Review of Mobile Termination Rates

Jersey

Initial Notice

Document No: CICRA 15/36 **July 2015**

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor, Plaiderie Chambers
La Plaiderie, St Peter Port, Guernsey, GY1 1WG
Tel: +44 (0)1481 711120
Web: www.cicra.gg

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier, Jersey, JE2 3RF
Tel: +44 (0)1534 514990
Web: www.cicra.je

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1. Executive Summary

Following its consultation the Jersey Competition Regulatory Authority ("JCRA") is issuing this Initial Notice ("IN") with regards to mobile termination rates ("MTRs").

The direction will apply to the market for "Calls to the UK mobile numbers allocated by Ofcom to that mobile operator". This will apply irrespective of the origin of the call and without any additional charge being applied to the relevant mobile network operator for any on-island transit of a call to be terminated on its network. The MTRs in this decision would not apply to the charges for transiting calls to local mobile networks from other jurisdictions.

The direction imposes the following cap on charges:

- 2 pence per minute (until 31 August 2016),
- 1 pence per minute (from 1 September 2016 to 31 August 2017), and
- 0.507 pence per minute (from 1 September 2017).

This direction also extends the scope of MTR regulation to Marathon Telecom Limited an operator licenced by the JCRA.

2. Introduction

Mobile termination rates ("MTRs") are the fees charged to other telecommunications companies by mobile network operators ("MNOs") to terminate calls on their mobile networks. They are a key component of the retail charges that customers calling mobile number ranges allocated to the Channel Islands pay for those calls. In the Channel Islands, the current MTR is 4.11 pence per minute ("ppm").

The issue of the level of MTRs and the need to ensure such charges are set at levels that reflect the efficient and cost-effective provision of such terminating services is a matter under review by regulators in many European countries. In particular, there has been significant progress in reducing MTRs in recent years within the EU. A key principle is that MTRs are intended to cover only the costs of the network that are specific to the 'local segments' of the mobile operator's network and the MTR should therefore not recover other network or operational costs that are not specific to this part of the network.

In Jersey, there are three mobile operators currently providing mobile services: JT (Jersey) Limited ("JT"), Sure (Jersey) Limited ("Sure") and Jersey Airtel Limited ("JAL"). In addition Marathon Telecom Limited ("Marathon") has a Class I licence and spectrum allocated to it in Jersey.

In September 2014 the JCRA issued a Final Notice[1] that an MTR cap of 4.11ppm would be applied in Jersey. This would be a flat rate (i.e. no time of day or weekend distinction) and calls would be charged on a per second basis (no minimum call charge or call duration), and the charge would include any on-island transit of a call to be terminated on a mobile network.

In May 2015 the JCRA issued a consultation on MTRs[2]. The JCRA received four responses to its consultation.

This document sets out the responses received to that consultation and the Initial Notice for future MTRs following consideration of those responses.

This document summarises the issues involved, and sets out the directions under Article 16(3)c of the Telecommunications (Jersey) Law 2002 (the "Telecoms Law") that the JCRA proposes to issue:

- to JT in relation to Condition 34.1 of the Class III licence issued to JT;
- to Sure in relation to Condition 27.1(c) of the Class II licence issued to Sure;
- to JAL in relation to Condition 27.1(c) of the Class II licence issued to JAL; and
- to Marathon under Condition 5.1(b) of the Class I licence issued to Marathon.

It constitutes the Initial Notice of the proposed directions under Article 11(1) of the Law. The JCRA is now inviting comments on its proposed directions.

[1] CICRA 14/53
[2] CICRA 15/22

3. Structure of the document

This document constitutes an Initial Notice (IN). The document sets out the conclusions which the JCRA has reached, having taken full account of responses to the consultation and having carried out further research to ensure it has fully addressed respondents' points. The document contains summaries of particular points raised to illustrate the JCRA's reasoning.

This document broadly follows the structure of the May consultation and is organised around the questions that were posed in that consultation. It is structured as follows:

Section 4	sets out the options for the basis of the MTRs
Section 5	summarises and responds to points made by the respondents to the consultation
Section 6	contains the Initial Notice
Annex 1	outlines the legal requirements and licensing framework

Respondents are requested to comment on the proposed Initial Notice.

All comments should be submitted before 5.00pm on 24th August 2015 to:

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

Email: info@cicra.je

All comments should be clearly marked '*Comments on the Initial Notice – Mobile Termination Rates*'.

In line with CICRA's consultation policy, CICRA intends to make responses to the consultation available on the CICRA website, the combined website of the GCRA and the JCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

4. Basis of the review of MTRs

There is currently a significant differential between the 4.11ppm MTR in the Channel Islands and the 0.845ppm MTR currently charged in the UK. This gap will only increase as Ofcom further reduces its MTRs as signalled in its recent decision.

Ofcom has modelled the bottom-up long run incremental costs ("LRIC costs") for MTRs as part of its review of the charges made for this service in the UK. In carrying out this modelling Ofcom has also taken into account the size of operator networks as well as the technology issues, including the move toward 4G networks.

The fact that, as identified by Ofcom's LRIC modelling, the effect of scale does not support a materially different MTR in the Channel Islands compared to operators in a larger jurisdiction such as the UK is significant in informing the JCRA's view of the appropriate level of MTRs in Guernsey and Jersey in setting prices that reflect efficient costs.

A further material consideration Ofcom has brought to the JCRA's attention is a concern that operators in the UK have or are looking to increase the cost of calls from the UK to the Channel Islands mobile number ranges or to remove calls to Channel Islands mobile number ranges from the pre-paid customer bundles they offer due to high termination rates in the channel islands. Ofcom also has a concern around transparency in that UK based customers see calls to Channel Island mobile number ranges as UK numbers given they form part of the UK numbering plan, whereas the mobile termination charges are significantly different between the two jurisdictions. It is likely that similar issues arise in other jurisdictions where such differentials exist. As a key neighbouring jurisdiction that is particularly key to Channel Islands society and to the economies, the above issues identified in the UK also inform the JCRA's review of MTRs in that ongoing issues in this area could have implications for decisions by businesses of whether and how they conduct their businesses either within the Channel Islands or may harm the economic link between the UK and the Channel Islands.

The JCRA has a number of duties set out in Article 7 of the Telecoms Law. These include the obligation to further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus, promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey and to further the economic interests of Jersey.

The above concerns appear to the JCRA as particularly relevant to a number of its duties referred to in Article 7 and are likely to outweigh any change in income faced by operators by imposing a reduction in MTRs by setting these at levels that reflect marginal costs.

The time period over which the current level of MTRs should be reduced is informed not only by the extent of the difference between MTRs in the UK and the Channel Islands but also by the wider economic risks to Jersey and Guernsey. The JCRA is increasingly aware of intentions by UK operators to remove calls to the Channel Islands from their call bundles. Discussions with Ofcom suggest the concerns are likely to increase and even accelerate the longer the considerable discrepancy in MTRs exists between the UK and the Channel Islands.

The disadvantage of MTR differentials that lead to such outcomes are difficult to quantify. However the JCRA is of the view that this is a significant and growing issue with risks to the wider economies of Guernsey and Jersey that must be taken into consideration in setting the time period over which MTRs in Guernsey and Jersey should be reduced. Evidence on complaint levels provided by Ofcom further informs this position.

5. Consultation responses

5.1 Introduction

A joint consultation was carried out by CICRA and a total of four responses were received, from Sure, Jersey Telecom, Airtel-Vodafone and Digital Jersey.

Digital Jersey in its response welcomed the attention being given by the JCRA to the costs of MTRs. It commented that Jersey has extensive business and tourism links with the UK and it is important not to damage its reputation for being a competitive location to visit and to do business and because of this Digital Jersey supports action being taken to address this anomaly.

5.2 Proposed reduction of MTRs

The JCRA proposed that operators in Jersey will be required to reduce MTRs over a period of approximately three (3) years to come in line with the UK MTRs by 1 September 2017.

The JCRA's proposed reduction in MTRs as follows:

Date	MTR
Current rate	4.11 ppm
From [effective date of decision] to 31/8/16	2 ppm
From 1/9/16 to 31/8/17	1 ppm
1/9/17 to 31/8/18	0.507 ppm

Q1. Do respondents agree that the MTRs proposed should be introduced in the Channel Islands over the period defined by CICRA? Respondents who do not agree with either or both of CICRA's proposals for MTRs or the period over which they are to be introduced are asked to provide reasons and evidence to support their position.

JT, in its response, agreed that the proposed MTRs should be introduced in the Channel Islands over the period proposed.

Sure, however, did not agree with the MTRs being proposed. Sure went on to state that should material reductions in the MTRs be forced into the market then these reductions should be on the basis of a glide path to reduce commercial risk and financial exposure for the Channel Island mobile operators.

JT continued to state that it was unconvinced that the changes to MTRs proposed would have the desired effect of ensuring that Channel Islands calls remain in the call bundles offered by UK mobile operators.

JT explained that, along with the other Channel Islands mobile operators, it negotiates interconnect rates to the UK with its interconnect partners (BT in the case of JT). These rates are commercially negotiated and therefore, in JT's opinion, outside of the remit of CICRA or Ofcom. In addition, the retail rates and bundling decisions of UK mobile operators is also outside of the remit of Ofcom (as the mobile retail rates are not regulated in the UK).

JT does not believe that there is a correlation between the MTRs in the UK and Channels and the retail rates and bundles offered by mobile operators in the UK or the Channels Islands and therefore cannot see how the problem identified by Ofcom can be solved by the reduction in Channel Island MTRs.

Sure expressed its concern on the emphasis placed on the MTRs defined by Ofcom. Sure cannot agree that the costs borne by CI operators can ever be compared to those of UK providers. It goes on to state that even between the islands the actual cost bases are likely to be materially different and that the key elements of each core mobile infrastructure will be similar in both islands, the number over which to recover these costs is almost exactly double that in Jersey than in Guernsey. Sure believes that this suggests that the mobile core network unit cost in Jersey would be half that in Guernsey.

Sure cites, from the Telecommunications (Bailiwick of Guernsey) Law, 2001:

> *10 (2)(c)* *The licensee shall provide interconnection or access on terms, conditions and* ***charges that are transparent and cost-orientated*** *[emphasis added] having regard to the need to promote efficiency and sustainable competition and maximise consumer benefit.*

By referring to the above clause Sure questions whether the GCRA (in the case of the specific Guernsey Law issue) has the remit to enforce the significantly reduced MTRs that it is currently proposing in Guernsey without following the due process set out in the Law. Sure therefore would expect a process whereby it would be required to submit its justified costs in relation to mobile termination. Following the GCRA analysis of this information Sure's MTRs should then be set based on its own efficiently incurred costs.

Sure also questions whether appropriate consideration had been given to the significant 4G investments that have been made by local mobile operators where much of the cost will need to be recovered through charges to consumers and other operators (primarily through MTRs in the case of the latter).

Airtel, in its response questioned benchmarking against the UK as the Channel Islands are not bound by EU regulation. Airtel goes on to say that Channel Island numbers are currently out of bundle for all UK customers so any reduction in MTR would need to be reciprocated by UK operators including Channel Islands numbers in their UK pricing.

Airtel stated that the financial impact of any reduction is considerable and if a reduction is considered necessary Airtel would prefer to see a longer period of transition than the 3 years proposed.

Digital Jersey, in its response, supports the rationale proposed for MTR price caps. Digital Jersey believes that CICRA needs to work closely with Ofcom to ensure that the desired effect of Jersey numbers being treated as domestic numbers for UK residents is achieved in practice and that the economic benefits of this decision is not captured by the UK service suppliers.

JCRA Analysis

The JCRA welcomes JT's agreement to the proposed reductions in the MTRs.

Sure's response expressed its concerns on how a reduction in MTRs would cause Sure difficulties in recovering its cost of investment in 4G and could further damage ongoing investment in new technologies and networks such as 5G. Both JT and Sure have invested significantly in upgrading networks to meet the 4G licence requirement. Whilst Sure is concerned on how this investment can be recovered without potentially increasing the MTR JT, on the other hand, raised no similar concern over the proposed reduction of MTRs and its impact on investment.

With regards to the specific point of recovery of investment costs, the JCRA is not stating that an operator should not be able to recover the costs of its investments in its network whether this is organic investment or whether it is investment to obtain new technology licence and the network build out that is required to meet the licence requirements. What the JCRA is not accepting is that operators should be allowed to recover a substantial part of the investment via the maintenance of higher mobile termination rates than justified by efficient levels of marginal costs. Sure has also provided no contradictory evidence to Ofcom's conclusions regarding the implications of scale for the level of marginal costs.

Regarding Airtel's point on the transition time frame, the JCRA considers three years an appropriate timescale to align the MTRs with the UK in order to ensure that benefits are maximised for consumers and the implementation is reasonable.

In order to assess the appropriate level for MTRs in Jersey the JCRA has relied on the conclusions by Ofcom in its modelling of the cost of mobile termination charges. This modelling takes account of scale and the provision of 4G services for example, both of which are considerations in a channel island context. Ofcom concluded that MTRs should be set on the basis of marginal cost and are not materially dependent on scale of network. Given the extensive research carried out by Ofcom in this area and the likely costs of undertaking a similar exercise, the JCRA does not accept Sure's position regarding duplicate costing assessment and believes it is not proportionate to duplicate such a modelling exercise and has therefore relied on Ofcom's conclusions to inform this Initial Notice.

JCRA Conclusion

The MTR should be used for the recovery of the marginal costs for terminating calls on the network of the mobile operators and should not be a way of recovering costs in other parts of the operators' networks.

The MTRs should be reduced as set out in section 6.

5.3 Market for terminating calls

The existing finding of SMP in the Channel Islands focuses on operators terminating calls on its network, i.e. each mobile operator has SMP in the market for terminating calls on its own network.

The JCRA proposes that to come in line with the methodology used by Ofcom in the UK then it intends to use the definition of:

Calls to the UK mobile numbers allocated by Ofcom to that mobile operator.

Q2. Do respondents agree that it is appropriate for CICRA to change the description of the market in which the operator has been found to have SMP? Respondents who do not agree are asked to provide reasons to support their position.

JT agreed with proposal to change the description of the market in which the operator has been found to have SMP.

Sure fundamentally disagreed with the proposal. Sure stated that since its inception, the regulator had only regulated each operator's activities to the extent that they are relevant to the local telecommunications markets. To Sure's knowledge, it has never tried to regulate the commercial charges applied by local operators to terminate traffic that originates on networks outside the island, nor has it tried to regulate the charges that these networks apply to local operators to terminate calls to destinations outside of the islands. Sure states that it is concerned that the regulator infers that it believes that it has the right to do so – seemingly counter to its long-held position to date – by setting an MTR that it believes should be applied to all other operators, regardless of whether or not the call originated within the respective Bailiwicks. Sure's costs in relation to calls that originate outside of the Bailiwick are materially higher than those that originate on a local operator's network as costs such as submarine cables, associated off-island transmission costs, additional local switching and transmission costs. Sure states that it is not possible to swallow up these additional costs within the proposed MTRs.

Sure is concerned that if the regulator attempts to change the definition in relation to the termination of calls on a mobile network to 'calls to the UK mobile numbers allocated by Ofcom to the mobile operator' it will then seek to additionally control the charges for calls originated outside of the Bailiwick and therefore Sure fundamentally disagrees with the proposal.

Airtel in its response referred to the JCRA's previous pronouncement that Airtel is considered to have SMP for traffic terminated on its network. Airtel reminds the JCRA of Airtel's previous concerns in that the pronouncement fails to consider the massive imbalance in market share between JT and Airtel. Airtel does not consider it appropriate to assume that being dominant in terminating traffic is a justification for reducing MTRs without taking into consideration the significant cost impact on Airtel of Airtel's originating traffic to JT's dominant fixed and mobile customer bases. The negative cost impact of Airtel's originated traffic to JT mobile and fixed numbers is further amplified since JT's fixed termination rates (FTRs) remain inflated (with Jersey's FTRs being 30% higher than Guernsey FTRs). Airtel firmly believes that the JCRA cannot make a determination related to reducing Jersey MTRs without taking decisive action to address the Jersey FTRs.

Digital Jersey supports the proposed changes to the description.

JCRA Analysis

On the basis of Ofcom's modelling the level of MTRs in Jersey appear significantly higher than is justified and the JCRA intends to rely on the conclusion of that modelling exercise in setting economically efficient levels of MTRs for each mobile network operator in Jersey.

In addition a cause of concern for both Ofcom and CICRA is that a large ongoing difference in termination rates is contributing to a situation where customers who are dialling a UK number in the UK (i.e. a Jersey or Guernsey mobile number that starts 07xxx) pay either significantly more than the customer's usual tariff for dialling a UK mobile number or the customer will actually end up paying for a call that they would normally consider to be part of a bundled tariff of UK calls. The related issue of transparency of charges to users is also relevant here. The JCRA's obligations under Article 7 of the Telecoms Law are specifically relevant in informing its approach to setting MTRs as set out in section 4 of this document.

Many of the mobile operators in the UK now have bundles that cover UK call minutes and UK text messages which would result in a customer, on a month to month basis, only paying the bundle tariff. When an operator, such as O2, is excluding calls to Channel Island mobile from UK bundles and charging 35p per minute for such a call an average 2 to 5 minute mobile call could now cost a customer between £0.70 and £3.50. In many cases this out of bundle charge could be significant to many customers and would be considered as "bill shock" to a customer who was not aware that the Channel Islands numbers were not part of their UK bundled minutes.

The JCRA has carefully considered the responses from Sure and JT where they have clearly expressed that, in their opinion, a reduction in MTRs would not lead to a reduction in the commercially negotiated costs. The JCRA's research has shown that reduction in MTRs in both the Channel Island and the UK have in fact been followed by a drop in charges levied by at least one of the carriers JT and Sure use for interconnection between the UK and the Channel Islands. The JCRA therefore still firmly considers that a significant reduction in Channel Islands call termination rates could and should lead to a reduction in the retail rates being offered in the UK and significantly reduce the difference in charges that give rise to the issues identified.

In addition operators have expressed further concerns to the JCRA on the symmetrical nature of the UK/Channel Island charges and specifically if the Channel Islands operators reduce their charges they would want to see a similar reduction in the charges Channel Island operators have to pay to terminate calls on the networks of UK based mobile operators.

The direction in this Initial Notice is intended to cover the termination of calls on local mobile networks irrespective of the origin of the traffic and without any additional charge applied by the relevant mobile network operator for any on-island transit of a call to be terminated on its mobile network. Where calls to these networks originate outside Jersey the same MTR to operators in other jurisdictions is intended to apply to the same services provided by local mobile network operators. The efficient costs for transiting calls from other jurisdictions to the Channel Islands are subject to negotiation with telecom operators in other jurisdictions and for the sake of clarity this Initial Notice is not intended to apply to such charges.

In response to Airtel's issues regarding Fixed Termination Rates the JCRA intends to consult on this matter in the near future.

JCRA Conclusion

The description of the market in which each operator has been found to have SMP is "C*alls to the UK mobile numbers allocated by Ofcom to that mobile operator". This* will apply irrespective of the origin of the traffic and without any additional charge being applied by the relevant mobile network operator for any on-island transit of a call to be terminated on its mobile network. The MTR in this decision would not apply to the charges for transiting calls to local mobile networks from other jurisdictions.

5.4 Inclusion of Marathon

Currently MTR regulation in the Channel Islands applies to the following operators:

Jersey:

- JT (Jersey) Limited, Jersey Airtel Limited and Sure (Jersey) Limited

Guernsey

- Sure (Guernsey) Limited, JT (Guernsey) Limited and Guernsey Airtel Limited

In addition to the operators listed above the JCRA has licensed the following operator in Jersey:

- Marathon

With the JCRA proposing the use of a different definition for the market then this would mean that Marathon should be included in the proposed MTR regulation. It is therefore appropriate that, following completion of this consultation that the Initial Notice (IN) issued by the JCRA would include a direction to Marathon.

Q3. Do respondents agree that it is appropriate for CICRA to include Marathon in the scope of the regulation of MTRs? Respondents who do not agree are asked to provide reasons to support their position.

JT and Airtel agreed that Marathon should be included in the proposed MTR regulation.

Sure also agreed saying that the regulation of MTRs should apply to all local licensees (for all traffic originated in the Bailiwick).

Digital Jersey stated that it had no view at this time on whether Marathon should be included.

JCRA Analysis

All respondents agree that Marathon should be included under the MTR regulation.

JCRA Conclusion

Initial Notice (IN) includes a direction to Marathon on MTRs.

6. Initial Notice

The JCRA proposes to issue a direction to JT under Condition 34.1(c) of JT's licence, and directions to CWJ, JAL and Marathon under Condition 27.1(c) of their respective licences, as follows:

- The rate charged by the relevant licensee for voice call termination on its public land mobile network in Jersey ("the mobile termination rate") shall be no more than:
    - 2 pence per minute (until 31 August 2016),
    - 1 pence per minute (from 1 September 2016 to 31 August 2017), and
    - 0.507 pence per minute (from 1 September 2017);
- this is a flat rate (i.e. no time of day or weekend distinction);
- there shall be no additional charge (other than the mobile termination rate) applied by the relevant mobile network operator for any on-island transit of a call to be terminated on a mobile network;
- the mobile termination rate shall be billed on a per second basis effective from the first second; and
- the mobile termination rate shall apply with respect to all voice calls terminated by the relevant mobile network operator in Jersey on a technology-neutral basis (i.e. on 2G, 3G and 4G mobile networks) and irrespective of the origin of the traffic.

The directions shall be deemed to have come into effect on 1 November 2015, and shall expire on 31 August 2018.

Annex 1 – Legislative and Licensing Background

Legal Background - Jersey

Article 16 of the Telecoms Law provides that the JCRA may include in licences such conditions necessary to carry out its functions. The Telecoms Law specifically provides that licences can include:

- Conditions for the prevention or reduction of anti-competitive behaviour; and
- Conditions allowing the JCRA to make determinations.

A Class III licence also includes conditions relating to the requirement to provide interconnection services and the production of a reference offer for interconnection services (“RIO”). The JCRA has previously issued directions to JT on the production of a RIO[3].

Regulatory Framework - Jersey

In April 2010, following a review of the markets for telecoms services in Jersey[4], the JCRA made the following decision with respect to significant market power (“SMP”) in markets relevant to this Initial Notice:

- **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;

Condition 33.2 of the licence issued to JT provides that:

> “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 Service;
>
> b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or

[3] Direction of the JCRA 2004/3 Re: Jersey Telecom Limited’s Reference Interconnect Offer, 29 April 2004, see http://www.cicra.gg/_files/040429%20Initial%20Notice%202004-3.pdf

[4] Response to the Consultation Paper 2009 – T3, “Review of the Telecommunications Market in Jersey” and Decision on the Holding of Significant Market Power in Various Telecommunications Markets, 21 April 2010, see http://www.cicra.gg/_files/100420%market%20review%20decision.pdf

c) provide for different limits to apply in relation to different periods of time falling within the periods to which the determination applies.”

This condition therefore allows the JCRA to regulate the prices that JT charges for telecommunications services in a way and for a time that it deems appropriate, provided that JT has a dominant position in the relevant market in which those services are supplied.

Condition 34.1(c) of JT’s licence is designed to protect fair competition in the markets in which JT operates, and provides as follows:

The Licensee shall:

(c) comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services.

This condition allows the JCRA to give directions to JT, including in relation to the prices that it charges.

As noted above, both JAL and CWJ have also been found in April 2010 to be dominant (or to possess SMP) in the provision of termination services on their networks. Part IV of their licences provide for the JCRA to impose further obligations in the event the JCRA determines the operator has SMP in a specific market. Those obligations include a Fair Competition condition (condition 27), part of which is in the same terms as Condition 34.1(c) of JT’s licence, set out immediately above.