that there are other services and technologies available that can be considered a substitute for the origination of telephone traffic (see market 2 below), there is no substitute for the fixed line itself. In addition no other operators have entered the fixed line market through the deployment of fixed infrastructure since the 2004 Direction. The origination of telephone traffic on other technologies is not in itself a direct substitute for the fixed line and the services that can be provided over it. In addition there is currently a universal service obligation ('USO') associated with fixed telephone lines within the JT licence. There is at present no equivalent USO obligation in licences for the provision of telecommunications services over wireless or other technologies. The JCRA therefore rejects the proposal that the market definition should be widened to include other technologies. In the absence of wholesale line rental ('WLR') and/or local loop unbundling ('LLU'), JT remains the sole provider of fixed lines. Without competition at infrastructure levels there is no incentive for JT to react to competition. This is indicated by the prices for the provision and rental of fixed lines which have only be upward since the 2004 Direction. Therefore the JCRA concludes that in this market JT continues to have SMP.

## **Market 2 - Call origination on the public telephone network provided at a fixed location.**

8. Most respondents agreed with the JCRA conclusion that JT remains dominant in the market for call origination even with the availability of alternative solutions such as carrier selection ('CS') and voice over broadband ('VoIP'). JT proposed that the market definition should be widened. To support this claim it cites mobile for fixed substitution as a direct competitor to its fixed lines calls. This, it claims, is having a significant effect on the number of originating fixed call minutes.
9. The JCRA has considered this point but has concluded that in this respect JT also benefits from call origination on mobile networks as a consequence of its market share in the mobile call origination market (further dealt with below).

From this perspective there is a possibility that the falling call minutes on its fixed network could also be as a result of price differentials for equivalent traffic minutes, which, as JT itself notes, are bundled into mobile offers. As far as fixed call origination is concerned, JT is able to act independently from other fixed line call origination direct substitutes (CS and VoIP) by consistently maintaining higher prices than the alternative providers since the 2004 review.

10. The JCRA therefore rejects JT's proposed revised definition and finds that JT remains the SMP provider in this market.

### **Market 3 - Call termination on individual public telephone networks provided at a fixed location.**

11. All respondents agreed with the JCRA's conclusion. JT did nevertheless propose that other operators also have geographic (01534) number allocations and that there are alternative technologies for terminating such numbers.
12. The JCRA considered but rejected the JT proposal as there is currently only a very small proportion of such numbers on other technologies and in the absence of fixed number portability ('FNP') this will remain the case as most fixed line subscribers place a high value on the geographic number<sup>4</sup>. There is also no provision for CS or LLU in the current JT reference interconnect offer which together with the absence of FNP precludes service competition in this market. The JCRA therefore concludes that JT continues to hold SMP in this market.

### **Market 4 - Voice call termination on individual mobile networks**

13. Most respondents agreed with the JCRA's conclusion that each operator has SMP for terminating traffic on its own network. JAL commented that JT remains the net beneficiary of the current relationship as it retains the highest number of subscribers and termination rates are reciprocal on all networks. The JCRA would observe that reciprocity is not mandated and that each mobile operator is therefore free to set its own termination rate.
14. The JCRA is, however, aware of an on-going dispute on the mobile to fixed termination rate set by JT and is keen to resolve this matter as soon as possible. It will therefore be pursuing this matter after the completion of the revised JT separate accounts have been submitted to the JCRA.

---

<sup>4</sup> Ofcom study - Raising confidence in telephone numbers available at:  
<http://www.ofcom.org.uk/consult/condocs/numbering03/03.pdf>

## **Market 5 - On island wholesale leased lines**

15. Most respondents agreed with the JCRA's analysis and conclusion although CWJ commented that the relative cost of JT's wholesale product compared to other benchmarks would appear to be too high.
16. JT proposed that the number of wholesale leased lines defined in the consultation was under represented but further analysis of the data submitted by JT in its response concluded that this was not the case. The underlying data provided in the consultation used the information given to the JCRA by all licensees and therefore is considered robust, albeit referring to the full year 2008. JT also proposed that other operators' on-island microwave backhaul should be included in this market as it was a substitute for its fixed private circuits. The JCRA considered this point but concluded that this was not the case as the majority of these circuits are used in the same way that JT would use its own internal infrastructure to support its retail and wholesale products. The balance of these circuits which could be considered in the same market would only contribute a small portion, leaving JT with considerably more than 50% of the total market.
17. Therefore, the JCRA concludes that JT holds SMP in this market.

## **Market 6 - Off island wholesale leased lines**

18. Most respondents broadly agreed with the JCRA's initial conclusion. However JAL commented that as it has no access to its own off-island backhaul, it is reliant on the incumbent's services. In this respect it proposed that there should be regulated set wholesale prices for all leased line wholesale products in order to stimulate competition.
19. Newtel also supported the proposal to regulate off-island wholesale prices pointing to JT's countervailing buyer power in this market and the possibility of properly set regulatory pricing could stimulate the IP market.
20. The JCRA is aware that off-island IP pricing is a concern to Class I licensees and is also aware that the IP sector is a growing market for innovation and competition. This was also one of the recommendations in the Regulaid report<sup>5</sup> and therefore the JCRA will consider this point further.

---

<sup>5</sup> Recommendation 5.23 - JCRA Review of the Telecommunication Market in Jersey Consultation Paper 2009 - T3 available at: <http://www.jcra.je/pdf/090817%20Regulaid%20Review%20of%20Jersey%20Telecom%20Ltd%20REDACTED.pdf>

## **Market 7 - Wholesale broadband services provided on fixed line network**

21. Most respondents agreed with the JCRA's initial conclusion. Newtel commented that the wholesale service should be defined by and the prices regulated by the JCRA as did CWJ. CWJ also proposed that the service level agreement should also be part of the regulated product. This point was also raised in the Regulaid report<sup>6</sup>.
22. JT proposed that the broadband market should be expanded to include wireless, particularly in light of the proposed long term evolution of mobile on the island. The JCRA considered this point but rejected it at this time because the technology is immature and there are likely to be considerable delays in the deployment of 2600MHZ spectrum licenses that would enable the expansion of mobile and fixed broadband services.
23. JT also proposed the inclusion of existing mobile broadband into the same market. The JCRA considered this but concluded that given existing technologies and network structures that xDSL and mobile broadband are not fully interchangeable. Backhaul bandwidth and contention plus other variables such as location and distance from the base station indicate that current 2G and 3G technologies are not directly comparable with fixed line broadband<sup>7</sup>. In the case of 2G, data speeds are much lower than the entry level of ADSL and for 3G the bottlenecks of cell shrinkage and backhaul capacity from base stations would prevent comparable substitution. The information provided by operators for the JCRA review shows that the number of mobile broadband connections has not significantly increased during 2009 which indicates that mobile broadband is an adjunct to rather than a replacement of fixed broadband. The cost of mobile broadband is more expensive than fixed and reliability is dependant on location. A number of other constraints (such as connection sharing) reduces its substitutability for fixed broadband for residential users.
24. Consequently, the JCRA concludes that JT retains SMP in this market.

---

<sup>6</sup> ibid

<sup>7</sup> See JCRA Telecom Market Review

## The Mobile Networks and Services Markets

25. The 2004 Decision designated JT as being dominant in the markets for mobile networks and for mobile services. In this consultation the JCRA asked respondents to comment on this market sector which is not included in the EC grouping.
26. At the time of the original decision JT had the only network and thus was the monopoly provider of mobile services. Since then two new entrants have entered the mobile market, however JT remains the largest single provider of services, having about two thirds of the total subscriber base.
27. Only two of the respondents, JT and CMJ, were in full agreement with the JCRA's initial conclusion.
28. JAL commented that JT continues to price above the other operators in respect to its headline prices and bundle content. JAL submits that this indicates that JT is still able to price independently which is one of the indicators of SMP.
29. CWJ proposed that JT's larger share of the market enabled it to leverage wholesale costs on termination to its retail products by virtue of its larger share of the traffic by attempting to increase both its mobile termination rate ('MTR') and its fixed termination rate ('FTR') which is currently in dispute. It further proposed that this would enable it to cross-subsidize its non-competitive services to its retail products. This would become opaque in any published separated accounts should JT's SMP status be withdrawn in this market. However, as outlined above, all mobile operators are dominant in termination rates, JT, as the incumbent operator, would still need to report to the JCRA on its MTR through the Regulatory Separated Accounts.
30. Newtel commented that as with its fixed line services, JT has not reacted to competitive pricing and that it is able to act independently of the competition and thus its SMP status should be retained. This view was supported by both CWJ and JAL.
31. In its statistical review of the telecommunications market<sup>8</sup> the JCRA notes that JT is able to consistently price above the competition for its mobile bundles, despite competition existing in the market since 2006. However, given that the facilities for moving operator are available without costs (Mobile Number Portability removes the consumer's overhead for changing numbers and operators levy no charge for porting) and that there is both price and service competition in this market, then the retail market is open for consumer choice based both on both price and options.
32. The JCRA is of the view that removing SMP from the retail sector of the JT mobile business is therefore appropriate.

---

<sup>8</sup> ibid

**Decision of 19 April 2010 under Condition 24.1 of Jersey Telecom Limited's Licence ('JT') and under Condition 25.1 of the Licences of Cable & Wireless Jersey Limited ('CWJ') and Jersey Telenet Limited (trading as Jersey Airtel Limited) ('JAL').**

**Whereas:** After a public consultation and a full review<sup>9</sup>, the Board of the JCRA has considered all relevant facts and materials relating to the telecommunications markets listed below;

The Board of the JCRA Hereby Decides:

In the Markets set out below

1. **Access to the public telephone network at a fixed location for residential and non-residential customers:** JT has SMP in this market;
2. **Call origination on the public telephone network provided at a fixed location:** JT has SMP in this market;
3. **Call termination on individual public telephone networks provided at a fixed location:** JT has SMP in this market;
4. **Voice call termination on individual mobile networks:** Each mobile operator, that is, JT, CWJ and JAL has SMP in the market for terminating calls on its own network;
5. **On-Island Wholesale Leased Lines:** JT has SMP in this market;
6. **Off-Island Wholesale Leased Lines:** No operator has SMP in this market;
7. **Wholesale Broadband Services Provided on a Fixed Line Network:** JT has SMP in this market; and
8. **Mobile Networks and Mobile Services** – No single operator has SMP on these markets and the JCRA intends to remove the designation of dominance placed on JT in 2004.

This Decision replaces in its entirety that made by the Board of the JCRA on 29 April 2004.

**By order of the Board of the JCRA**

**19 April 2010**

---

<sup>9</sup> JCRA Review of the Telecommunication Market in Jersey Consultation Paper 2009 - T3 available at: <http://www.jcra.je/pdf/090817%20Regulaid%20Review%20of%20Jersey%20Telecom%20Ltd%20REDACTED.pdf>