Retail Price Control

2016

Final Notice

issued to JT (Jersey) Limited

NON-CONFIDENTIAL VERSION

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1. Executive summary

Retail fixed line services include calls using fixed line phones, exchange lines and a range of related services associated with having a fixed line phone service. Jersey consumers spend around £17.75m[1] per annum on these services. This document, issued by the Jersey Competition Regulatory Authority (**JCRA**), puts in place a price control on the retail fixed line services of JT (Jersey) Limited (**JT**), as the provider of those services in Jersey with significant market power. It does not cover other retail services such as residential and business broadband or leased line services and it does not include consumers taking the tariff referred to in Jersey as PrimeTalk.

The need for regulatory oversight of JT's prices arises from its position of significant market power, which would allow it, absent of control, to raise prices independently of its customers or its competitors. Regulatory control is therefore appropriate for as long as this concern remains. This concern reduces if the strength of market power by JT is reduced due to effective competition that delivers reasonable choice for Jersey consumers. However, given the stage of development of such competition and the continued limits to consumer choice the JCRA considers it appropriate to continue to control prices for retail fixed line services in Jersey.

Given the introduction of the WLR access product [2], the prospect of future access products and considering the issues with data availability identified by Frontier Economics; the JCRA, in setting the level of the control, has sought to avoid a more intrusive bottom-up cost based approach. This approach is predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. Should effective competition develop rapidly the JCRA will revisit the need for a regulatory price control.

The JCRA has determined that a 'price basket' control is the appropriate form of retail price control. This provides greater flexibility than alternative forms of control and therefore enables JT to respond to a greater extent to developing competition than a control set on a product by product basis.

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[1] *CICRA Telecommunications Statistics Market Report 2014, CICRA 16/07 Revision A, 24 May 2016*

[2] *The telecoms industry in the Channel Islands has been working with the Channel Islands Competition and Regulatory Authorities (CICRA) on the development of new wholesale access products aimed at increasing choice and competition. WLR is a wholesale access product that affords a less extensive form of competition than those access products commonly available in neighbouring jurisdictions and was launched across both Jersey and Guernsey on 1 June 2015. WLR is also a recent development in the Channel Islands and was introduced several years later than envisaged.*

The JCRA's determination is that the basket of charges levied by JT for its retail fixed line services shall be reduced by RPI – 6.5% for year one, RPI – 6.5% for year two and RPI – 0% for the third and final year of this price control.

This price control will commence on 1 January 2017 and will remain in place for that three year period unless replaced or removed following a review by the JCRA.

2. Background

Background

Price controls are generally put in place for the protection of consumers where competitive pressure is considered too weak to provide adequate protection of their interests.

The last detailed price control of JT (Jersey) Limited (**JT**), in Jersey, was set in 2008, initially covering a period up to 2011. Since then JT has been subject to extensions to the price control essentially allowing for price increases in line with the retail price index (**RPI**).

Given the delay in achieving the increased benefits of further competition and the less extensive form of wholesale access competition to be introduced in June 2015, the Channel Islands Competition and Regulatory Authorities[3] (**CICRA**) decided in 2014 to undertake a formal review of the price control on JT in Jersey and Sure (Guernsey) Limited (**Sure**) in Guernsey for their retail fixed line services. To support this process Frontier Economics (**FE**) was commissioned to carry out a review to inform any future price controls. FE was selected to support the JCRA in setting this retail price control based on FE's international expertise and experience.

CICRA then issued a pan-Channel Island consultation in March 2015[4] (CICRA 15/10). That document considered the appropriate forward looking price controls for Sure in Guernsey and JT in Jersey, informed by the FE assessment which was also provided with the consultation. Three responses were received to that consultation.

Following the consultation the JCRA, on 17 December 2015, issued an Initial Notice[5] (CICRA 15/55) to JT proposing a price control on the retail fixed line services of JT as the provider of those services in Jersey with significant market power. The proposed price control looked to reduce JT's basket of prices by RPI-14% through a 3 year price control. Three responses were received to that Initial Notice on 1 February 2016.

Having considered the arguments provided to the Initial Notice the JCRA on 26 April 2016 issued a second Initial Notice[6] (CICRA 16/20) to JT[7] taking into account new evidence and proposing a revised price control. Two responses were received to the second Initial Notice

[3] *The Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA) are together referred to as CICRA and unless otherwise stated, all references to CICRA in this Decision are to each of the JCRA and GCRA.*

[4] *CICRA 15/10*

[5] *CICRA 15/55*

[6] *CICRA 16/20, Second Initial Notice: JT (Jersey) Limited – Retail Price Control*

[7] *Initial Notice CICRA 15/55 was withdrawn by means of "Final Notice to withdraw Initial Notice: JT (Jersey) Ltd Retail Price Control – Initial Notice 15/55", CICRA 16/21 issued on 24 April 2016.*

from JT and Sure (Jersey) Limited (**Sure**). In addition Sure provided a confidential supplementary response to the Initial Notice.

Disclaimer

This document does not constitute legal, technical or commercial advice; the JCRA is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the JCRA to exercise regulatory powers generally.

3. Specification of Retail Price Control

The second Initial Notice set out the JCRA's view that JT has significant market power in the provision of telecommunication services covered by this price control.

SCOPE OF PRODUCTS INCLUDED IN RETAIL PRICE CONTROL

The proposed price control covered the following retail services:

a. Exchange line;
b. Fixed Line local geographic calls;
c. Fixed Line non-geographic calls charged at local rate;
d. Fixed Line Guernsey and National calls;
e. Fixed Line non-geographic calls charged at national rate;
f. Fixed Line international calls;
g. Fixed Line calls to Channel Island mobiles;
h. Fixed Line calls to Other mobiles;
i. Public Payphones;
j. Exchange line connection, and
k. ISDN services.

The price control basket excluded customers on JT's PrimeTalk tariff[8].

LEVEL OF RETAIL PRICE CONTROL

The JCRA's proposed determination was that the basket of charges levied by JT for its retail fixed line services shall be reduced by RPI – 6.5% for year one, RPI – 6.5% for year two and RPI – 0% for the third and final year of the price control.

[8] *JT provides a tariff, 'Prime Talk', which is taken by a significant proportion of JT customers. A home occupied by a person of pensionable age (65 years) qualifies for the tariff. Prime talk has a monthly line rental of £1.99. The service provides the first thirty minutes of landline to landline calls at £0.07, after which the charge is £0.23 per minute. The tariff was withdrawn from availability to new customers on 31st July 2015. JT has more recently also introduced a 'Senior Home Service' tariff with free line rental with calls costing £0.02 per minute. The JT Senior Home Tariff is essentially a modified form of the Prime Talk tariff and not a 'standard' JT tariff. It is therefore not included in the scope of the control. In all cases where this decision document refers to PrimeTalk tariff it should be taken to include the Senior Home tariff.*

4. Responses to the Initial Notices

Introduction

JCRA received a total of two responses to its second Initial Notice on the retail price control review for JT, from:

- Sure, and
- JT.

The JCRA would like to thank each of the respondents for their input to this process. The non confidential sections of the responses are published on the CICRA website, www.cicra.je.

This Final Notice was preceded by a Consultation, an Initial Notice and a second Initial Notice as well as a report from Frontier Economics following its assessment that supported the JCRA in carrying out this price control review. Those documents set out in greater detail the technical, methodological and analytical bases for the proposed price control. This Final Notice therefore does not repeat the analyses in those documents. However, the responses received raised several points and in this Final Notice the JCRA's consideration of those points is set out below.

JT RESPONSES

The following sections contain specific responses made by JT to the first and second Initial Notices which are italicized, accompanied by an assessment of the issues raised.

KEY POINTS FROM JT'S RESPONSE TO SECOND INITIAL NOTICE

"WLR has been introduced in Jersey to regulate and regularise upstream, wholesale prices and, while still in relative infancy, provides JT and its competitors with certainty as to its costs and charges of acquiring wholesale fixed line product, allowing downstream, retail products to be sold from a fixed base. In the face of the developing market diversification, which WLR is helping to nurture, downstream control is entirely superfluous."[9]

The EU regulatory framework is informative and in its recommendation of 17 December 2007[10] states that regulatory controls on retail services should only be imposed when

[9] *JT's response to the Second Initial Notice on Retail Price Control, Pg 1, Para 2*

[10] *2007/879/EC, Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.*

national regulatory authorities consider the relevant wholesale measures, or measures regarding carrier selection or carrier pre-selection, would fail to achieve the objective of ensuring effective competition and public interest.[11]

The conclusions by FE following its analysis have informed the JCRA's position.

FE stated in its report:

> *'competition for retail fixed line services appear to remain limited in … Jersey. In particular: (i) there are limited alternative offerings to the incumbent's retail fixed access line services; and (ii) both operators[12] have retained a dominant position in their respective market for retail fixed line services."*

Key relevant features informing this view were:

- JT remained the sole provider of PSTN access lines;
- Barriers to entry to the market remained high as there was no wholesale access service (while acknowledging that WLR would be launched in mid 2015);
- Despite the increasing presence of mobile voice services and availability of 'over-the-top' (**OTT**) Voice-over-Broadband (**VoB**) services, there was limited evidence to suggest that fixed line access customers in the Channel Islands are substituting away from fixed line services to these alternative services.
- Given that JT is likely to maintain a significant market power position in the provision of retail fixed line in the geographic market of Jersey there was, in FE's view, a continued need for ex-ante price controls on JT.

As set out in the Initial Notices, the nature and development of competition in Jersey is not at a level where protection of consumers is adequately provided through a competitive market. It is therefore the JCRA's view that the need for a price control is likely to remain for the period of this control. Relevant to this conclusion is that in the provision of retail fixed line services in Jersey, alternative providers do not have the necessary infrastructure to compete with JT to any significant extent through competing networks. The provision of these services by JT's competitors is restricted to a limited form of retail competition where the wholesale products are essentially 'resale' services. The scope for competitors to offer variety, innovation or sell at a discount to JT is therefore limited given the lack of more extensive wholesale products. Prices of key wholesale inputs are also generally set by

[11] *Paragraph 15*

[12] *i.e. JT in Jersey and Sure in Guernsey*

reference to JT's retail prices. Fair and reasonable wholesale charges paid by competitors in this market therefore derive from the level of retail prices.

The conclusion by the JCRA as set out in the two Initial Notices is that downstream control of prices in the form of a retail price control is necessary to protect Jersey consumer interests in a context where significant market power remains and the level of competition in the market at a retail level is not extensive.

"Efficiency must be at the centre of any review of this nature. … JT is operating efficiently and yet still making a loss on those products under review. In such circumstances, downward price control cannot be implemented without unwarranted detriment to other areas of the business."[13]

The price control is set by reference to a basket of prices in a comparable jurisdiction where that SMP provider earns a reasonable return. Given FE's analysis there is no reason to suggest JT would be in a different position when subject to a similar pricing constraint to provide similar services. The JCRA has sought to set a price control that is pragmatic given the issues JT has with information provision. It is also proportionate in approach and fair and reasonable given the evidence available to it. JT has not been able to demonstrate that it is operating efficiently since it was not able to provide the necessary detailed information in response to FE's requests which would allow this assertion to be tested. FE in its report stated that:

> *"The assessment of the appropriate level of a price cap is usually made on the basis of an operator's financial forecasts. By means of comparing expected future revenues and costs, and an appropriate level of efficiency gains, a price path (cap) can be determined which allows the regulated entity the opportunity – if it acts efficiently – to earn a reasonable rate of return. Unfortunately, we note that the operators were unable to provide us with such forecasts in response to our information request. We therefore make our assessment based on the operators' current or most recent prices and costs."*[14]

This is particularly relevant given there is a substantial asymmetry of information between JT and the JCRA.

[13] *JT's response to the Second Initial Notice on Retail Price Control, Pg. 1, Para 3*

[14] *Frontier Economics Report. Retail Price Cap Review in the Channel Islands, A Report Prepared for CICRA, March 2015.*

At the commencement of the retail price control analysis carried out by FE a meeting was held in Jersey between JT and FE. At that meeting (week commencing 11 August 2014) FE presented its main information building blocks for the price cap reviews.

Following the meeting an information request was submitted to JT. JT responded by supplying data at a number of points in time. As stated by FE above, JT was however unable to provide key information comprising the necessary forecasts in response to the information request. For purposes of this price control decision, the standard analysis process could therefore not be followed. This extended the period of this review process and required an alternative approach to provide protection for consumers who purchase the relevant category or combination of telecommunication services covered by this control. In the circumstances FE engaged in an alternative approach to analyse the level of pricing for retail fixed line services.

At no point over the period of the consultation or following two Initial Notices did JT comment on the fact that it could address the limitations in the information it had previously given to FE nor did it offer to supply the outstanding data, or alternative data, to support a different approach to a decision by the JCRA.

Current and recent prices as well as data supplied by both JT and Sure during the course of the consultation and Initial Notice periods have therefore informed the decision making through this process to the extent they were available. This is apparent from the reassessment of the price control following the consideration of new facts and responses received, where the pricing adjustment has been amended since the FE report. Price changes and new information have therefore seen the JCRA respond by altering its proposed price control.

"Jersey and Guernsey are different markets and it serves no party's interests to try to artificially align the two."[15]

It would have been preferable to have been able to have carried out a bottom-up modelled price review as well as carrying out the benchmarking analysis. However, without sufficient levels of data being supplied to FE its options were limited. In terms of approach, the broader benchmarking by FE across a number of jurisdictions looked at retail prices and costs. FE however cautioned that its sample was relatively small due to the lack of data availability and its wider benchmarking analysis should therefore be treated with caution. Having taken into account the available information and the issues with data availability and comparability across jurisdictions FE recommended:

[15] *JT's response to the Second Initial Notice on Retail Price Control, Pg. 1, Para 4*

- *regulating on the basis of a **single price control basket** including retail line rental, line connection and call charges;*
- ***aligning more closely** the average level of retail prices for fixed line services across the **Guernsey and Jersey jurisdictions**, and*
- ***aligning JT's average prices with those of Sure in Guernsey**, maintaining that those offered a reasonable reference using an RPI – X% framework which is well tested from previous price controls in the Channel Islands.*
- *as a smaller island jurisdiction with similar features, **Sure offered a reliable reference average price** for JT's retail fixed line services.*

The JCRA accepted these recommendations by FE. The effect of the form of price control applied is to set an upper limit on the charges for the overall basket of fixed line services provided by JT. The approach is informed by the issues with alternative approaches considered by the JCRA, as discussed already. The fact is that the services supplied in both jurisdictions are similar and the two jurisdictions have a number of relevant features in common.

But as Sure suggests in its response, there are economies of scale that JT benefits from, that Sure does not in Guernsey, given the larger Jersey customer market. There are also the challenges and additional costs and complexity of providing fixed network coverage across several island land masses in Guernsey that are not present to the same extent in Jersey. Given these points, on a like-for-like basis the price control on JT in Jersey might arguably be increased further than proposed by the JCRA (i.e. a larger –X%) if alignment was the priority. However, the approach taken by the JCRA is rather to use the overall price cap for the basket of services applicable to Sure Guernsey as an upper ceiling for JT's basket of charges. Taking into account the scope for further competition in Jersey where there are currently more competitors than in Guernsey, in the view of the JCRA this is a fair and reasonable approach to setting a control for JT's fixed line services.

"The market that the JCRA is seeking to price control is a declining market, with users moving away from the traditional fixed line call to using voice call functionality on WhatsApp, Facebook, Facetime, Viper and Skype to name a few of the alternative methods of making voice calls today. While the usage of JT's fixed voice network is decreasing JT's costs are not decreasing in line with this decrease."[16]

[16] *ibid, Pg. 2, Para 6*

The market remains significant in the context of Jersey. Jersey customers spend around £17.75m[17] per annum on retail fixed line services. The services are provided to 59,117[18] customers who generated 141 million[19] minutes of calls in 2014. JT has a market share of approximately 88%[20]despite approximately 3,800 customers[21] having taken the WLR service and moved to Sure since WLR's launch in July 2015.

The issue of why even in a declining market SMP remains and the need for a future price control continues, are covered separately and in particular in the Frontier Economics report. As this is a price basket control approach, revenues that decline from one line of services (such as voice calls) are recoverable from other services (including fixed exchange lines for example). This provides JT with the flexibility referred to previously in the face of changing market dynamics.

Organic development of the market. *"… in the relatively short period between the First Notice and the Second Notice, …, the price difference between JT and Sure has decreased significantly."*[22]

Where changes in market conditions have taken place the JCRA has sought to take account of these in setting this price control. The FE report and Initial Notices dealt with the need for a price control in the Jersey market context. In summary, the nature and development of competition in Jersey is not considered to be at a level where protection of consumers is provided through a competitive market. The average price level for fixed line services in Jersey compared to Sure in Guernsey for customers covered by this price control is significant. It is therefore the JCRA's view that the need for a price control is likely to remain for the period of this control.

Saturation of the market. *"There seems to be an unrealistic expectation … that the fixed line market in Jersey would be able to support a greater number than the three operators it already has …. The fact that the market is declining … has not been properly taken into consideration."*[23]

"*In order to make such a prospect attractive for any potential new entrant (as the JCRA seems determined to do), there necessarily needs to be an artificial suppression of prices*

[17] *CICRA Telecommunications Statistics Market Report 2014, CICRA 16/07 Revision A, 24 May 20164*

[18] *ibid*

[19] *ibid*

[20] *JCRA Calculation based on WLR performance and Telecom Statistics*

[21] *Sure reporting information provided to the JCRA shows a total of 3,749 customers have completed the WLR migration to JT at 30 July 2016.*

[22] *JT's response to the Second Initial Notice on Retail Price Control, Pg. 5, Para 21*

[23] *Ibid, Pg. 5, Para 23*

(which the JCRA seems determined to effect), which serves neither the existing operators, hypothetical new operators, or the customers themselves (since forced price cuts force compromises in investment in other areas of the business, such as customer service and product innovation; a consequence wholly inconsistent with the JCRA's duties under Article 7 of the Telecommunications (Jersey) Law, 2002)."[24]

The primary aim of the retail price control is not to attractive potential new entrants to the market. The primary aim is to ensure the level of prices that customers are facing is fair and reasonable in order to provide adequate protection of their interests in a context where JT has significant market power.

Broader context. *"Given the persistent assumption at the JCRA that if customers are not moving away from JT (which they are) it must be because they are unable to do so, or because JT's competitors are prevented (by JT) from attracting them away, perhaps the JCRA's concern is rather that the market is not 'working well' for JT's competitors. This ought not to be the principal focus."*

This is not a depiction of the rationale for this price control that is recognised.

The need for regulatory oversight of JT's prices arises from its position of significant market power, which would allow it, absent of control, to raise prices independently of its customers or its competitors. Regulatory control is therefore appropriate for as long as this concern remains. This concern reduces if the strength of market power by JT is reduced due to effective competition that delivers reasonable choice for Jersey consumers. However, given the stage of development of such competition and the continued limits to consumer choice the JCRA considers it appropriate to continue to control prices for retail fixed line services in Jersey.

Given the introduction of the WLR access product, the prospect of future access products and considering the issues with data availability identified by Frontier Economics; the JCRA, in setting the level of the control, has sought to avoid a more intrusive bottom-up cost based approach. This approach is predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. Should effective competition develop rapidly the JCRA will revisit the need for a regulatory price control.

<u>Price Control Proposed</u>

"… JT's prices be controlled so that they are brought into line with historical prices of … Sure. In doing so, the JCRA has disregarded Sure's own admission that prices in Guernsey have

[24] Ibid, Pg. 5, Para 24

been too low for some time … and insisted upon a 'race to the bottom'. JT must, according to the JCRA, match the price of an operator in a different jurisdiction, who competes with JT in this jurisdiction."[25]

"Jersey and Guernsey are different markets. No consideration has been given to the different ownership and investment strategies of JT and Guernsey which do have an impact on the cost base. The JCRA and Frontier have disregarded JT's fibre investment on the basis that they believe that the investment should be solely recovered from the broadband market. This is totally illogical when both the fixed line voice service and the broadband service share the same underlying infrastructure."[26]

The approach by the JCRA is not consistent with an interpretation that the price control is premised on a 'race to the bottom', it is rather to ensure that by reference to a basket of prices in a comparable jurisdiction where that SMP provider earns a reasonable rate of return, the charges to Jersey consumers are fair. The analysis carried out by FE could not justify the observed price difference between two similar jurisdictions offering similar services.

The assessment carried out by FE is premised on the provision by two efficient networks of the services that are the subject of this price control. The underlying network infrastructure is a commercial and investment decision and FE could find no cause for a material differential in the retail prices faced by customers.

The investment by JT in a fibre network was not premised on the need to deliver voice call services which were already delivered to a high technology standard using the existing network technology. It is therefore not accepted that customers using fixed line services should bear the additional costs introduced by the installation of a complete fibre network rollout which should be borne by broadband users. This is consistent with sound cost causality principles.

"…there are further that JCRA has not taken into consideration in arriving at the proposed control. For example, as a direct consequence of the recently imposed EU-wide control on roaming charges within the EU, some international carriers within the EU are applying a surcharge for selected non-EU jurisdictions to terminate calls within their country."[27]

The specific issues JT raise are no different to that faced in its neighbouring jurisdiction by that SMP provider or any other price controlled entity subject to changes in a marketplace. As discussed previously, the price control is a basket control which does allow JT the

[25] Ibid, Pg. 7, Para 34
[26] Ibid, Pg. 7, Para 36
[27] Ibid, Pg. 7, Para 37

flexibility to respond as market dynamics change. This allows JT the option to adjust prices for individual items in the basket within an overall price control basket. In the absence of testable forecasts provided by JT and given the significant information asymmetry between JT and the JCRA, there is in any event a risk in setting any price control, of selective downside risks being presented to justify a case for weaker control. The range of other factors that may reduce or even offset such future perceived risks are also relevant. The rapid rate of technology progress and efficiencies delivered by IP technology in providing fixed line services are for example also important considerations.

PrimeTalk/Benchmarking. *"The First JT Response and the Second JT Response each contain a detailed analysis of why the benchmarking adopted by the JCRA in assessing and formulating the proposed controls is inappropriate, and incomplete."*[28]

"The JCRA has dismissed entirely the impact of the PrimeTalk tariff and excluded it from the fixed line bundle it has considered."[29]

JT's supply of the PrimeTalk tariff[30] is a commercial decision and therefore one JT can alter. Throughout the price control review process JT was unable to provide evidence of a policy requirement for JT to supply the PrimeTalk tariff, the supply of which appears to be a heavily subsidised tariff which is not obligatory under law nor is it a formal regulatory requirement placed upon JT by the JCRA. The Authority **does not** have as its duty the specification of social policy. The duties of the JCRA on this matter are contained in Article 7(2)(f) of the Law which have been taken into account fully in setting this control.

The price control has instead been based on JT's standard tariffs (i.e. excluding PrimeTalk). There is in the JCRA's view no case at this time for an explicit price control to protect PrimeTalk customers given the low level of the PrimeTalk tariff relative to the other JT tariffs and should the PrimeTalk tariff increase materially consumers would have the option to take the controlled standard tariff instead.

"JCRA's analysis also expressly excludes the additional charges imposed by Sure."[31]

As the JCRA has previously set out in both Initial Notices, JT is able to consider applying 'additional charges' in a similar manner to those applied by Sure. There is also an economic

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[28] *Ibid, Pg. 8, Para 39*

[29] *Ibid, Pg. 8, Para 40*

[30] *For the avoidance of doubt, in terms of scope of the price control the JCRA considers that the more recent JT Senior Home Tariff is in a similar category to the Prime Talk tariff and is excluded from the price controlled basket.*

[31] *JT's response to the Second Initial Notice on Retail Price Control, Pg. 8, Para 41*

efficiency benefit in that the costs incurred by for example late payment are borne by the customers creating the cost rather than being met by all of the customers of the service. Given the evidence available on the revenue involved, the additional charges are in any event not material in the context of this control.

"The JCRA seems to have forgotten that the prices for WLR were agreed on the basis of the package of services that use the fixed line infrastructure (i.e. Broadband and voice services) and are not the same in Jersey and Guernsey."[32]

If JT and Sure had not agreed prices for the WLR services it is the case that the JCRA would have had to determine the WLR price through a formal decision process. The WLR prices were however not set by a JCRA formal decision and operators at the time had the opportunity to challenge each other over the price agreed and/or the methodology used to reach that agreement.

"…the price control basket includes ISDN lines, which are a higher price in Guernsey than Jersey but CICRA are not seeking to align these prices. The JCRA cannot pick and choose which prices it wishes to align and if the strategy is to align Jersey and Guernsey pricing then this should be set out in its strategic objectives and be consistently applied."[33]

The suggestion by JT that alignment is a strategic objective has been discussed previously in this document. JT has formally notified the JCRA and its customers that its ISDN services are to be phased out shortly and replaced with NGN services whose product descriptions and prices have yet to be finalized. It is also possible that these services are in the near future more appropriately included within the price control basket of leased line services and removed from the control that is the subject of this decision. JT has the option to approach the JCRA when its plans for such services are clarified and the JCRA can amend the scope of the price control accordingly. Given these developments and the efficiencies such new technologies offer, a price control basket that includes the ISDN service within its scope is considered appropriate while the application of the cap as proposed ensures that consumers are protected and benefit from such efficiencies in the form of lower prices.

"Given the cross-jurisdictional comparison that shows that Jersey's consumers pay below average prices for fixed line products, it is wholly unclear why the JCRA believes even lower prices are necessary; Jersey consumers continue to receive very good value and the market may fairly be described as 'working well' for them."[34]

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[32] *Ibid Pg. 9, Para 46*
[33] *Ibid Pg. 9, Para 46*

[34] *Ibid Pg. 9, Para 47*

The comparison JT refers on several occasions to in its responses was for exchange line prices, which is only one of several products within the scope of the overall price control basket. The cross jurisdictional comparison showed that Sure and JT were within an average range of prices for fixed line services given the comparators used. It is however also the case that even within this band the differences were significant. As FE identified in its report, benchmarking therefore has a number of potential issues when looking to set a specific price control, one of which is identifying strong comparators for such particular purposes.

The closest jurisdiction to Jersey is Guernsey which faces similar issues and shares similar characteristics to Jersey. It was this comparison with a similar jurisdiction that informed FE's recommendations. Customers not on PrimeTalk pay significantly higher prices for taking the same services as PrimeTalk customers and the average charges these customers pay is significantly higher than can be justified. It is this latter consumer that is protected by the price control.

Adverse consequences for consumers of proposed price control

*"There is, however, the real prospect that if price controls such as those proposed are imposed by JCRA, Jersey consumers will suffer as a consequence of the increased loss JT will be directed to incur. It is the JCRA's primary duty to "**perform…its function…in such manner as…is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunications services**"; the proposed control would therefore seemingly contradict this primary duty of the JCRA."*[35]

The above duty cannot reasonably be interpreted as one where JT should be allowed to charge materially higher charges for a category or combination of services even when they cannot be justified. The basket of charges that are used to cap JT's charges are taken from an operator that is profitably providing these services. Given FE's analysis there is no reason to suggest JT would be in a different position when subject to a similar pricing constraint.

Restriction on product investment and innovation. *"Given that JT is already operating efficiently, any belt-squeezing exercise necessary to absorb the increased losses directed by the JCRA would necessarily bleed into other areas of the business."*[36]

In directly comparing JT with another operator in a similar jurisdiction the price control takes into account the fact that the comparison operator also has a requirement to invest and innovate on its network in an efficient manner. JT has not been able to substantiate the argument that it is efficient as it could not provide the data requested which would form the basis for such an assessment by FE.

[35] *Ibid Pg. 9, Para 48*
[36] *Ibid Pg. 9, Para 52*

"It is quite wrong for the JCRA to dismiss the advantages fibre installation brings as relating only to broadband customers; quite aside from the improvements in voice services that correspond with the installation of fibre (including, but not limited to reliability and quality), it is clear that Jersey's society generally benefits from its position as a key offshore commercial and financial centre. The installation of fibre helps to better serve those businesses operating in this sector, the performance of which has a direct effect on and corresponding benefit for the economy of the Island. It is narrow-sighted to suggest investments and initiatives of such scale and scope do not have benefits for all telecommunications users, irrespective of such scale and scope do not have benefits for all telecommunications users, irrespective of whether the use broadband."[37]

The JCRA has responded to this point elsewhere in this Final Notice. It is not accepted that customers using fixed line services should bear the additional costs introduced by the installation of a complete fibre network rollout which should be borne by broadband users. This is consistent with sound cost causality principles.

KEY POINTS FROM JT'S REPONSE TO FIRST INITIAL NOTICE

"The European Commission considers that the introduction of WLR has 'significantly reduced the barriers to entry'[38] *in retail line rental markets. Based on the EC's three criteria test, there is no need to regulate the retail market if WLR reduces barriers to entry in this market. The last retail markets were removed from the list of relevant markets susceptible to ex-ante regulation in 2014."*[39]

The last European retail market susceptible to ex-ante regulation was removed in 2014. At that point in time JT had not in fact made WLR available to its retail competitors and more advanced forms of access available in Europe are absent in Jersey. This demonstrates that the Jersey is some way 'behind the curve' on wholesale products compared to the rest of Europe. As a comparison and reference to developments, the context for regulatory withdrawal in Europe is therefore significantly different to that in Jersey. However, as the market changes in Jersey and competition increases the JCRA would give further consideration to the requirement, appropriateness and effectiveness of retail price controls.

PrimeTalk. *"PrimeTalk, consisting of a heavily discounted price for pensioners, is held by [✂]% of line rental customers, and [✂]% of line rental only customers. This is indeed the*

[37] Ibid Pg. 10, Para 55

[38] "Solving problems at the sources: why telecommunications regulation should focus on wholesale, not on retail, markets" Iratxe GURPEGUI and Przemyslaw KORDASIEWICZ (2007)

[39] JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 4, Para 3.2

most vulnerable customers in Jersey[40]*. Yet when implementing a price control policy apparently, the JCRA has ignored the tariff. Not only is this wholly illogical but it produces a patently unreasonable result (and one no reasonable regulator could have reached).*[41]

*"In its report, JCRA states that '**The discontinuation of its PrimeTalk tariff will increase JT's revenues by more than £2m over the next four years which will help JT to partly offset the lost revenues from lower retail prices**'*[42]*. It is not clear how the JCRA have come up with this figure. Particularly since we have not discounted the tariff."*[43]

*"[The JCRA] has merely pretended that these PrimeTalk customers do not exist and simply insisted that '**Jersey consumers are paying significantly more for their fixed lines phone services.**[44]'"*[45]

"Moreover any regulation producing that effect would be contrary to the express statutory obligations and responsibilities applicable to the JCRA. Articles 7(2)(f) and 7(3)(e)[46] *… concern the provision of services to those who are disabled or have limited financial resources and involve consideration of cross subsidies put in place by service providers. The proposed price control patently ignores the requirements of these articles.*[47]

These points have been extensively covered in the Initial Notices and elsewhere in this document.

As our separated accounts show losses for retail services, international benchmarking is necessary to justify JCRA's assertions. *"JT has consistently made losses for its retail fixed line services. In 2014, … loss of £1,234,000 for the basket of fixed line access and fixed retail*

[40] *Notwithstanding the fact that there are many PrimeTalk customers who are not vulnerable, but benefit from the cheaper price.*

[41] *JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 5, Para 4.2*

[42] *CICRA, 2015, Retail Price Control 2015. Initial Notice. Determination issued to JT (Jersey) Limited, Pg. 18*

[43] *JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 5, Para 4.5*

[44] *CICRA, Pan-Channel Islands Consultation on Retail Price Control Review: Consultation Document, March 2015, p 9*

[45] *JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 6, Para 4.7*

[46] *Telecommunications (Jersey) Law, 2002*

[47] *JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 6, Para 4.10*

calls. … in 2013 … loss of £2,014,000[48]*. Despite this, the JCRA still purports to conclude that JT's prices are too high.*[49]

The price control is set by reference to a basket of prices in a comparable jurisdiction where that SMP provider earns a reasonable return. Given FE's analysis there is no reason to suggest JT would be in a different position when subject to a similar pricing constraint to provide similar services. It is important to note that the structure of JT's separated accounts was for pragmatic reasons at the time not agreed with the JCRA and not based on a methodology imposed or endorsed by the JCRA. In these circumstances there are a range of reasons why JT's separated accounts might lead to conclusions that need to be treated with considerable caution for purposes of setting this price control.

The JCRA is for example aware that a significant proportion of the fibre access costs are allocated to JT's fixed voice costs in these accounts. This is likely to have materially, and in the view of the JCRA incorrectly, increased the costs attributed to providing fixed line services in Jersey. As the JCRA has stated previously, the investment by JT in a fibre network was not premised on the need to deliver voice call services which were already delivered to a high technology standard using the existing network technology. It is therefore not accepted that customers using fixed line services should bear the additional costs introduced by the installation of a complete fibre network rollout which should be borne by broadband users. This is consistent with sound cost causality principles.

"… unilaterally and without any or any proper consideration of consultation, the JCRA proposes to abandon international benchmarking and to adopt single peer benchmarking, without considering properly or at all the suitability of that peer and/or its regulator and/or its regulatory environment.[50]

FE stated in its report:

> *"Given the similarities between the two Bailiwicks, we would not expect to observe such a substantial price differential price differential in the long run. A potential explanation for at least some of the observed difference in prices is that, historically, Sure was subject to stricter price caps than JT"*

The above was in a context where in comparing the two Channel Island jurisdictions given their similarities FE had difficulty in finding persuasive evidence justifying why customers in Jersey on non PrimeTalk tariffs should be paying the level of charges they do for fixed line

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[48] JT Group Limited Separated Regulatory Accounts: For the year ended 31st December 2014, Page 15
[49] JT Response's to Second IN, Pg. 6, Para 5.1
[50] JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, 1 February 2016, Pg. 7, Para 5.3

services. JT has not been able to justify the level of charges to these customers and in particular why they are significantly higher than the comparator chosen.

"…we set out a number of flaws with the international benchmarking presented … JCRA has acknowledged this but not corrected … final price was not determined through this international benchmarking. …benchmarking was important as it was used initially to support the view that [JT] prices were high. Having corrected for these errors, JT's price for line rental is lower than the average for the benchmark countries."[51]

*"The JCRA did not correct for the flaws in the international benchmarking because it asserts that "**the key basis for the recommended level of control did not ultimately rely on these comparator jurisdictions**[52] Whilst it is correct that the level of price reduction proposed for JT was based on a simple comparison with Sure Guernsey, the international benchmarking was used as the basis for considering that JT's prices needed to be reduced. Without this control set of prices from competitive jurisdictions, it would be inappropriate to conclude that JT's price needed to be reduced."*[53]

As set out in the second Initial Notice, the JCRA undertook a fresh review of the benchmarking based on the same service characteristics as the original benchmarking by FE given the period of time elapsed since the FE study and JT's criticisms of some of the prices used by FE. This updated benchmarking ensured that the most up to date prices were taken into consideration when comparing the Sure and JT prices to those of the comparison jurisdictions. Any criticisms by JT on this aspect were addressed during this update and as such JT's objections no longer apply. As explained in both the Initial Notices, for practical purposes the issues highlighted by JT had no bearing on the substance of the price control proposed.

Inappropriate for JCRA to set two prices on the basis of benchmarking one against the other. *"There is a circularity issue associated with using each operator as the 'control' benchmark country when regulating the price of both. …the price that Sure Guernsey charges is not externally set … instead influenced by regulation put in place by the same regulatory body."*[54]

*"…it has to look at the entirety of revenues associated, or it is not a fair comparison. JCRA must account for Sure Guernsey's additional charges made to customers that use alternative payment methods to direct debit, receive paper bills and make late payments. JCRA has ignored our concerns about these additional charges explaining that "**There is a valid***

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[51] Ibid, Pg. 7, Para 5.4, 5.5 and 5.6

[52] CICRA, 2015, Retail Price Control 2015. Initial Notice. Determination issued to JT (Jersey) Limited. Page20

[53] JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, Pg. 8, Para 5.9

[54] Ibid, Pg. 8, Para 6.2

argument that such charges improve efficiency of operations and therefore deliver savings and eliminate unfair cross subsidies between late payers and those that pay on time for example. It is open to JT to introduce such charges outside the price control mechanism[55]*"*[56]

"JT's price, after accounting for these factors, is now over 11% lower than Sure Guernsey's. Therefore if this price control is brought into force the price for JT will end up being over 25% lower than the equivalent price charged by Sure Guernsey."[57]

These objections have been considered elsewhere in this document. Based on the factors taken into account by the JCRA the Second Initial Notice issued to JT shows that JT's prices for the combination or category of services within the scope of the price control are 13% above those of Sure after taking into account the adjustment for RPI between the two jurisdictions.

The proposed price control have changed without explanation. *"It is not clear why JCRA has determined that parity must be reached in over two year period rather than three. The JCRA has always used a three year glide path when regulating prices in the past … ."*[58]

"The rationale for the new price control mechanism has not been explained clearly or indeed, at all by the JCRA whether in the Initial Notice or elsewhere."[59]

"The decisions reached by the JCRA in relation to the price control mechanism are illogical and wrong, and the consultation process itself flawed in that, for example:

- *The JCRA now considers that JT's price needs to be reduced by the full differential to achieve price parity yet this was not considered as part of the consultation;*
- *The JCRA as now discounted the option of only applying a 4% reduction yet this was the reduction proposed when it thought that the price difference was much larger;*
- *The JCRA has used a two year glide path for the price reduction rather than the three year glide path proposed in the consultation."*[60]

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[55] *Frontier, 2015, Retail Price Cap Review in the Channel Islands. A report prepared for CICRA. Page 15*
[56] *JT (Jersey) Limited's Response to CICRA's consultation on Retail Price Control Review, Pg. 9, Para 6.5*
[57] *Ibid, Pg. 10, Para 6.8*
[58] *Ibid, Pg. 11, Para 8.1*
[59] *Ibid, Pg. 11, Para 8.4*
[60] *Ibid, Pg. 11, Para 8.5*

In seeking to ensure that the duration that customers in Jersey are exposed to the higher prices for these services is no longer than necessary the JCRA has sought to reduce the prices over a two year rather than three year prices. The JCRA's Initial Notice set out the rationale for seeking to achieve the proposed price reduction over the first two years of the price control.

FE recommended a year on year price control of between 4% and 10% when there was a much larger differential in the prices between the two jurisdictions. Following price adjustments by operators during the period of this price control setting process the observed difference is now 13%. The 6.5% reduction in the first two year of the price control is within the 4 to 10% range identified by FE.

KEY POINTS FROM SURE'S REPONSE TO SECOND INITIAL NOTICE

Whilst Sure welcomed further scrutiny of JT's price control framework it did question the validity of the *"lengthy process that has been undertaken, particularly as almost all of the detailed analysis has since been discarded by the JCRA in favour of a simple – and we would contend, flawed – comparison of JT's fixed line prices in Jersey against those of Sure's equivalent prices in Guernsey."*

Scope of price control going forward: *"Whilst JT may suggest that voice services will also benefit, the availability of such services on its existing copper network was already likely to have been at least 99.9%, so JT's previous claims about improved network reliability (through the use of fibre) appear to be unfounded. We believe that it is also worth reiterating (through the use of fibre) appear to be unfounded. We believe that it is also worth reiterating the total loss of service on fibre-provisioned fixed lines during a power cut[61], a situation that is not replicated for services provided over a copper network."*[62]

Level of price control going forward: *"Frontier Economics considered whether differences in retail prices across the two jurisdictions … was justified going forward. It believed that it was reasonable to assume that the overall level of retail prices across Jersey and Guernsey could be similar. Sure considers that JT prices in Jersey should, in fact, be lower than Sure's prices in Guernsey, as Jersey has a significant greater number of exchange line customers, all of whom are served on one island. By comparison, the Bailiwick of Guernsey consists of 7 islands (Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou), linked via a variety of wireless networks. Separate on-island fixed networks also have to be maintained on Guernsey, Alderney, Sark and Herm. Unsurprisingly, the high cost to serve the 'outer islands' (beyond Guernsey) results in a disproportionate cost per subscriber, for which there is no*

[61] *For all but the most vulnerable of users and those who choose to purchase a battery back-up unit.*

[62] *Response by Sure (Jersey) Limited to the JCRA's second Initial Notice on JT's Retail Price Control (CICRA 16/20) – response to Pg. 13 of CICRA 16/20*

equivalent detriment in Jersey. We therefore believe that both the JCRA and Frontier Economics should recognise that it is inappropriate to consider JT's fixed line prices as being fair once they have been more closely aligned with those of Sure in Guernsey, as the cost to serve customers in Jersey should, by comparison, be lower.[63]

It is the JCRA's view that the arguments put forward by Sure only go to confirm that the price control being proposed for JT in Jersey serves as an upper ceiling for JT. The argument also shows that Sure has had to maintain a wider network across a number of separate islands, while, their basket of retail prices has in aggregate been lower than that of JT in Jersey. The cap on JT is therefore considered a suitable but upper bound on which to constrain the pricing of JT in Jersey for fixed line services.

The argument put forward by Sure has merits but are difficult to quantify. The JCRA are setting a price control for JT's fixed line services in a pragmatic, fair and reasonable manner. There are more competitors in Jersey in which as already referred to, is relevant to the JCRA's considerations.

"… it is unfair for the JCRA to claim that JT and Sure negotiated the wholesale price for line rental. … We would draw your attention to the contents of CICRA's letter of 29 December 2014, as it clearly shows the rates that CICRA had established for itself and urged the operators to accept (under the explicit threat of a formal price control setting process if [Sure] and JT did not agree to its proposals). As a result, it is incorrect to state on page 20 of the IN that 'the JCRA did not set the pricing for WLR'. In Sure's view CICRA … was entirely responsible for setting the WLR rates in operation across the Channel Islands".[64]

This point has been covered in response to JT's comments.

"The JCRA highlights that both Sure and JT have amended retail fixed line charges over the past year and in doing so, have reduced JT's price premium (compared to Sure's prices) from 33% to around 13%. The JCRA has however failed to acknowledge the key reason for Sure's change in its retail exchange line price."[65]

"Sure, with the full support of CICRA, undertook a tariff rebalancing exercise in May 2015 in preparation for the opening up of the fixed line market to competition in Guernsey in June 2015. This one-off 'Day Zero' rebalancing process resulted in a £2.00 reduction in the monthly price of Sure's retail broadband services, but a corresponding £2.00 increase in Sure's monthly fixed line rental charge. This process was undertaken for the specific purpose of eradicating the otherwise certain margin squeeze that would have occurred with regard

[63] Ibid – response to Pg. 16 of CICRA 16/20
[64] Ibid – response to Pg. 20 of CICRA 16/20
[65] Ibid – response to Pg. 20 – 22 of CICRA 16/20

to Sure's fixed line rental charge. The JCRA has failed to recognise in its latest IN that Sure's broadband services sit outside of its retail price control, whereas its line rental services very much form part of it. As a result, the reduction in the headline price difference between JT's fixed line services in Jersey and Sure's in Guernsey is entirely misrepresentative, as it takes no account of the offset loss of our broadband revenue. This is a serious omission on the part of the JCRA."

In the assessment of the retail price control the broadband charges are not included in the basket. Sure made a commercial decision to raise its fixed line rental charge to the extent that it did. The price control considers the basket of services and has compared the basket of charges between two similar jurisdictions having considered current and recent price levels. As such it is appropriate that the recent increase made by Sure to its retail exchange line price is taken into account to ensure a control on JT is not unreasonable given the comparator chosen.

"Considering that the JCRA's latest calculated price difference between the two operators (13%) is the sole measure that the JCRA now intends to apply to JT for price control purposes we consider this to be a flawed approach. Not only does the JCRA not explain how it has arrived at a 13% price difference … but it has focused on a limited time window that completely ignores JT's significant long-term overcharging of Jersey consumers (compared to their Guernsey counterparts). ."

The JCRA's second Initial Notice, at page 21, sets out how the 13% differential was calculated.

There is no reason to believe JT has not complied with its previous price controls. There can therefore be no question, as Sure appears to suggest, of a future price control on JT that seeks to recoup for past price levels that in Sure's view were higher than they should have been.

The control has gone through a number of adjustments to reflect changing market conditions, in particular the introduction of WLR and a single significant price change by Sure in Guernsey to one of the services within the scope of the control. FE was able to show that both Sure and JT were in the average range of comparative jurisdiction, but even within this band there are demonstrable and significant differences. Despite the above changes this continues to be the case.

The FE report in particular identified a difference of prices between Sure and JT that, at the time of the production of its report was significantly higher than that applied in this control. Subsequent changes in the pricing of operators resulted in the JCRA reconsidering the level of the price control applied to JT. The JCRA considers that it has taken reasonable account of changes in the market and reached a decision that is fair and reasonable as well as proportionate in the circumstances.

"We are also concerned at the apparent naivety shown by the JCRA in its proposed application of the 13% price reduction for JT's fixed line services over the next two years. Simply dividing 13% by two … is a flawed methodology, as it will not result in a 13% reduction rather 12.58%". Sure has, in its response identified a 6.72% reduction in years one and two is required to meet the overall correction of 13% in two years.

Whilst accepting that the methodology employed by Sure in reaching the figure of 6.72% is technically correct the JCRA considers it appropriate to apply the figure of 6.5%. There are pragmatic and methodological factors involved in the approach taken that suggest such a level of granularity is disproportionate to the aim of achieving a fair and reasonable price control for JT.

Monitoring & Enforcement; *"… the JCRA has made an error in relation to its proposals in the event of negative inflation. The JCRA has proposed the same methodology as adopted by the GCRA for use by Sure in Guernsey, which is that if the relevant PPI in a year is negative then Sure is not required to reduce its prices, but must take account of that the following year by offsetting against an increase in any positive RPI figure."*[66]

Sure is correct in pointing out the error in the Second Initial Notice to JT. The guidance note for the monitoring and enforcement has been amended accordingly to reflect the stated intention of the control.

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[66] *Ibid – response to Pg. 28 of CICRA 16/20*

5. Conclusion

There continues to be a need for regulatory oversight of JT's prices in order to protect consumers' interests in Jersey in a context where the constraints on JT's ability to maintain prices at higher levels than are justified are weak. Regulatory control is considered to be appropriate for as long as this concern remains and any future review will consider developments in effective competition and whether there is reasonable choice for Jersey consumers.

The JCRA, in setting the level of the control, has sought to avoid a more intrusive bottom-up cost based approach. This approach is predicated on the potential for the development of effective competition and the desire to avoid unnecessary regulatory burden. Should effective competition develop rapidly the JCRA will revisit the need for a regulatory price control.

Having considered the responses to the second Initial Notice and all other submissions and having taken account of the evidence before it the JCRA makes the following determination under Condition 33.2 of JT's licence:

> That by reference to the monitoring and enforcement framework in Annex 2 of this Final Notice the charges levied by JT shall be capped by RPI – 6.5% for year one, RPI – 6.5% for year two and RPI – 0% for the third and final year of this price control.

The decision will take effect on **1 January 2017** will remain in place for the three year period unless replaced or removed following a review.

Annex 1: Legal Background and licensing framework

Legislative background and regulatory duties in the Channel Islands

The legislative basis for this Initial Notice in Jersey is provided by the Competition Regulatory Authority (Jersey) Law 2001 and the Telecommunications (Jersey) Law 2002. Any decision resulting from this consultation will be based on relevant laws and duties of the JCRA.

The relevant duties of the JCRA in the telecommunications sector are those defined in Article 7 of the Telecommunications (Jersey) Law 2002. In addition, there is scope for the States of Jersey to give directions to the JCRA.

The legal basis in Jersey that provides for the JCRA to subject JT's 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 as follows:

"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 its 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[67]:

- 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.

[67] *Responses 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*

Annex 2: Monitoring and Enforcement

The price control will be based on a weighted average basket price index. The JCRA's assessment of JT's compliance with this price control will be undertaken retrospectively on an annual basis. This annual assessment will require submission of timely information by JT. The JCRA would seek to review the compliance statement within three months of receipt. In addition the JCRA would be able to use its relevant powers to inspect financial records to verify the accuracy of submission in demonstrating compliance with the price control regime.

In addition, when JT wishes to introduce a price change, it will need to submit an assessment to the JCRA to demonstrate its compliance with the price control by completing the five steps described below. Whilst <u>JT will not need the JCRA's approval of individual price changes,</u> the assessment will assist the JCRA in assessing compliance at the end of the relevant period. The JCRA may intervene however if it considers that proposals are likely to be non-compliant. In complying with the price control, JT is also required to comply with other relevant licence conditions.

Compliance Procedures

In order to demonstrate annual compliance[68] with the price controls for the services included in the price control JT will need to undertake a number of tasks comprising:

1. Quantifying the price changes for each services;
2. Indexing the price changes;
3. Weighting the services on the basis of revenue earned in the 12 months prior to the relevant period;
4. Deriving the weighted average basket price index; and
5. Comparing this with the Price Control Index (PCI) incorporating RPI.

The list of relevant services in the price controlled basket is:

- Exchange line;
- Fixed Line local geographic calls;
- Fixed Line non-geographic calls charged at local rate;

[68] *JT should also follow these steps when notifying JCRA of changes in the prices of price controlled products for the duration of the price control.*

- Fixed Line Jersey and National calls;
- Fixed Line non-geographic calls charged at national rate;
- Fixed Line international call;
- Fixed Line calls to Channel Island mobiles;
- Fixed Line calls to Other mobiles;
- Public Payphones;
- Exchange line connection, and
- ISDN services.

NOTE – PrimeTalk customers are excluded from the price control basket (refer to Footnote 8).

Quantify the price change for each service

This information is derived by comparing the historical (i.e. nominal) prices for each service in the price control periods.

Simply, this is the differential between the old and the new price, represented by:

$$\delta P = \frac{P_t - P_{t-1}}{P_{t-1}}$$

Where:

P_t = The weighted average price for the service during the relevant price control period;

P_{t-1} = The weighted average price for the service during the previous relevant period.

Note that P_t should be weighted to take into account the phasing of any price changes during the relevant period. For example, if the price change were introduced at the start of a relevant period then the new price could be used as P_t for the purposes of the calculation. If however the price change were introduced midway through the year, then the P_t would need to reflect 0.5 of P_{t-1} and 0.5 of the new price to reflect the average price for the service over the period[69].

[69] *In calculating average prices over a price control period, JT should use a weight of n/365 for a price that was offered for n days.*

Index the price change for each service

Once the price change has been quantified, the next step is to index the price changes. The indexed price (IP) for each service is derived from the following formula:

$$IP_i = 100 * (1 + \delta P)$$

Where:

IPi = Indexed priced for service i within a basket

Weight services based on revenue in the relevant period

Weights for each service in the basket are derived from each service's percentage share of total revenue in that basket over the previous year. Thus the sum of the weights of all the services within the basket equals 1.

Thus:

$$W_i = \frac{R_i}{R_B} \text{ subject to } 1 = \sum_i^n W_i \text{ and } R_B = \sum_i^n R_i$$

Where:

W_i = weight for a given service in the basket;

R_i = the amount of actual revenue for the previous relevant period that is derived from that individual service;

R_B = the amount of total revenue in the previous relevant period that is derived from a combination of all services in the basket.

Derive the weighted average basket price index (Actual Price Index)

The Actual Price Index (API) is calculated by combining the weights for each individual service with the indexed price changes and summing the products.

$$API = (IP_1 * W_1) + (IP_2 * W_2) + \cdots + (IP_n * W_n)$$

Compare with Price Control Index incorporating RPI

The final step involves:

- Calculating the PCI for the basket; and
- Comparing the PCI with the API to assess compliance.

The PCI is:

$$PCI = 100 * (1 + RPI - X)$$

Where:

RPI = the measure of inflation for the prior year of the relevant price control period. This is obtained from Statistics Unit of the States of Jersey. The December RPI figure will be used.

X = the efficiency factor applied to the basket in a given year.

The Compliance Decision

The basic price control rule is that the API over the relevant period must be equal to or less than the PCI.

$$i.e. API \leq PCI$$

If the API is greater than the PCI then JT would have failed to comply with the price control regime.

However, if JT's API for a basket at the end of the relevant period is lower than required by the PCI, it ***may*** be able to carryover the difference into the next charge control year subject to the JCRA's approval. Conversely, if JT's average charge is higher than the required level, it will be obliged to remedy the situation as the JCRA may reasonably require. The JCRA may also impose sanctions on JT for failing to comply with the price control regime it has imposed.

In the event of negative inflation the approach set out in the analysis section will apply. As an illustrative example, if the relevant RPI in a year were to be -2% followed by 4%, with the X value set at -6.5%, the PCI would reduce to 91.5[70] in the first year, JT would be required to reduce its API by 6.5% in that first year (being solely the X value). But JT could also not raise its average prices by 4% the following year. The ceiling for any rise would be capped by the 89%[71] index for any average price the following year, essentially requiring a reduction of 2.7%[72] for that subsequent year.

[70] *= 100 – 2 – 6.5 = 91.5*

[71] *= 91.5 – (+4 – 6.5) = 89%*

[72] *= (91.5 – 89)/91.5 = 2.73%*