

Make the most of now



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08 October 2009

**For the attention of Mr Graeme Marett – Case Officer**

Dear Graeme,

**“Fixed Line Access Review – JCRA Consultation 2009-T2” – Jersey Airtel Limited (JAL) Response**

With reference to the Consultation Paper 2009-T2 published by the JCRA requesting comments on the Fixed Line Access Review completed by Regulaid BV, Jersey Airtel Limited is pleased to submit its response.

JAL is responding to the consultation on the basis that the JCRA will be following the “Guideline on procedures under the Telecommunications (Jersey) Law 2002”, document dated 20 April 2009 and consequently JAL understands that the consultation will follow the process involving Initial and Final notices from the JCRA and the further intervening consultations. Whilst JAL understands that the full Initial and Final Notice regulatory process is considered to be cumbersome, in view of the critical importance of this particular consultation on sustainable competition in the Jersey telecommunications market, JAL believes it is wholly appropriate to follow the formal engagement process to ensure that the JCRA fully engages with the stakeholders and determines an effective implementation framework which will deliver the radical change to the wholesale market that is necessary for the short/ medium term.

**Comprehensive Regulaid Report but compromised by scope breadth, priority and lack of access to key JT data**

JAL welcomes the Regulaid report and would like to express its gratitude to Regulaid for completing a very comprehensive investigation. JAL commends Regulaid on the structured approach it has taken to such a broad commission and in particular found its assessment and benchmarking of competition in the Jersey marketplace (section 3) to be very thorough and appropriate. However, JAL remains concerned that the role of the JCRA as the approval and regulatory authority in wholesale RIO matters is still confused. The Regulaid report and recommendations place the onus on JT and the OLOs to implement the key changes, rather than position the JCRA as the central owner for establishing an effective wholesale environment in Jersey; thereby specifically defining, coordinating and driving the implementation activities.

JAL is concerned that the original scope of the consultation was extremely broad. JAL also believes its ability to assess and comment on Regulaid’s findings and recommendations has been compromised by the redaction of key financial data and is disappointed to note that key JT financial/ cost information was not available to Regulaid.



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Finally, whilst JAL agrees with the majority of Regulaid's recommendations, the sheer number and variety of the different recommendations due to the broken nature of the Jersey telecommunications market must raise serious concerns that real progress in addressing this situation will be compromised without leadership from the JCRA to define the next steps, quickly and decisively. Action must be taken promptly to establish the key drivers for sustainable competition and prevent the Jersey telecommunications market falling behind in terms innovation, choice and value.

JAL looks forward to reviewing the reviewing the JCRA's Initial Notice in which it outlines its proposed prioritization of the Regulaid recommendations and its proposed implementation approach and framework with specific timescales.

### **“problems in Jersey’s telecommunications sector are so severe”..... “no firm foundation for effective competition”.**

In comparison to Jersey's sister market Guernsey, Airtel-Vodafone concurs with the Regulaid report's stark yet key finding that the Jersey telecommunications market has little basis to encourage legitimate competition to the ultimate benefit of the Jersey economy and consumer.

Simple comparison to the relative price levels of core wholesale products clearly shows the competitive disadvantage for OLOs in the Jersey telecommunications market. For two jurisdictions which are geographically and economically so similar, how can such a massive variation in wholesale product pricing and regulated OLO margins, and differences in anti-competitive behavior of the incumbents be justified and tolerated?

JAL views the difference in regulatory approach and capabilities between Guernsey's Office of Utility Regulation (OUR) and the JCRA as being a decisive factor in the stark imbalance in the nurturing of competition between the Guernsey and Jersey markets. Since Airtel-Vodafone launched its operations in both Jersey and Guernsey, we have seen the OUR directly influence the competitive environment in Guernsey, whereas over a similar period, the competitive environment in Jersey with the exception of the launch of MNP, has stagnated. JAL identifies the very different regulatory approach between the OUR and JCRA as being a key factor, as follows :-

- JCRA has largely adopted an ex post approach to regulation which has enabled the incumbent to maintain its stranglehold on the Jersey telecommunications market through; a) limiting OLO access to its network and wholesale services; b) minimizing OLO wholesale margins; c) maintaining and enhancing wholesale pricing on its monopoly products; d) treating its retail arm preferentially to the OLO's; and e) resisting change through defensive legalistic behaviours. The OUR on the other hand has proactively adopted a more ex ante approach to force constructive change in the incumbent's behavior and treatment of the wholesale market and has identified and addressed key competitive drivers in the wholesale arena to create a far more effective basis for sustainable competition.
- JCRA is fundamentally restrained from making decisive change due to its lack of effective regulatory and punitive measures to force operators (both the incumbent and OLOs) to support and deliver the necessary change to enable competition to exist and develop effectively. JAL believes the JCRA will not be able to lead the implementation of many of the key recommendations until ; a) its powers under the Jersey Telecommunications Law are revised to enable wider ranging regulatory and punitive measures to be used to ensure licenced operators comply and co-operate; and b) it has the necessary resources and capabilities to lead and co-ordinate the licenced operators to drive through the radical changes being recommended by Regulaid. By contrast, the OUR has been granted a broader range of regulatory and punitive powers to ensure licenced



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operators compliance and has strengthened its resources and capabilities to drive through its programme of competition stimulating initiatives.

- JCRA must remember that it has a statutory responsibility to regulate and stimulate competition in the telecommunications and postal arenas and consequently must address the current imbalance between its focus on developing recognition as a world class competition commission at the expense of building an effective regulatory capability. The OUR on the other hand with its sole responsibility for utility regulation has established an extremely effective ex-ante regulatory function with the pragmatism and foresight to establish a conducive wholesale environment in which competition can thrive to offer value, choice and innovation to the benefit of local communities and the economy alike.

JAL is disappointed to note that the Regulaid report does not highlight the importance of the role the JCRA must play in driving through the key recommendations and the corresponding key changes which are critical to optimize its regulatory powers, capabilities and approach in this regard.

JAL looks forward to receiving the JCRA's assessment of the resourcing and approach it will be adopting in leading the implementation of its prioritized Regulaid recommendations and the specific findings from the LECG report it feels are necessary to support its implementation framework and the corresponding timescales, ie changes to legislation, resources etc.

### **Effective retail competition can only be driven through a strong wholesale environment**

JAL agrees with Regulaid that the Jersey telecommunications market is a difficult and unattractive market to compete effectively as an OLO, since wholesale margins are wholly inadequate and wholesale product availability constrains the ability of competitors to offer the choice, value and innovation that Jersey's consumers demand and deserve. The Jersey retail telecommunications market is consequently limiting consumer access to world-class product/ service quality, variety and value, since Jersey is not an attractive environment for competitors to risk investment and innovation.

Ultimately, both the Jersey consumer and the OLO's are severely hampered by the incumbent's inherent and gross inefficiency and the JCRA's inability to force through the radical efficiency changes within the incumbent.

The traditional approach to cap JT's retail prices merely address the symptoms and not the underlying inefficiency issues identified by Regulaid. JAL therefore agrees with Regulaid that the JCRA must make radical change in Jersey's wholesale telecommunications market as this will force the incumbent to deliver cost and product equality to enable the OLOs to compete fairly and effectively.

JAL supports the Regulaid key recommendations that will create a JCRA regulatory ex ante interventional approach to create a fair, effective and sustainable wholesale environment by ensuring:-

- pricing of key incumbent monopolistic termination and transit services is capped to a reasonable level
- OLO margins on wholesale DSL and on/ off island lease line are set at reasonable levels
- OLOs have access to equivalent products which are available now and post NGN launch to JT's retail arm
- OLO's are able to leverage JT's NGN to deliver innovative products and services



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- final barriers within fixed line services are removed through the launch of Fixed Number Portability, Wholesale Line Rental and Carrier Pre Selection
- OLOs are treated equally and have fair access to Jersey's consumers through JT's NGN
- JT establishes a more proactive, engaging and commercially focused Wholesale function which is capable of optimizing the wholesale opportunities to the benefit of both the OLOs and JT and ultimately the Jersey consumer and economy
- JCRA adopts a decisive and focused ex ante regulatory approach yet becomes pragmatic, engaging, forward looking and collaborative with JT and the OLOs.

JAL will be pleased to support the JCRA in its implementation of the prioritized framework of the key Regulaid recommendations and will actively participate in cross party dialogue/ workstreams as required.

The JAL response will now assess each of the key sections of the Regulaid report and outline comments to the Regulaid commentary and recommendations, as follows, but the JAL response to each specific Regulaid recommendation can be found in the annexes to this response :-

### Cost Allocation Review

JAL is encouraged that Regulaid's commentary indicates that a comprehensive study of JT's wholesale cost base has been undertaken as far as was reasonably practicable, but is disappointed that JAL has not been able to make a full assessment since a) key financial data has been redacted from the report; and b) by Regulaid's own admission they were unable to gain access to key financial data, ie routing factors, 3G and duct maintenance, which prevented Regulaid from finalizing their analysis and assessment. Consequently, JAL believe the cost allocation review cannot be considered as concluded and would recommend that the JCRA commission further investigations in this respect.

Bizarrely, the Regulaid report contains the comparative financial data regarding Cable and Wireless's Guernsey operations, but the corresponding JT data around which Regulaid has targeted its analysis and recommendations has been removed from the report. JAL concludes this situation is intolerable and one of the key urgent deliverables must be the publication by JT of annual regulated accounts, which are comprehensive, correct and accurate. Without published regulated accounts, the critical trust cannot be established between the JCRA, JT and the OLOs which will be the foundation of a positive wholesale market for the future.

JAL is concerned to have identified a number of serious inconsistencies and contradictions in statements made in the Regulaid report. For instance;

- Regulaid state on page 21 "While fixed network operating costs are similar for JT & C&WG, JT has much higher operating costs for its mobile network". Regulaid concludes that both JT and C&WG "have similar profitability on their Fixed networks but C&WG has better profitability on its mobile business". However, further down on Page 21 Regulaid then state "However, JT's operational and fixed costs in the fixed network are much higher than C&WG's costs". This directly contradicts the earlier statement. JAL view is that JT's costs appear to be significantly higher than C&WG across the board which is caused by gross inefficiency and weak regulation.
- In Table A2.15, page 91, Regulaid include a table comparing the monthly DSL backhaul costs between JT and C&WG, in which they conclude the C&WG and JT costs are roughly similar at around £6 per subscriber per



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month. Unfortunately, Regulaid's calculations appear incorrect since based on the actual figures given in the table, for 3000 subscribers, the actual C&WG cost is £12254 per month or £4.09 per subscriber, whereas JT cost is £16654 per month or £5.55 per month. Thus, JT's average backhaul costs are 36% higher than the equivalent C&WG backhaul costs.

JAL is disappointed to note the extraordinary level of accounting errors that Regulaid has identified in its analysis of the JT separated accounts and trusts the JCRA will be mandating JT to address these errors and issues immediately. Sadly Regulaid's findings in this respect provide little confidence in JT's cost base and the severity undermines the whole basis on which JT regulated Wholesale RIO pricing has been set.

A key driver for the Fixed Line Access Review was the dispute between JT and the OLOs relating to JT's proposed dramatic increases to RIO fixed termination and transit charges, a dispute in which the approval role of the JCRA as identified by Regulaid was unclear. Despite Regulaid identifying that; a) JT wholesale prices are much higher due to greater inefficiency within JT which has not been challenged by strong regulation; b) RIO prices should be aligned and price capped; c) significant levels of errors were found within JT's separated accounts and d) they did not have access to sufficient information on key drivers such as routing factors, we are extremely disappointed that Regulaid conclude in recommendation 4.3 that the average rate of calls terminating and originating on JT's network should be 0.736 pence per minute. JAL totally rejects this recommendation as having no financial or logical justification and actually contradicts many of Regulaid's core findings. Whilst the rates proposed by Regulaid represents 30% reduction from the new JT rates that are disputed by the OLOs, on average they are still 123% higher (ie more than double) the equivalent fixed termination rates in Guernsey and represent an average increase of 17% on the previous JT rates. This recommended charging level will reinforce JT's monopoly in the fixed line market and undermine the ability of OLOs to compete effectively, since the OLOs will end up seriously out of pocket because JT retains the majority of fixed lines within Jersey and thus the OLOs will be terminating more calls on JT than are originated by JT.

**JAL concludes that the cost allocation work must be re-visited to urgently and considers its dispute with JT over fixed termination rates to remain unresolved.**

### Wholesale Product Issues

It is evident that the current wholesale pricing from JT and the corresponding margins available to OLOs in Jersey are wholly inadequate, especially when compared to Guernsey. When this is considered with the unfair product bundling and offers from JT identified by Regulaid, the environment becomes extremely difficult for OLOs to compete effectively and differentiate based on value, innovation and variety. For instance, JAL considered launching retail wireline dsl products based on the JT wholesale offering but quickly concluded that the existing regulated pricing and the limited JT product functionality made such a wholesale based dsl product not financially feasible.

JAL welcomes the radical approach to wholesale product and pricing being proposed by Regulaid. However, with the increasing importance of IP technologies, service convergence and demand for bandwidth, fair and cost effective access to internet bandwidth will have a dramatic impact in the sustainability of competition in the Jersey telecommunications market. Thus JAL firmly believes wholesale Off Island Lease Lines and Internet Bandwidth must also be subject to strong regulated price capping to ensure OLOs can compete fairly.



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Before changes are made to JT's licence enabling the bundling of products, JT must be encouraged to address the inherent inefficiency that is currently undermining fair competition. Consequently as already stated, JAL believes JT's RIO pricing must move from being cost based (derived from the costs of an **inefficient** operator) and driven down through rigorous wholesale price capping to compare favourably with similar jurisdictions. Once realistic wholesale pricing is mandated and available, OLOs can compete more effectively and this will drive through to the retail sector through increased value, choice and innovation.

Only once a positive wholesale environment has been established, can the matter of removing restrictions on bundling be considered. Once bundling is allowed, this must be available to all operators and consequently requires the removal of the final obstacles to enabling the OLOs to access the entire Jersey consumer base and offer the equivalent range of products/ services, through CPS, Wholesale Line Rental and Fixed Number Portability.

In parallel, JAL concurs with Regulaid that wholesale RIO product pricing must be aligned to retail pricing approaches and alternatives identified since fixed unit per minute/ MB charging will become inappropriate, restrictive and unfair.

The Regulaid findings identify a number of areas in which JT may be allowed to take action which could result in margin squeeze or be viewed as anti-competitive, ie offering special discounts or offers, bundles etc. JAL firmly believes the role of the JCRA as approval authority must be clearly defined in such cases and that any engagement by JT and approval by the JCRA must be transparent and publicly justified.

JAL firmly believes that Wholesale Products should only be considered and developed provided there is proven demand for such products from the OLOs. Clearly this requires regularly engagement between JT and the OLOs which should be focused through the independently moderated working group framework recommended by Regulaid. Such a working group should meet regularly and develop an efficient and timely process for evaluating new wholesale product requirements, developing product specifications and implementing operational launches. The Regulaid report identifies a number of potential Wholesale products which in JAL's view have differing levels of appeal and priority. JAL can summarise its views as follows :-

- **Fixed Number Portability** – On the basis of the actual success and demand for Mobile Number Portability (MNP), fixed number portability must be considered as a key short-term priority for driving competition by removing the main barrier to consumer choice in the fixed line sector. However, to be successful, Fixed Number Portability requires that OLOs are able to access all customers and thus key access enablers such as Wholesale Line Rental, are essential pre-requisites. The Porting XS porting platform used for MNP across the Channel Islands already has the capability to support Fixed Number Portability, but there will be a development phase whilst new validation and provisioning approaches are developed for fixed number porting and additional OLOs are able to achieve readiness. Additionally, JAL believes based on the success of MNP, then Fixed Number Portability must be launched simultaneously with Guernsey and thus the JCRA must collaborate closely with the OUR.
- **Carrier Pre Select** – JAL believes wholesale Carrier Pre Select services significantly extend consumer choice and boost competition, whilst being relatively simple to develop and implement. JAL concurs that the JCRA should mandate JT to ensure that Carrier Pre Select functionality is implemented in the JT NGN from the outset/ launch.



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- **Wholesale Line Rental** – JAL firmly believes that Wholesale Line Rental is an extremely effective approach (from a cost and operational basis) for OLOs to access the entire Jersey consumer base to offer products/ services and bundles that compete directly with JT . JAL concurs that the JCRA should mandate JT to ensure that Wholesale Line Rental functionality is implemented in the JT NGN from the outset/ launch. JAL believes the development and implementation of Wholesale Line Rental products can be completed promptly with close collaboration between JT and the OLOs and thus this should be considered an immediate priority.
- **Local Loop Unbundling** – JAL agrees that Local Loop Unbundling can be beneficial in driving competition and choice in large markets with established competition, but JAL views the significant investment involved for OLOs is not feasible or appropriate for small markets such as Jersey JAL does not view the development of a wholesale Local Loop Unbundling bundling as a short-term priority.
- **MSAN Sharing/ Access** – JAL views this option in a similar way to Local Loop Unbundling where the investment cost and return for an OLO is unlikely to be attractive for a small jurisdiction such as Jersey in the short/ medium term.
- **Duct Sharing** – JAL does not view duct sharing as a key priority to secure access to retail or business consumers in view of the significant investment involved in cabling and infrastructure. However, JAL does view duct sharing as a positive opportunity to increase its network backhaul capacity between its operations sites and would be interested in progressing discussions with JT to access ducts to enhance transmission links etc.
- **Bitstream / Naked DSL** – JAL concurs with Regulaid’s conclusion that currently the demand for Bitstream services is limited in Jersey, but JAL believes that wholesale Naked DSL services could be cost effective alternatives for offering higher performance IP driven products once the JT NGN is launched.
- **On Island/ Off Island Lease Lines** – JAL uses both On and Off Island Lease Lines to connects its operations sites. The majority of JAL’s On Island lease lines are over 300m in length and thus JAL does not view the re-definition of sub 300m category as a priority. However, as consumer demand for Internet bandwidth continues to increase, JAL believes the current duopoly control of submarine/ off island links to the Channel Islands will increasingly constrain competition and consumer value. JAL firmly believes that decisive regulatory action must be taken to control and cap pricing in both Off Island and Wholesale IP product sectors to ensure that OLO access is fair and equitable.
- **Wholesale IP** - JAL welcomes the establishment of wholesale IP products for the reasons outlined above. However, JAL believes wholesale IP products should extend beyond 10 MB/s and probably upto 1GB/s with strong regulation and price capping to minimize anti-competitive behavior.

### Wholesale & Retail Functions in JT

JAL agrees with Regulaid’s findings that JT’s Wholesale function has been seen as taking a Legalistic and sometimes Antagonistic approach to its wholesale dealings with OLOs. However it is fair to say that JAL is pleased to report that JT’s Wholesale function has recently become more engaging, supportive and constructive in its dealings with JAL.

Traditional incumbent operators have the key dilemma to confront; either to embrace Wholesale/ Carrier business through a Commercial approach or to use their Wholesale functions to control and frustrate their competitors to protect their retail operations, through the traditional Antagonistic and Legalistic approaches. However, more enlightened incumbent operators have realized that increased competition actually increases overall demand and market size and thus their Wholesale businesses become lucrative sources to enhance revenues. Through a proactive and engaging



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Commercial approach, wholesale business for incumbent operators can be profitable, catalyse innovation and deliver further economies of scale for their core operations.

From JAL's experience the transformation to embracing Wholesale business requires more than a change in reporting structure, but complete commitment and support from the management board to develop a viable and lucrative Wholesale business and products by isolating and protecting from the retail functions and staffing with suitably empowered and motivated commercially focused staff.

It is difficult for JAL to comment on what is the most appropriate structure and format for JT's Wholesale business with the limited information available, but JAL firmly believes the Wholesale function should be where possible :-

- Structurally separate from the Retail sales function
- Directly accountable to the JT management board
- Have equal access to internal JT product development and network operations resources
- Operate as a separate business unit with dedicated resources for key functions and detailed profit and loss accounting
- Operate billing and provisioning systems with protected separation from Retail operations
- Operate with at least the same focus on customer satisfaction and quality delivery as the Retail operations

JAL would be pleased to be engaged in the evaluation of JT's proposals to change its Wholesale function in line with the Regulaid recommendations.

JAL has found JT's provisioning and fault repair functions to be acceptable although communication and clarity of fault escalation processes/ status could be clearer and more effective.

The current nature of JAL's usage of wholesale products makes routine forecasting unnecessary, but JAL would welcome a review and revision of JT's RIO forecasting mechanisms to make them more appropriate and usable.

JAL would welcome JT taking a more proactive and structured approach to SLA performance and wholesale reviews, since engagement has been sporadic and inconsistent.

With regard to Regulaid's observations concerning JT's IT systems; from a customer's point of view we have not experienced issues, but are concerned to read that our wholesale records could be visible to the Retail organization. However, we believe these concerns should be addressed by the recent launch of a new wholesale billing system by JT. Thus we would reserve judgement until we have been able to experience the impact and benefits delivered by the new wholesale IT/ billing system.

JAL would support the implementation of an internal RIO since there appears to be sufficient evidence to support the view that JT is treating its retail arm in a prejudicial manner when compared to the OLOs and engaging in possible cross-subsidisation contrary to JT's licence obligations. JAL concurs that it is important that JT demonstrate it is fully complying with its licence obligations and believes that the recommendations Regulaid has made in this respect will help ensure JT's compliance.





### Next Generation Network Issues

JAL agrees that the current JT fixed network is outdated and obsolete. Consequently the decision for JT to implement its NGN is non-negotiable and critical. However, as Regulaid correctly identify, JAL amongst others already operates a NGN compatible network and it is thus important that the JT NGN network is able to effectively interface with the OLO networks and offer the essential features to enable the OLOs to deliver both the base and advanced services consumers require as well as support the likely evolution in the wholesale arena for the short/ medium terms.

SIP-I capability is a key requirement for JT's NGN since JAL believes SIP-I functionality will become a defacto feature which will significantly enhance the cost and flexibility for OLOs to deliver a greater variety of tailored and mass market products.

JAL welcomes the expansion of Ethernet related wholesale products since JAL views Ethernet as offering OLOs increased flexibility, scalability and operational efficiency especially as consumer demand for bandwidth grows.

MSAN deployment within JT's NGN plans is particularly welcomed especially as it potentially removes the need for manual jumpering which simplifies transfer of services between operators and hence will be a key enabler for fixed number portability along with the introduction of Wholesale Line Rental.

Consequently, the implementation of the JT NGN provides tremendous opportunities to drive competition and enhance telecoms offerings to consumers, as well as delivering significant services quality and operational efficiency benefits to JT and the OLOs alike. However, JT must be encouraged by the JCRA to engage with the OLOs to ensure the NGN implementation meets the needs of the Jersey market in terms of functionality and its implementation has minimal impact to users and the OLOs. JAL therefore agrees that the Regulaid's recommendation for multi-party wholesale working groups is the most appropriate mechanism but concurs that such engagement must have clearly defined terms of reference and the meetings should be independently moderated to ensure the inter-operator engagement is appropriate.

JAL takes an open minded view to the evolution of RIO/wholesale charging mechanisms. JAL is adamant that wholesale pricing in Jersey is currently grossly excessive and unfair. As already highlighted, JAL is clear that this situation must radically change if competition is to evolve and offer Jersey the leading edge products it demands. JAL firmly believes that the JCRA must take a decisive role in moving wholesale pricing from cost driven, based on the current inefficiency of JT's current operations to a price capped glide path approach to align to best practice in similar markets, enabling OLOs to invest and compete effectively. JAL agrees that Wholesale charging approaches must be aligned to the evolution in Retail charging in which inclusive bundle/ rental charges are replacing unitary charging. JAL will be pleased to support the JCRA's engagement with the industry to assess radical and innovative charging approaches such as; "Sender Keeps All" and "Near Zero".

### Implementation

Whilst JAL basically supports the majority of the recommendations made by Regulaid, JAL remains concerned that the sheer scale of the fundamental changes identified to make the Jersey telecommunications market truly competitive will result in extended dialogue and the key recommendations and improvements could be delayed.



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JAL is already concerned that the timeframe proposed by Regulaid has slipped by two months. JAL firmly believes that the JCRA must take a decisive role in prioritizing the recommendations based on impact/ benefit and ease of implementation. As the Jersey regulator with the prime responsibility for ensuring fair competition in the Jersey telecommunications market for the benefit of the Jersey economy and consumers, JAL expects the JCRA to take full ownership and accountability for co-ordinating the implementation of the key prioritized recommendations made by Regulaid.

Consequently, JAL looks forward to receiving the JCRA's proposals on which of the Regulaid proposals are to be prioritized and how the JCRA intends to coordinate JT and the OLOs to instigate the implementation actions.

JAL agrees with Regulaid that the JCRA should develop a structured working framework in which it facilitates JT and the OLOs to work together to progress the key recommendations, such as expanding the NGN wholesale product portfolio, dispute resolution processes etc. But most importantly, the JCRA must take decisive and urgent action to ; a) reach a more satisfactory conclusion to JT/ OLO RO rate dispute; b) price cap key RIO pricing & margins; c) mandate JT to implement key NGN functionality such as CPS, Wholesale Line Rental; and d) undertake a detailed and comprehensive market analysis.

### **JAL Priority Recommendations**

JAL believes Regulaid's key recommendations should be prioritized by the JCRA as follows and JAL has identified achievable target timeframes for each initiative :-

- Resolve the current RIO Termination/ Transit Rate dispute between JT and OLOs - Target completion - December 2009
- Correct cost accounting errors and revise JT accounting approach - Target completion - December 2009
- Publish accurate separated JT accounts - Target completion - Quarter 1 2010
- Mandate JT to offer Wholesale IP Bandwidth, CPS and Wholesale Line Rental products - Target completion - Quarter 2 2010
- Outline price capping approach to align JT wholesale and retail pricing to Guernsey - Target completion - Quarter 1 2010
- Outline price capping approach to offer OLOs to reasonable margins for on-island leased lines, off island leased lines (especially UK/ France submarine routes), DSL backhaul, IP Bandwidth - Target completion- Quarter 1 2010
- Restructure JT Wholesale & implement Regulaid training recommendations - Target completion - December 2009
- Establish multi-operator working groups to a) co-ordinate the implementation of NGN; and b) definition and development of NGN wholesale products - Target completion - December 2009
- Mandate Fixed Number Portability launch during 2010 - Target completion - Quarter 1 2010



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We trust our response and comments meet with your approval and we look forward to having the opportunity to actively contribute in the further stages of the implementing the key recommendations of the Regulaid report to the benefit of the Jersey consumers and economy.

Yours sincerely

A handwritten signature in blue ink, which appears to read 'James Wild'.

**James Wild**  
**Head of Regulatory Affairs – Channel Islands**  
**Jersey Airtel Limited**



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## **Annex 1 – JAL response to Regulaid recommendations within Section 4 - Cost Allocation Review**

### ***4.1 JT and its accountants should confirm that the changes in cost allocations recommended by Regulaid have been implemented.***

JAL response – Recommendation is appropriate and supported by JAL

### ***4.2 JT should implement current cost accounting as the basis for its statutory accounts as from the start of 2011.***

JAL response - Recommendation is appropriate and supported by JAL

### ***4.3 An average rate of 0.736 pence per minute should be used for calls terminating and originating in JT's fixed network for 2009***

JAL response – JAL does not accept the Regulaid proposal to increase the fixed termination rate to an average of 0.736 pence per minute as either justified or reasonable. Whilst the proposed rate represents a 30% reduction from the rate proposed by JT, on average it is 123% higher than the equivalent fixed termination rate in Guernsey and an average increase of 17% on the previous JT rates. Regulaid have clearly stated that a) Jersey Telecom's fixed network costs are excessive implying serious inefficiency within JT's operations; b) Regulaid did not have access to key cost and routing data; and c) serious and numerous errors and inaccuracies were identified in JT's regulated accounts and cost accounting approach. The Regulaid recommendations are underpinned with the theme that it is unfair that competitor OLOs and ultimately the Jersey consumer should fund JT's continuing inefficiency reinforced by weak local regulation. JAL firmly believes that decisive resolution of the on-going termination rate dispute is the ideal opportunity for the JCRA to demonstrate its support for the key findings of the Regulaid report by taking radical action aligned to the key recommendations. Consequently, JAL recommends that the JCRA directly intervenes and applies a price cap approach with a clearly defined glidepath to ensure Jersey fixed termination rates are aligned with those in Guernsey. JAL proposes the JCRA mandates JT to keep the fixed termination rate prices unchanged from the previous non-disputed rates and directs that the prices will be further reduced to align with the equivalent Guernsey termination rates within 2 years. Additionally, since Time of Day gradients are no longer appropriate at a retail level, because retail price JAL suggests the JCRA directs JT to remove the time of day gradient and set fixed termination rates at a flat rate of 0.55 ppm reducing down to 0.29 ppm after 2 years. A similar approach should also be applied to the disputed on-island transit charges.

### ***4.4 JCRA should require JT to demonstrate that it is not cross-subsidising its data hosting business, which would be contrary to its Licence Condition 30.1.***

JAL response - Recommendation is appropriate and supported by JAL



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## **Annex 2 – JAL response to Regulaid recommendations within Section 5 - Wholesale**

### **Product Issues**

**5.1 JCRA should require JT to make available wholesale services that enable OLOs to replicate its retail services, provided that they are demanded by an OLO.**

JAL response - Recommendation is appropriate and supported by JAL

**5.2 JCRA should permit JT to offer bundles to its retail customers, on the condition that OLOs can replicate the bundles.**

JAL response - Recommendation is appropriate and supported by JAL

**5.3 JT should be required to demonstrate to JCRA that equivalent wholesale products are available, that the price of the bundle exceeds the incremental cost of each element, and that the retail price does not constitute a price squeeze.**

JAL response - Recommendation is appropriate and supported by JAL – However JAL believes it is essential that JT a) implement the cost accounting changes recommended by Regulaid to ensure cost data is accurate, correct and complete; and b) such cost data is made publically available in the form of published regulated accounts.

**5.4 The individual elements of the bundle should be available on an individual basis to retail customers.**

JAL response - Recommendation is appropriate and supported by JAL

**5.5 Condition 32 of JT's licence should be amended to permit product bundling if the above requirements for equivalent wholesale services and pricing are met.**

JAL response – JAL would only support the implementation of this recommendation, provided : a)Wholesale product pricing is revised in line with Regulaid's recommendations to enable the OLOs to achieve reasonable margins on Wholesale products both singly and on a bundled basis; b) JT are required to formally apply for JCRA approval to offer each bundle and the JCRA approval is transparent and public; c) JT provide comprehensive, accurate, correct and published regulated accounts and d)OLOs are able to offer similar bundled product offerings. Only once a positive wholesale environment has been established, can the matter of removing restrictions on bundling be considered. Once bundling is allowed, this must be available to all operators and consequently requires the removal of the final obstacles to enabling the OLOs to access the entire Jersey consumer base and offer the equivalent range of products/ services, through CPS, Wholesale Line Rental and Fixed Number Portability.

**5.6 JT should not be able to make special offers or discounts unless it demonstrates to the satisfaction of JCRA that the reduced price covers the incremental cost of the service and that it is not undertaking a margin squeeze.**

JAL response – JAL would only support the implementation of this recommendation, provided : a)Wholesale product pricing is revised in line with Regulaid's recommendations to enable the OLOs to achieve reasonable margins on Wholesale products both singly and on a bundled basis; b) JT are required to formally apply for JCRA approval to offer each bundle and the JCRA approval is transparent and public; c) JT provide comprehensive, accurate, correct and published regulated accounts and d) where appropriate similar changes are made to the relevant Wholesale product pricing to enable OLOs to offer similar offers/ discounts.

**5.7 JCRA should direct JT to provide CPS in line with its Licence Condition 25.**

JAL response - Recommendation is appropriate and supported by JAL. JAL recommends that the JCRA direct JT to ensure the necessary CPS functionality is included in the JT NGN equipment and is available to OLOs from the outset of migration of retail services/ customers to the JT NGN. JAL is keen to subscribe to a JT Wholesale CPS product and will be pleased to work with JT, the JCRA and OLOs to develop and agree the necessary product, technical and operational specifications and processes.



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**5.8 JT and the OLOs should form a working group to agree service definitions, specifications, and processes for wholesale services.**

JAL response - Recommendation is appropriate and supported by JAL. JAL recommend that the working group is independently chaired by a nominee of the JCRA. JAL will be pleased to work with JT, the JCRA and OLOs to develop and agree the necessary product/ service, technical and operational specifications and processes.

**5.9 JCRA should mandate the introduction of wholesale line rental, and introduce a specific Condition into JT's Licence.**

JAL response - Recommendation is appropriate and supported by JAL. JAL firmly believes that Wholesale Line Rental is wholly appropriate for the Jersey market since it allows OLOs to match JT's retail product portfolio in a cost effective manner, thereby further driving and reinforcing competition to offer consumers greater choice and enhanced value. JAL recommends that the JCRA direct JT to ensure the necessary Wholesale Line Rental functionality is included in the JT NGN equipment and is available to OLOs from the outset of migration of retail services/ customers to the JT NGN. JAL is keen to subscribe to JT Wholesale Line Rental products and will be pleased to work with JT, the JCRA and OLOs to develop and agree the necessary product, technical and operational specifications and processes. However, the adoption and success of Wholesale Line Rental products will be determined by attractive and appropriate wholesale pricing to the OLOs and consequently JT's regulated accounts must be transparent and correct, with the corresponding RIO pricing approved by the JCRA.

**5.10 JCRA should mandate the introduction of fixed number portability, and introduce a specific Condition into JT's Licence.**

JAL response - Recommendation is appropriate and supported by JAL. The development and launch of Mobile Number Portability(MNP) in the Channel Islands has been a tremendous success for all parties concerned and a major breakthrough in furthering competition and consumer choice in the Jersey mobile market. Unfortunately, competition and consumer choice in the fixed market remains severely constrained by the lack of fixed number portability and lack of viable wholesale access to the JT fixed network. The Porting XS porting platform used to underpin MNP in the Channel Islands has existing Fixed Number Portability functionality which could be simply implemented in the Channel Islands. Porting validation for fixed numbers is more complex than for mobile, but it is believed Porting XS have an existing fixed number porting validation function using IVR which is proven and appropriate for the Channel Islands. Opening up access to the JT network and specifically the "final mile" are essential pre-requisites for Fixed Number Portability. Thus JAL believes the development and launch of a Wholesale Line Rental product prior to the launch of Fixed Number Portability is the absolute minimum enabling requirement. Since the retail and network routing approaches for Fixed Number Portability are largely common and already operational with MNP, then the timescale to implement Fixed Number Portability can be reduced to between 6 and 8 months, but this assumes that Wholesale Line Rental is operational ahead of the launch of Fixed Number Portability. However, JAL accept that additional OLOs will be involved in the development and implementation of Fixed Number Portability and time should be factored into enable these OLOs to update their networks and systems etc accordingly. JAL would recommend a joint approach with the OUR to launch Fixed Number Portability in Guernsey and to adopt the same streamlined working/ steering group approach/framework that successfully developed and launched MNP. JAL will be pleased to take an active role in the development and implementation of Fixed Number Portability.

**5.11 JCRA should encourage operators to share ducts, and only mandate duct sharing if the operators fail to reach agreements commercially.**

JAL Response – JAL accepts that duct sharing is a positive development in the Jersey wholesale market, but this is not a short-term priority for JAL. JAL's interest in duct sharing would be focused around enhancing the capacity and quality of its backhaul network between its operational sites.

**5.12 JT should publish its retail prices for enhanced service levels for leased lines.**



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JAL response - Recommendation is appropriate and supported by JAL.

### **5.13 The enhanced service levels should be available to OLOs at a discount of 5 -10% from the retail prices.**

JAL response - Recommendation is appropriate and supported by JAL. However, JAL believes the actual discount should be determined through a formal review and set at an appropriate level for OLOs to be able to achieve a reasonable margin. JAL believes that a suitable discount is likely to be between 15% and 25% from the retail prices.

### **5.14 JT should be required to provide a wholesale IP bandwidth service to OLOs.**

JAL response - Recommendation is appropriate and supported by JAL. JAL firmly believes that with the increasing rate of development and convergence in mobile/ wireless technologies, products and applications and the ever increasing demand by consumers for bandwidth, means the ability for OLOs to compete effectively will be increasingly determined by access to cost effective and high quality wholesale IP access products. Currently, the costs of wholesale IP products delivered in Jersey or off island lease lines to the UK are exorbitant and seriously constrain legitimate competition in the mobile and wireline broadband sectors. JAL is concerned that duopoly situation is developing in the control of the vitally important IP access arena to the Channel Islands and the JCRA must take decisive action to impose rigorous controls to ensure wholesale prices are brought to a reasonable level. JAL recommends that the JCRA undertakes a fundamental review of the Wholesale IP bandwidth market and ; a) directs JT to offer wholesale IP bandwidth products upto at least 100 MBits/second; and b) benchmarks IP bandwidth and off island lease line pricing and imposes strict price capping to ensure OLOs are able to compete effectively.

### **5.15 There should not be any further subdivision of JT's on island leased line categories.**

JAL response - Recommendation is appropriate and supported by JAL.

### **5.16 JT should consider renaming the under 300 metres leased line category.**

JAL response - Recommendation is appropriate and supported by JAL. The majority of JAL leased lines are over 300 metres and JAL does not view this recommendation as a key priority.

### **5.17 JCRA should mandate the introduction of LLU (including line sharing) and co-location, and impose suitable Licence Conditions on JT**

JAL response - Recommendation is appropriate and supported by JAL. However, JAL is concerned that the investment for OLOs to implement LLU compared to the possible returns available from the Jersey market may limit actual interest. JAL believes that Wholesale Line Rental is a more appropriate and attractive wholesale product and the development and launch of Wholesale Line Rental should be the JCRA's priority.

### **5.18 JT should work with the OLOs to identify where they require space in MSANs, to agree a suitable co-location arrangement, and to plan the necessary processes, plans and procedures for the implementation of LLU**

JAL response - Recommendation is appropriate and supported by JAL. However, JAL is concerned that the investment for OLOs and JT to implement MSAN collocation/access compared to the possible returns available from the Jersey market may limit actual interest. JAL believes that Wholesale Line Rental is a more appropriate and attractive wholesale product and the development and launch of Wholesale Line Rental should be the JCRA's priority.

### **5.19 Working with the OLOs, JT should develop a wholesale backhaul product from its MSANs.**

JAL response - Recommendation is appropriate and supported by JAL. However, JAL does not view this as an immediate priority.

### **5.20 JT and the OLOs should discuss new forms of bitstream products (including naked DSL and those forms that will become available as a result of JT's NGN). If they are unable to agree specifications for these new services, they should refer the disagreement to JCRA using the dispute process.**

JAL response – JAL believes the consumer and wholesale demand for bitstream products is currently limited and thus does not consider this recommendation as a short-term priority. However, JAL believes there could be interest in a



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wholesale naked DSL product and believes this should be explored further. JAL would be pleased to be involved in the discussions with JT and OLOs in this respect.

### **5.21 JT's RIO prices should be set through the use of a wholesale price cap on separate baskets of RIO services. The cap should be set for a period of three years, with the target prices being set by the use of benchmarks and the setting of an efficiency target.**

JAL response - Recommendation is appropriate and supported by JAL. Such a price cap should be benchmarked and reviewed on an annual basis rather than over a period of three years in view of the dynamic nature of pricing movement in the European and local telecommunications markets.

### **5.22 JCRA should place a price cap on JT's wholesale on-island leased lines**

JAL response - Recommendation is appropriate and supported by JAL. Such a price cap should be benchmarked and reviewed on an annual basis.

### **5.23 JCRA should require JT to provide a 25% discount to OLOs for its off-island leased lines.**

JAL response - Recommendation is appropriate and supported by JAL, but JAL view the discounts should be at least 25%. However, JAL believes that current pricing of off-island leased lines seriously constrains the ability for OLOs to offer competitive and attractive pricing for internet based products, both wireless and wireline. Since cost effective access to off-island lease lines is becoming a key driver for competition, the actual discount should be determined through a formal review, benchmarked and set at an appropriate level for OLOs to be able to achieve reasonable returns.

### **5.24 Wholesale prices for JT's DSL service should be based on cost, not on retail minus, and should be subject to a wholesale price cap**

JAL response - Recommendation is appropriate and supported by JAL. JAL undertook a detailed business case analysis of offering wholesale broadband products based on current JT wholesale pricing and concluded that existing OLO returns were woefully inadequate. JAL views this recommendation as a key priority. Such price capping should; a) take into account the whole end-to-end cost of providing broadband services to retail/ business customers and b) be benchmarked to determine that the capped pricing is sufficient to enable OLOs to achieve reasonable margins and returns. Such price caps should be reviewed on an annual basis.

### **5.25 JCRA should place a price cap on JT's DSL backhaul services**

JAL response - Recommendation is appropriate and supported by JAL. Such a price cap should be benchmarked and reviewed on an annual basis.

### **5.26 JT should include the router costs in its backhaul prices.**

JAL response - Recommendation is appropriate and supported by JAL.

### **5.27 JCRA should remove the requirement placed on JT to publish changes to wholesale prices in local press.**

JAL response - Recommendation is appropriate and supported by JAL on the basis that JT will be required to provide electronic notification to the OLOs with at least 30 days notice of their implementation.

### **5.28 JCRA should require JT to provide electronic notification of changes to wholesale prices to the OLOs with at least 30 days notice of their implementation**

JAL response - Recommendation is appropriate and supported by JAL. JAL firmly believes that the remit of the JCRA should be changed to clarify the role of the JCRA to be approval authority for JT's wholesale product and price changes. JAL believes it is important that the JCRA formally advises OLOs of its approval of JT wholesale product and price changes and the corresponding basis of the JCRA's approval.

### **5.29 JCRA should require JT to provide electronic notification of new wholesale products and their prices to the OLOs with at least 60 days notice of their implementation.**

JAL response - Recommendation is appropriate and supported by JAL.

### **5.30 JT should initiate the payment of penalties, not the OLO.**

JAL response - Recommendation is appropriate and supported by JAL.





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### **Annex 3 – JAL response to Regulaid recommendations within Section 6 - Wholesale & Retail Functions in JT**

#### ***6.1 JCRA should invite JT to propose changes in its reporting structures which make its wholesale function more commercial.***

JAL response - Recommendation is appropriate and supported by JAL. JAL believes a reporting structure where the Wholesale function reports to a commercial function which is clearly segregated from JT's retail organization but is able to evolve into a proactive, responsive and commercially focused business unit developing lucrative wholesale opportunities for both JT and OLOs.

#### ***6.2 JCRA should invite JT to propose other changes in its management methods which make its wholesale function more commercial.***

JAL response - Recommendation is appropriate and supported by JAL.

#### ***6.3 JCRA should require JT to publish total KPIs on its provisioning and fault repairs for leased lines and DSL lines, distinguishing between retail and wholesale customers***

JAL response - Recommendation is appropriate and supported by JAL.

#### ***6.4 JT should restrict access to wholesale information on its provisioning and billing systems, and not show information about wholesale services on its customer records (with the possible short term exception of residential customers). JCRA should invite JT to indicate how it will comply with this recommendation.***

JAL response - Recommendation is appropriate and supported by JAL.

#### ***6.5 Any operator with a Class 1, 2 or 3 licence issued by JCRA should be eligible for wholesale services at wholesale rates from JT.***

JAL response - Recommendation is appropriate and supported by JAL.

#### ***6.6 JCRA should invite JT to consider moving the Installation and Maintenance Unit to the Operations Division.***

JAL response - Recommendation is appropriate and supported by JAL.

#### ***6.7 The OLOs and JT should commit themselves to holding a quarterly meeting for the next 12 months with an agenda and written action points. Thereafter meetings should be cancelled only by agreement of both parties.***

JAL response - Recommendation is appropriate and supported by JAL. JAL is pleased to support the quarterly support review meeting framework between JT and the OLOs.

#### ***6.8 JT and the OLOs should review the requirements to submit regular forecasts in Schedule 4 of the RIO, the Legal Framework of the wholesale DSL Agreement (Clause 2) and in the Legal Framework of the Wholesale Private Circuit Agreement (Clause 2), and agree on suitable replacements.***

JAL response - Recommendation is appropriate and supported by JAL. JAL is pleased to support the development and operation of a more appropriate forecasting framework with JT and the OLOs.

#### ***6.9 The OLOs and JT should agree a process for resolving all disputes between them. Under this process, disputes should be brought to the JCRA only after the dispute process between the operators has been exhausted. The overall process should be sanctioned by the JCRA***

JAL response - Recommendation is appropriate and supported by JAL. JAL is pleased to support the development and operation of a more appropriate dispute resolution process with JT and the OLOs. However, it is important that the RIO and Wholesale agreement documents are updated by JT to include the revised dispute resolution process and the role of the JCRA as arbiter is more clearly defined and agreed.

#### ***6.10 JT should make proposals for improvements in its regulatory training and process documentation so that its staff are fully aware of regulatory constraints on their work.***

JAL response - Recommendation is appropriate and supported by JAL.



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***6.11 JT should undertake documentation of its processes so that it can ensure full compliance by all its staff with regulatory processes and requirements.***

JAL response - Recommendation is appropriate and supported by JAL.



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## **Annex 4 – JAL response to Regalaid recommendations within Section 7 - Next Generation Network Issues**

### ***7.1 JT should communicate more details of its planned NGN migration to the OLOs.***

JAL response - Recommendation is appropriate and supported by JAL. JAL has been disappointed that JT's briefing of the progress and impact of the NGN migration has been sporadic and lacked depth.

### ***7.2 JCRA should set-up a multi-operator forum to discuss the issues and opportunities flowing from the NGN deployment. In order that JCRA does not become fettered by decisions taken by this forum, it should ideally be independently chaired, but in any event, JCRA should be an observer to avoid any suggestion of cartel style discussions.***

JAL response - Recommendation is appropriate and supported by JAL. JAL concur that it is important that all multi-operator forums should be independently chaired, but JAL believes it is the responsibility of the JCRA to appoint suitable independent chairpersons, whether they be from the JCRA or a third party.

### ***7.3 In particular, there needs to be more multi-lateral discussion about the need and demands for new wholesale services. Some of these may need to be subject to regulatory imposition. However, the first step would be for the OLOs to provide outline Statements of Requirements for each new wholesale service.***

JAL response - Recommendation is appropriate and supported by JAL. JAL will be pleased to support this initiative and contribute to the development of the Statements of Requirements.

### ***7.4 There also needs to be an agreed longer-term view on the migration of telephony interconnect, e.g. agreement on SIP-I.***

JAL response - Recommendation is appropriate and supported by JAL. JAL firmly believe that IP interconnect functionality, especially SIP-I are critical interconnect requirements to enable OLOs to offer the variety of leading edge products and services that consumers will require in the most cost effective manner. JAL firmly believes that the JCRA should mandate JT to ensure that SIP-I interconnect functionality is available from the outset and NOT a long term evolution.

### ***7.5 Charging mechanisms for wholesale products are likely to remain as at present for the immediate future, though there might be a need for a capacity based interconnect charge for services which are bundled at the retail level with the line rental.***

JAL response – JAL believes that a priority activity will be for JT and the OLOs to revise wholesale product charging mechanisms to ensure they are aligned to the equivalent retail charging approaches. JAL will be pleased to support and be actively involved in this dialogue.

### ***7.6 JCRA and JT will need to agree the specific NGN network elements that will be subject to detailed cost accounting and the drivers for allocating joint and common costs to NGN era products.***

JAL response - Recommendation is appropriate and supported by JAL. JAL believes that the agreed NGN cost account approaches and drivers should be clearly defined and published openly within JT's regulated separated accounts. Such information should be in the public domain since it has a direct impact on OLO product economics.

### ***7.7 Since JT does not seem to be deploying a risky Next Generation Access network, there is no need for a particular lenient regulatory approach to bitstream access. However, it is important that a fit-for-purpose NGN era bitstream service is provided.***

JAL response - Recommendation is appropriate and supported by JAL. JAL does not view bitstream as a short-term priority but agrees that the JT NGN should include the appropriate enabling functionality.



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## **Annex 5 – JAL response to Regalaid recommendations within Section 8 - Implementation**

***8.1 JCRA should update 2002 - 04 market analysis work, and include suitable remedies in order to stimulate a competitive market. This work should be initiated as soon as possible.***

JAL response - Recommendation is appropriate and supported by JAL. JAL will be pleased to support and provide input where appropriate.

***8.2 JCRA should request the operators to form two working groups, one to plan for the introduction of new wholesale products, and one to co-ordinate the introduction of JT's NGN and associated wholesale products.***

Recommendation is appropriate and supported by JAL. JAL believes that it is important that all multi-operator forums should be independently chaired, but JAL believes it is the responsibility of the JCRA to appoint suitable independent chairpersons, whether they be from the JCRA or a third party.

***8.3 JCRA should undertake a public consultation based on the findings of this report***

JAL response - Recommendation is appropriate and supported by JAL. JAL believes that such public consultation should include a clearly defined prioritized action plan with specific milestones/ target dates

***8.4 JCRA should draw up proposals for the future of controls on JT's wholesale prices, and these proposals should be subject to public consultation.***

JAL response - Recommendation is appropriate and supported by JAL. JAL will be pleased to support and provide input where appropriate.