



Jersey Telecom Gigabit Isles Compensation for enforced router replacement

Initial Notice

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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 April 2015 consultation¹ the Jersey Competition Regulatory Authority (“JCRA”) is issuing this Initial Notice with regards to compensation to customers for the forced replacement of their broadband routers and the ability of other service providers to use the routers, originally supplied by JT (Jersey) Limited (“JT”), when a customer decides to switch service provider.

The Direction applies to the market for access to the public telephone network at a fixed location for residential and non-residential customers.

The proposed Direction requires JT to continue making such compensation payments, to set out the formal arrangements regarding the return of routers when a customer switches service provider and to ensure that a new service provider can make use of the router at no additional cost. This is done to ensure the benefit of the compensation payment to the customer remains with the customer after they have switched broadband provider and that access to a router is therefore not a barrier to switching service provider.

2. Introduction

DSL services, based on the copper local loop infrastructure, were introduced to Jersey in the early 2000s and a regulatory wholesale/retail regime was developed to ensure multiple service providers could compete with JT on a non-discriminatory basis. In providing such service it was expected that customers would acquire and own their own routers; albeit this might have been via special offers and free routers supplied by the service providers as an inducement to take their service. As a rule service providers have not attempted to recover routers from customer that cease service or switch to another service provider; rather they recover the cost through minimum contract periods in their terms and conditions.

In 2010, JT Networks announced its intention to convert the whole of Jersey's copper local loop to fibre-optics. Since the existing broadband routers, designed for the copper based DSL services, do not work with the fibre-optic network they require replacement with fibre-optic compatible, high speed routers.

In recognition that the decision to migrate to fibre-optics was JT's (in particular that of JT Networks), and that the customer is being required to replace their broadband router, JT Networks pays compensation for the enforced router replacement.

JT's competitors have however raised concern around JT's decision to require the routers to be returned to it when a customer switches service provider. Given the risk that the arrangements may not be fair to consumers and harm competition, JCRA issued a consultation on the matter in April 2015 (CICRA 15/13).

¹ CICRA 15/13. Jersey Telecom Gigabit Isles Compensation for enforced router replacement

This paper sets out the responses to the consultation paper and subsequent investigations of the issues raised. It then sets out a proposed Direction under Article 16 (3) (c) of the Telecommunications (Jersey) Law 2002, as amended, (the “Law”) that the JCRA proposes to issue to JT in relation to Condition 34(c) of its Class III telecommunications licence. This paper constitutes the Initial Notice of the proposed direction under Article 11 of the Law.

The JCRA is now inviting comments on its proposed Direction in this Initial Notice.

3. Structure of the document

This document constitutes an Initial Notice. 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 is structured as follows:

Section 4	Sets out the responses to the April 2015 consultation, subsequent investigations and JCRA’s analysis of the current situation.
Section 5	Sets out details of JCRA’s proposed Direction to JT.

Respondents are requested to comment on this Initial Notice.

All comments should be submitted before 5.00pm on Thursday 26th November 2015 to:

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

Email: info@cjra.je

All comments should be clearly marked ‘*Comments on the Initial Notice – Compensation for enforced router replacement*’.

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. Consultation responses and subsequent investigations

4.1 Introduction

Responses to the April 2015 consultation were received from Sure and JT. They broadly supported the principle that the compensation payment was for the benefit of the customer, who has been required to replace their router, and that the new fibre router should be left with the customer should they decide to switch service provider.

Both parties considered the compensation transfer scheme proposed in the consultation paper was unnecessarily complex.

4.2 Responses to questions posed in the consultation

Question 1: Views are sought on the current compensation and router ownership arrangements, in particular whether there are aspects of the current arrangements that disadvantage users and/or inhibit competition?

Both parties agreed that the compensation payment was made for the benefit of the customer.

JT accepted that the router should be left with the customer and that it would change its current policy of requesting the return of routers if the customer switched service provider. Consumer information and related material would also be changed to reflect this. Its response stated that, in practice, no routers have been returned.

Sure was of the view that the fibre router should be the property of the customer. It noted that, in practice, it has had to provide several hundred routers when fibred customer switched to it, which contradicted JT's position.

Both parties agreed that the current compensation by JT (whether a router or a cash equivalent) is best managed by the retail service provider on behalf of the customer.

Question 2: Respondents are asked for their views on the above options [who compensation should be paid to] or any others? Their views on the advantages and disadvantages of such alternatives are welcomed to assist CICRA in forming its views.

Question 3: Respondents are asked for their views on how customers, to whom compensation payment are due, are identified and tracked? If respondents feel exchange line number is an unsatisfactory proxy for the customer then what alternative would they suggest and why?

Both respondents agreed that the customer should be the one that is compensated and, as a matter of practicality, they should be identified as the party paying the account for the exchange line (identified by the exchange line number).

Question 4: Respondent's views are sought on the need to depreciate the value of the compensation payment, the period over which the compensation payment should be depreciated and the depreciation method.

Question 5: Respondent's views are sought on the compensation transfer scheme presented by this paper. Reasons should be provided for any suggested changes or alternative approach.

Neither party agreed with the compensation transfer scheme proposed by CICRA. Sure considered it unnecessary if the router was gifted to the customer. JT took the view that since routers are not being returned there is no problem to solve.

Question 6: Respondent's views are sought on the continuing need for a settlement scheme and whether JCRA should play the role suggested above. If respondents disagree with the proposed scheme they should give their reasons and make alternative proposals.

Both parties agreed to the continuing need for a settlement scheme and JCRA's facilitating that.

Question 7: Respondents are also asked for their views on what role, if any, JCRA should play in monitoring, or even participating, in the scheme described in Annex A for the transfer of depreciated compensation payments when customers switch service provider.

Both parties considered the scheme proposed in the consultation paper to be overly complex. Sure proposed an alternative in which ownership of the router is passed to the customer on installation and subsequent activities be conducted in the same way as for copper routers.

4.3 Subsequent investigations and attempt at settlement

JCRA welcomed the agreement of the parties on the fundamental issue and, on the basis that the parties were in agreement that :

- (a) the supplied fibre router should remain with the customer and be available for use by other service providers, and
- (b) that the customer be identified by the exchange line number

In July 2015 JCRA therefore issued a letter to the parties seeking, through a formal undertaking, to widen the existing agreement (which covers new installations) to cover the situation where customers switch service provider.

JT's response to the proposed new agreement was that, while it continued to agree that the router should be left with the customer, the router would remain its property. This was not a position JT had made clear in its response or at the time compensation arrangements were agreed.

Subsequent investigations and discussions with the parties therefore focussed on the effect of JT retaining ownership and how the customer could receive the benefit of possession of the router in such circumstances. Of particular importance is whether and how control of the router is transferred to the new service provider in such circumstances.

JCRA is of the opinion that, regardless of ownership of the router, unless a new service provider can make practical use of the router to deliver service to the customer, and to do so at no additional cost, then :

- (a) The customer has not received the benefit of the compensation payment (JT has in effect retained it); and
- (b) As a consequence of JT's decision to convert the customer from a copper to fibre connection and not providing adequate compensation, JT has created a barrier to the customer switching service provider; either through the customer, or the new service provider, needing to provide a replacement router. Such barriers to switching risks market abuse that would have the object or effect of preventing, restricting or distorting competition in the provision of broadband telecom services.

5. Initial Notice

The JCRA therefore proposes to issue a Direction to JT under Article 16 (3) (c) in relation to condition 34 (c) of JT's licence as follows.

JT is directed to :

1. On conversion of a customer from a copper to a fibre connection, to pay to the broadband service provider providing service to the customer at the time of conversion, a compensation payment (which is to be used to provide a suitable router to the customer) of either a suitable router or equivalent cash value.
2. Change its policy of (in the event that the customer switches to an alternative service provider) requiring the fibre router supplied (when the customer was converted from copper to fibre) to be returned to it; the new policy being that the customer retains possession of the router.
3. Publish detailed and clear instructions for the process by which a broadband service provider can take control of a fibre router so that the service provider can provide service to a customer that decides to switch to them.
4. Update all its sales and marketing material and all communications it makes with its customer to reflect the change of policy.
5. Train and clearly instruct its staff, agents, subcontractors etc. regarding the change of policy and associated processes.
6. Not to impose additional charges in relation to this change of policy or the process of transferring control of routers to other service providers.

This Direction will come into effect on Friday 27th November 2015 if no representations or objections are received by the JCRA.

Written representation may be made to the contact details set out in Section 4 of this document. Should any representations or objections be made in that period the Authority shall consider them and then give final notice in relation to the proposed exercise of the specified regulatory function.