Jersey Telecom Price Control

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Initial Notice of Proposed Determination: T817J

23 November 2010

Jersey Competition Regulatory Authority,
2nd Floor, Salisbury House,
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1. Introduction

On 31st December 2011, Jersey Telecom's (***JT***) existing three year price control[1] will end. Since January 2010, the Jersey Competition Regulatory Authority (***JCRA***) and Guernsey's Office of Utility Regulation (***OUR***), together with the telecoms industry in the Channel Islands, have been working on a project to facilitate the development of new wholesale access products, aimed at increasing choice for fixed-line telecoms services.

Creating fairly-priced wholesale access products is considered key to the development of fixed-line competition. If successful, competitive access to JT's network may stimulate further competition in the fixed-line services, providing consumers with greater choice and better pricing and helping to drive innovation in the services provided to telecoms users. In the event that competition is increased in fixed-line services, the need for price controls in the longer term would be less and there may be scope to reduce significantly, or remove entirely, price controls on JT's products.

The regulators and industry together have identified a range of new wholesale services that may be introduced to promote further fixed-line competition and the next steps in this project are subject to a separate consultation. At this time, the products to be introduced and their timing remains to be determined; however, it is expected that that during 2012 the first products should be launched. Therefore, the JCRA believes it is necessary to retain a price control on certain JT services, and that the services to be price controlled should remain those covered by Decision T2008-1.

However, the time period in which sufficient competition might develop in fixed-line services, given this workstream, is such that the JCRA proposes to refrain from setting an entirely new price control for an extended period of time (i.e. the normal three year price control) given the resources involved and the possibility that the period of such a control may need to be revisited if effective competition develops over a shorter time period. Instead, the JCRA proposes to set a one year price control (as is also being proposed in Guernsey for Cable & Wireless Guernsey Limited (***C&W Guernsey***) for similar reasons). The detail of the proposed one year control is set out later in this Initial Notice.

[1] *Decision Paper and Determination T2008-1*, 15 September 2008

2. Structure of the Initial Notice

This Initial Notice is structured as follows:

Section 3:	Sets out the legal and regulatory framework for the telecoms sector;
Section 4:	Discusses the background to the current price control and subsequent developments; and
Section 5:	Explains the JCRA's proposals for the price control

Interested parties are invited to submit comments on this Initial Notice in writing or by email to the following address:

JCRA,
2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF

Email: info@cicra.je

All comments should be clearly marked "**Jersey Telecom Price Control – Initial Notice**" and should arrive before 9am on Thursday, ***22 December 2011***.

In line with JCRA consultation policy, the JCRA intends to make responses to the consultation available on the CICRA website. Any material that is confidential should be put in a separate Annex and clearly marked so it may be kept confidential.

3. Legal Background

The legal basis in Jersey that provides for the JCRA to subject JT services to price control is the licence issued to JT by the JCRA under Article 14 of the *Telecommunications (Jersey) Law 2002*. JT's Licence, in particular Condition 33.2, states:

"The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunications Services within a relevant market in which the Licensee has been found to be dominant. A determination may:

a) provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunications Services;
b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies."

This condition allows the JCRA to regulate the prices that JT charges for telecommunications services in a way and for a time that it deems appropriate, where JT has a dominant position in the relevant market. In April 2010, the JCRA determined that JT has a dominant position in, inter alia, the following markets[2]:

- Access to the public telephone network at a fixed location for residential and non-residential customers;
- Call origination on the public telephone network provided at a fixed location; and
- Call termination on individual public telephone networks provided at a fixed location.

[2] *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*, 19 April 2010

4. Current price control and subsequent developments

The current three-year JT price control is due to expire at the end of December 2011. For the current price control, the JCRA concluded a price control framework for certain JT services and determined that the price control would run for 3 years with effect from 1st January 2009.

As stated earlier in this Initial Notice, the regulators in the Channel Islands are working with the telecoms industry as part of a Channel Island Wholesale Access Project (***CIWAP***) initiative to look at ways of increasing competition in the provision of fixed-line services. More effective competition may provide scope to remove or significantly reduce the scope of JT's price controls. The JCRA believes that the evidence from mobile telecommunications services, where greater competition was facilitated in 2008 through the introduction of mobile number portability (MNP), demonstrates that enabling consumers to choose who they get their service from provides a significant boost to competition and as a result delivers better prices and better service than regulation alone can achieve.

While a significant amount of work has been undertaken by the CIWAP, there remain a number of tasks still to be completed before any new services will be available to consumers. However, the regulators are committed to such services as can be enabled being available during 2012. Therefore, the JCRA would wish to avoid setting a price control for an unnecessarily long period, but considers equally that having no price control in place risks a situation where consumers are inadequately protected.

The JCRA is therefore minded to adopt a one year price control from 1st January 2012. This will enable a view to be taken during 2012 on whether further price controls are required and if so what duration any further control should last for. The detail of the price control being proposed is set out in the next section.

5. Proposed Price Control

JT's dominance

As stated earlier, JT has been found to be dominant in the the following markets[3] which are relevant for the purposes of this proposed price control:

- Access to the public telephone network at a fixed location for residential and non-residential customers;
- Call origination on the public telephone network provided at a fixed location; and
- Call termination on individual public telephone networks provided at a fixed location.

While the finding of dominance was made in April 2010, the JCRA has reviewed the provisional market share returns provided by Jersey operators for the period to the end of December 2010. It shows that JT continues to provide 100% of all fixed lines and had a market share for calls on fixed lines of 88% (a very slight decrease in market share from 90% in 2009). This information confirms that no significant change has occurred in the market share of JT since the determination made in April 2010. In addition, the JCRA does not believe that competition from mobile telephones (as a substitute for a fixed line) or broadband-facilitated calling services (e.g. voice over internet protocol, or VoIP) as yet exert sufficient pressure on JT to justify a conclusion that fixed-line markets are competitive. Therefore, the JCRA remains of the view that JT is dominant in the markets listed above, and believes that a continuation of a control on the prices charged by JT for services in these markets is warranted in these circumstances.

Proposed Price Control

In 2008, the JCRA set a price control which included the following features:

- That the appropriate level of Weighted Average Cost of Capital (***WACC***) for the period of the price control is 11.6%;
- That a price control of RPI – 3% should apply to JT in respect of its charges for local calls, calls to the UK and international calls; and
- That a sub-cap of RPI – 1% should apply to JT's charges in respect of the connection of fixed subscriber lines and line rental.

In respect of WACC, the JCRA believes that, as this is a one year price control and given there has been little change in the markets subject to price control during the duration of the previous price control, it would be inappropriate for either JCRA or JT

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[3] *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*, 19 April 2010

to expend the significant resources required to calculate a new WACC figure. Instead, the proposed determination is based on a roll over of nominal prices from 2011. In the event that the JCRA were to determine that a longer price control was justified for the period from 2013 onwards, then it would intend to re-estimate the WACC for JT (or, potentially, several WACCs for different parts of JT's business) as part of that process.

With regard to the two sub-baskets of the price control, the JCRA is minded to freeze maximum charges (i.e. to allow no increase to tariffs in nominal terms) for both sub-baskets for 2012. A number of factors have informed the JCRA's proposed determination.

As already noted, regulators in both Jersey and Guernsey will shortly consult on the development of new wholesale fixed-line access products. These products would give consumers choice in their fixed-line telecoms provider. One of the options being considered is the introduction of a wholesale line rental (***WLR***) product. Setting a wholesale price for WLR would require a detailed assessment of the cost of providing line rental services, and the JCRA believes this work should provide greater clarity on what retail prices should be charged by JT for this service in the future.

The JCRA has also taken account of the fact that since the last price control was put in place in January 2009, JT has made significant changes to its cost base through its business transformation programme. It has further made significant changes to the underlying network used to deliver certain services and the JCRA expects that these combined measures would impact the cost of providing the services which are the subject of the proposed price control. The JCRA believes that before allowing further price increases, a detailed assessment of these costs (and their impact) should be made. As it is already intended to undertake a costing exercise as part of the CIWAP initiative, the JCRA does not believe that it would be an efficient use of either its own or JT's resources to run parallel exercises in this area. The JCRA notes that even if a prize freeze is adopted, JT's standard line rental, currently £12.75 per month (excluding GST) will still be significantly higher than line rental charges applied by C&W Guernsey in Guernsey (£8.99 per month) and that call charges are also significantly higher, with a minimum call charge in Jersey of 7p compared to 2p in Guernsey.

Finally, the JCRA has reviewed the latest separated accounts provided by JT for the 2010 year. While these accounts are in draft form, and have not as yet been published, they raise questions about the underlying allocation of charges between the wholesale and retail arms of JT. The provision of robust financial accounting information remains a key priority for the JCRA so that properly informed decisions can be made on JT's charges (both retail and wholesale). In light of the issues highlighted by the draft 2010 regulated accounts, the JCRA believes it is impossible to have confidence that any increased charge for price-controlled services would be cost-justified.

In light of these factors, the JCRA proposes that no change should be made to the maximum price for the services covered by this proposed determination during the period to 31 December 2012. In the event that the costing work to be undertaken in 2012 as part of CIWAP identifies reasons why this determination should be amended earlier than 31 December 2012, the JCRA will consider this at that time.

Proposed Determination

For the reasons set out above, the JCRA proposes to issue the following determination under Condition 33.2 of JT's licence:

The maximum price charged by JT for each service in the categories listed below (being the services covered by the existing JT price control in JCRA Decision T2008-1), and any new service introduced by JT that does or could compete with any such service, shall be the price charged by JT for that service on 23 November 2011:

- local calls from fixed-line telephones,
- calls to the United Kingdom, other Channel Islands and the Isle of Man from fixed-line telephones,
- international calls from fixed-line telephones;
- connection of fixed subscriber lines; and
- line rental.

The proposed determination will terminate on 31 December 2012.

The proposed determination will take effect on 1 January 2012, unless the JCRA receives representations or objections about the proposal prior to that date, in which case the effective date will be specified in any final notice issued by the JCRA under Article 11(4) of the Law.

By order of the Board of the JCRA **23 November 2011**