14 April 2015

Please see the Nitel response below for the review of the price control for wholesale on-island leased lines: Jersey.

"Review of the price control for wholesale on-island leased lines: Jersey"

Q1: do you agree with the JCRA's proposal to implement a retail-minus price control, strengthened by supporting remedies? If not, what alternatives do you suggest?
Nitel broadly supports the JCRA view that retail-minus price control is a better pricing mechanism than benchmarking or cost orientation.
However, this is a least bad option in the prevailing circumstances. The clear flaw lies in the true cost to JT as the Significant Market Power (SMP) of providing the infrastructure services to which retail-minus price controls apply – initially the wholesale line rental prices for single line services, thereafter multiple lines and broadband.
If JT provides these services in an inefficient manner and/ or adds a significant mark up to the theoretical wholesale price, then the retail-minus price offered to other licensed operators may not give those operators appropriate advantage against the SMP.
In that light, Nitel would request that an analytical approach be instituted to JT's true costs for providing infrastructure services on an annual basis – to include depreciation, maintenance, staffing etc. – which should be linked to a justification for JT's prevailing retail price structure. This would allow a retail-minus price calculation to be determined in a fair manner to all parties.

Q2: do you agree that the control should be set ex ante? If not, why not?
Nitel is prepared to accept an ex ante approach on the basis that previous complaints Nitel has made about some of the SMP's specific practices are not simply "filed under forget". It is clear that a "start point" is required.
However, Nitel would suggest that given the huge gap between the size of the SMP and Other Licensed Operators (OLOs) the initial JCRA approach to setting a margin between the price of retail and wholesale leased lines should err in favour of a wide margin as opposed to a narrow one.

Q3: do you agree that the control should apply to all wholesale on-island leased lines? If not what alternatives do you suggest?
The introduction of wholesale line rental (WLR) has taken so long to achieve that the prevailing demands for WLR for single and multiple lines now relate to an ageing "copper cable" technology that is being physically removed for scrap value by JT, the SMP.
The short is answer is "Yes", price control should apply to all wholesale on-Island leased lines and to broadband services in particular.
The relevant alternative response is that all infrastructure services offered by the incumbent network operator should have a wholesale price, subject to price control.

Q4: do you agree that the control should apply to each wholesale on-island leased line? If not, what alternatives do you suggest?
Nitel agrees that a product by product approach offers the highest degree of certainty for implementing price control.

Q5: do you agree that every retail on-island leased line product offered by JT must have a wholesale equivalent? If not, what alternatives do you suggest?
Nitel shares the JCRA view that every type of retail leased line offered for sale should have a wholesale equivalent that complies with market-level control.

Q6: should all retail price discounts and temporary promotions be mirrored in wholesale level pricing? If not, what alternatives do you suggest?

Discounts and promotions tend to undermine or negate the WLR and other wholesale prices offered to OLOs. This runs counter to the principle of favouring the OLOs with a retail minus price margin, which is specifically calculated to give OLOs a chance of competing against the SMP – JT.

Unless all retail price discounts and temporary promotions instigated by the SMP are backed up by similar discounting at the wholesale level, the SMP simply reinstates its dominant market position on every occasion a discount or promotion is offered.

Q7: do you agree that the control should be set as a fixed percentage? If not, why not?

Nitel does not agree that the retail minus control should be set as a fixed percentage. This approach is too simplistic and merely creates a "two level playing field" with the SMP tied to the benchmark retail price and ALL the OLOs making offers based around the retail-minus figure.

The practical situation is that the OLOs comprise small, medium and relatively large businesses (when compared to the SMEs). Placing all of these on a "level playing field" against the dominant incumbent network operator is clearly unfair, as the smallest businesses are obliged to struggle against a number of more dominant operators with no pricing advantage.

The fair position is to set up a "tilted playing field" biased towards the smaller participants. This can be achieved by establishing a series of retail-minus percentage figures based on the turnover of the relevant OLO.

For example, the smallest licensed operators would have a retail-minus percentage of 40%. Small to medium operators 30%. Medium to large operators 20% and large operators – other than the SMP – 10%.

The positioning of the OLOs within this percentage table should be determined by the individual operator's local annual turnover in call and data charges from the previous year.

In this theoretical example, it is possible that a number of the OLOs could be receiving network services at below cost. This could be compensated for by adjusting the percentages, or it could be accepted that new businesses are awarded a structural pricing advantage until their annual turnover rises to a level where the pricing advantage is lost.

Clearly the entire process would be subject to annual review.

Q8: do you agree that retail minus 20% is an appropriate margin? If not, what alternatives do you suggest?

No. A single figure is too restrictive and does not recognise the variety and size of competitors in the market place. See previous response to Q7.

Q9: do you agree that it is not appropriate to use the price control mechanism to address differential pricing? If not, why not?

Nitel considers that differential pricing should be abolished.