Comments on JCRA Consultation Document 2009-T2, Fixed Line Access review

Review of Jersey Telecom Limited's regulatory accounts and access provisions

9 October 2009

Introduction

Cable & Wireless Jersey Limited (C&WJ) welcomes the opportunity to respond to the Request for Response[1], which calls for written comments to the Review[2]. C&WJ has noted that on 8 September the JCRA extended the time for responses to 9 October 2009.

This document including the confidential appendix sets out C&WJ's comments and response to the Review.

Without prejudice to the specific comments and responses, it is critical that effective and definitive action is taken by the JCRA as soon as possible and that the appropriate recommendations in the Review are implemented without any undue or unnecessary delay. As referred to in the Review, there are significant and immediate changes needed to introduce, allow and maintain competition in the telecoms market in Jersey. We note the indicative timeline issued by the JCRA[3] but would urge the JCRA to accelerate that timeline and process wherever possible. The fact that certain of those indicative timelines have already been missed should not allow the process as a whole to be delayed or postponed. As noted at paragraph 3.1.7 of the Review "*telecommunications regulation in Jersey is mainly "ex post""*. In order to ensure competition and development of the market, it is crucial that the JCRA develops and takes "ex ante" action.

Further, the JCRA should ensure that any recommendations in the Review relating to cost are implemented using the principle that costs should reflect those of an efficient operator. This principle needs to be applied from the outset as this will then give JT the incentive to remove current inefficiencies from its operations as quickly as possible.

C&WJ notes that considerable parts of the original Review have been redacted and therefore the JCRA must accept that some responses to the recommendations are incomplete or may be inconsistent with the full version of the Review and the full appraisal and evaluation. In the event of any such incompleteness or inconsistency, C&WJ would ask the JCRA to consider whether any elements previously considered confidential should in fact be made available, either generally or on a limited circulation basis only, to ensure that it (the JCRA) has the best and most comprehensive comment and response available to it. In the absence of such further information, C&WJ must reserve the right to amend in any way necessary its responses in this document.

C&WJ responds below both generally and by reference to each specific recommendation in the Review. C&WJ attaches a separate Appendix marked "Confidential" which is not to be published or circulated beyond the JCRA and Regulaid without the prior express consent and agreement of C&WJ. If the JCRA believes that it will be unable to publish any further consultation or decision without publishing all or any part of that confidential appendix, C&WJ will be pleased to discuss this.

[1] JCRA Consultation 2009 – T2 "Fixed Line Access Review".

[2] The review of Jersey Telecom Limited's (JT) regulatory accounts and access provisions prepared by Regulaid BV (Regulaid) for the Jersey Competition Regulatory Authority (JCRA) (Review), published by the JCRA on 17 August 2009.

[3] Indicative timeline for the review of JT's fixed-line wholesale access provision and separated accounts methodologies, 25 February 2009.

Competition in the telecommunications market in Jersey

C&WJ notes the discussion in Section 3 of the Review of the current legal and regulatory framework in Jersey and the powers available to the JCRA to enforce obligations contained in JT's existing Licence Conditions. It is aware that the recent LECG Review of the JCRA's regulatory powers, referred to in this section of the Review, made several recommendations with respect to the powers and resources available to the JCRA. C&WJ believes it is important that progress is made on implementing those changes as soon as possible, as this will help to ensure that the recommendations contained in this Review can also be taken forward as appropriate and necessary. However, implementation of those changes recommended in the LECG Review should not delay the JCRA taking all and any such action as is available now. The LECG Review must not be used as an excuse for delay.

In particular, it agrees with the statement in section 3.2.4 of the Review that an important objective is the creation of a regulatory framework that enables more effective competition. C&WJ believes that such a framework has to include ex ante regulatory powers of the type seen within European Union countries and it is clearly not effective for the Jersey framework to continue to rely predominantly on ex post competition law remedies.

C&WJ notes the comparison, in Table 3.2, of the current regulatory remedies available to the JCRA and those available to national regulatory authorities within the European Union. It believes that one of the key obligations noted as missing in Jersey is the requirement for JT to publish separated accounts. C&WJ has long argued that JT should be required to publish its separated accounts so that all operators can ensure that JT is not engaging in any discriminatory pricing behaviour towards its competitors. The regulatory accounts of an incumbent operator can also provide key indicators to OLOs of the potential profitability of the various telecoms services that they may choose to provide. OLOs in Jersey currently have no such information available to them. This is potentially restricting competition and therefore choice for consumers. Publication of separated accounts is a standard regulatory requirement in all modern jurisdictions that C&WJ is aware of. C&WJ is surprised to see, therefore, that there is no specific recommendation with respect to this requirement in the subsequent sections of the Report. It believes that this is a significant omission and would request that the final version of this Review should ensure that such a specific recommendation is included.

Findings on Separated Accounts

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

C&WJ is disappointed to see such a high level of reported errors in JT's separated accounts, especially considering how many years – we believe at least eight - JT has been using an activity based costing model. C&WJ understands that over £1M has been spent on external support during this period, so this does suggest an inefficient use of funds. It also wonders who has been responsible for auditing the accounting model and what kind of audit opinion has been given over the years. C&WJ cannot however comment or respond categorically on these issues, as a result of the separated accounts never having been published. It is therefore difficult to be certain as to materiality and impact. Nevertheless it is important that all errors are reviewed and corrected; materiality impacting on how immediate the correction should be made and whether the accounts as a whole need to be reworked and resubmitted.

Of the errors in cost allocations identified by Regulaid it is worrying that network assets (the costs directly relevant to their RIO pricing) have only 134 allocations correct out of the total of 185. This does bring into question the ability of the results to provide meaningful network component values. C&WJ also wonders – but cannot check given that JT's separated accounts are not published - whether JT has correctly dealt with capital employed, given that Regulaid quotes allocation of both capital employed and assets. JT should not calculate a ROCE (Return on Capital Employed) and then also include an associated asset value. This would be a major mistake – and C&WJ would expect that Regulaid would have spotted such a mistake if it has indeed been made - but it might help to explain why the regulatory cost base is so high. To reiterate, C&WJ would expect RIO service costs to be based on the allowable ROCE of capital only, rather than the full capital value.

The splitting of staff costs, which represent the largest single cost to the business, is inappropriate and must result in material errors to the RIO pricing. Using an equal value across any network related products is bound to inflate wholesale costs (compared to retail costs), due to the smaller volumes of wholesale services.

With so many errors identified by Regulaid in the model, C&WJ has to question whether the model is actually fit for the purpose of justifying rates and charges. More importantly, if Regulaid has identified so many errors in JT's accounts it does raise the question as to whether JT should be required to correct these mistakes and resubmit its results before the RIO rates are finalised, although this should not delay the immediate implementation of recommendation 4.3 below. If any further adjustments to the RIO rates are needed as the outcome of JT using the correct cost allocations and methodologies, these can be made retrospective.

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

C&WJ is unsure whether Regulaid actually means statutory or regulated accounts here and would welcome clarification. JT has already been directed to use CCA in its regulated accounts for the year 1 Jan 06 – 31 Dec 06, but C&WJ is aware that JT pushed back on this. C&WJ gave some feed-back to the JCRA – and we can provide the paperwork if required - but is not aware of the current status of this.

It should also be noted that JCRA advised on 12/6/7 ref T110/07 that they would be reviewing the format of JT's accounts in that year.

The use of CCA is widely accepted and provides a more accurate picture of capital employed for other entrants to analyse with a view to ensuring services provided to the market are competitive and at least as efficient as the incumbent's services. CCA was devised to counter some of the limitations inherent in historical cost accounting (HCA). Historical accounts do not give up-to-date information about a company's results and financial position particularly in times when prices are changing significantly or rapidly. C&WJ is not convinced that waiting until 2011 – because that is when JT is *aiming* to implement its NGN - is a valid reason to delay implementation of CCA as there are a large number of asset categories which will not be affected by the implementation of its NGN.

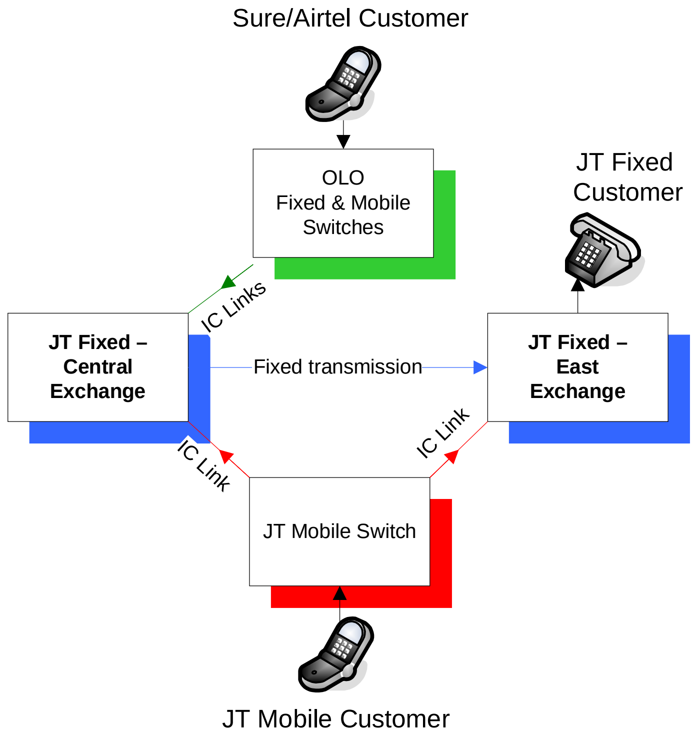
4.3 An average rate of 0.736 pence per minute should be used for calls terminating and originating in JT's fixed network for 2009.

C&WJ agrees with this recommendation for the implementation of cost orientated rates, with effect from 1 January 2009. It believes that such implementation should be without prejudice to any requirement to further reduce such rates if that rate (0.736 ppm) is found to be unjustifiably high. In particular, C&WJ believes that the rates should be those of an efficient operator and should not be allowed to include any allowance for JT's current inefficiencies.

In that respect, C&WJ would note that there are a number of other issues with JT's RIO charges that C&WJ is aware of but which are not discussed by Regulaid, and which could affect the RIO charge. These include:

- its RIO call charges are based on a minimum 60 seconds duration, when C&WJ is aware that JT has interconnected with BT and C&W Worldwide on a purely per second basis for decades. In our view the JT method of charging includes the equivalent of a call set up charge and such a charge solely for its local competitors should be seen as anti-competitive.

- With the current interconnection links in place JT's fixed network termination rates should always be lower than those for call origination. This is because JT should take into account all calls from its mobile network terminating on or transiting its fixed network in its network usage factor calculations. JT's mobile network interconnects with its fixed network via more sites than OLOs networks do. Calls from JT's mobile network to/through its fixed network will therefore use fewer network components. Without such acknowledgement JT could continue to discriminate between OLOs' call minutes and those of its own mobile business. For fixed network RIO purposes JT's mobile service should be treated as a separate business (at arms length). If this approach was taken it could materially reduce the charges associated with JT's fixed network call termination. The following diagram may help to clarify the point:



If a Sure or Airtel-Vodafone customer (connected only to JT via Central Exchange) phones a JT fixed network customer (connected via JT's East Exchange) then the call uses two fixed exchanges and one fixed transmission. If a JT mobile customer phones the same JT fixed network customer then only one fixed exchange is used and no fixed transmission. If JT's RIO does not take this difference into account it may not reflect cost based rates for its call based RIO services. It should be noted that calls in the opposite direction will not result in the same overall route factors, due to the additional blend of indirect access traffic being carried between JT and OLOs, only through Central Exchange.

C&WJ requests that the JCRA reviews JT's route factor data to ensure that its mobile call minutes are appropriately recognised.

- JT's Product Management, Policy and Planning (PPP) charging principles should reflect the administrative costs associated with the provision of calls to OLOs and its own retail business from its Core Network Business. C&WJ requests that the JCRA ensures that the treatment of JT's retail call minutes is appropriate and in line with the view taken by Ofcom during its review of BT's PPP charging structure.

- It is likely that JT's local call fee terminating service provides access to some services which are provided to JT on a cost per call basis (for example, weather information), however it intends to charge OLOs solely on a cost per minute basis (per second after 60 seconds). If this is the case then JT's rates will not be cost based for this call type.

- Its operator assistance/emergency services call costs are not based on the appropriate time of day logic. The majority of cost for these call type relates to labour (for call centre operators) and staff will be paid more for working outside normal office hours (to cover the 24 hours a day cover required). JT was proposing peak rates of £4.18/£4.13 per minute and off-peak of £2.34/£2.32 so it is difficult to understand how these rates can have been correctly profiled. This raises further doubts over the general logic that JT has employed in its RIO calculations.

- Finally, C&WJ believes it is important that a statement of costs of network services is included in JT's regulatory accounts as this is a key document in the understanding of the costing of interconnect services. C&WJ does not know if such a statement is included given that JT's regulatory accounts are not currently published.

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

C&WJ agrees that JT should be required to demonstrate that appropriate costs are allocated to its data hosting business. C&WJ's concerns relate more to whether the costs of this and other business are being shown inappropriately in the regulated businesses. For instance the sales process, customer relationship, power costs and technical support time for a data centre business are much higher than, say retail calling. As JT attributes staff costs evenly there is a probability that the regulated businesses are showing higher staff costs than would be the case if they were calculated using time studies.

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.

C&WJ believes that the ability of an OLO to replicate the incumbent's services is important, particularly in the early stages of competition. However, if the only thing required of the regulatory regime is the principle of replicability, then this will limit the extent to which competitors will be able to innovate and compete effectively in the long term. JT Retail would lead the market in terms of all product and service development while OLOs would be forced to just follow, rather than be able to innovate and provide value in their own retail products. The principle of replicability also supports the ongoing regulation of price based on a retail-minus approach, which means that OLOs would always be beholden to JT both commercially and in terms of service features and timescales for innovation. In short, competition will remain ineffective.

C&WJ therefore believes that the JCRA should work towards requiring JT to make available new wholesale services and interconnects that provide efficient and equal access to the fundamental elements of JT's Core and Access networks that enable OLOs to develop and deliver their own retail services independently of JT's retail product set. Furthermore to require that any retail services provided by JT in future are delivered using these same wholesale services on the same commercial basis, or that additional wholesale elements are provided to ensure that an equivalent service could be replicated by an OLO if required.

Wholesale services should serve the fundamental purpose of providing connectivity from a service provider to a customer site and nothing more. Currently JT is merely providing to OLOs a white-labeled and discounted version of a JT retail product and introducing additional unnecessary inefficiencies of large quantities of underutilized fibre and CPE. This cost is ultimately wrapped up into the wholesale cost borne by OLOs.

Having a wholesale service which gives the basic building blocks and looks nothing like a retail service will also require that the pricing must be based on cost and utilisation of assets of known value, rather than an abstract retail-minus approach. This allows OLOs models to develop both technically and commercially.

C&WJ would also suggest that JT needs to ensure that proper "Chinese Walls" are in place between its wholesale and retail arms such that OLOs should be made aware of the future availability of a wholesale service at the same time as JT's retail business. OLOs should also be able to request wholesale prices for services that are not currently provided by JT's retail arm, e.g. higher bandwidth leased lines, LANs, etc.

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

C&WJ recognises the benefits that the bundling together of different products can have for some customers, in terms of convenience and lower prices compared to buying the individual elements of the bundles separately. It therefore agrees that JT should be allowed to offer bundles to its retail customers but agrees that this should only be to the extent that OLOs could replicate the bundles. As referred to above this means, for example, that the fundamental elements of JT's Core and

Access networks required for any bundles should be available at a wholesale as well as retail level.

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 costs of each element, and that the retail price does not constitute a price squeeze.

C&WJ agrees with this recommendation as this will ensure that the OLOs can also provide their own bundles, at prices that will be competitive with those of JT. In the same way that recommendation 5.4 states that all the individual elements of the bundle should be available on an individual basis at the retail level, they should also be available individually at the wholesale level. Wholesale elements required by OLOs to produce competing bundles will need to be made available in advance of the retail individual products and bundles, to ensure that OLOs are not placed at a competitive disadvantage compared to JT's retail operations. JT should also demonstrate to the JCRA that the retail price does not constitute a margin squeeze, prior to the introduction of any individual or bundled product, price change or promotion.

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

C&WJ agrees with this recommendation so that customers would still have the choice to buy the individual elements of the bundle separately if they so wished and would not be forced to buy some elements that they do not want. C&WJ believes that this recommendation should also apply to the wholesale level too, such that OLOs would have more freedom to produce innovative bundles of their own in addition to producing exact replicas of any bundles produced by JT.

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.

C&WJ agrees with the recommendation to amend JT's licence condition to allow bundling, subject to all the other requirements in relation to bundling having been met.

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.

C&WJ agrees that the issue of retail promotions can raise some difficulties, especially with respect to the extent to which they should be replicated by OLOs. Suitable regulation at the wholesale level, which would give OLOs access to the necessary wholesale inputs at appropriate prices, should help to ensure that OLOs have more freedom to compete at the retail level in terms of offering their own special offers and discounts.

C&WJ notes that the current Licence condition 33.4 does not specify the cost standard that should be used for ensuring that any discounts and special offers cover their costs and agrees that the incremental cost rule would be appropriate. It also agrees that the JCRA should confirm prior to launch that any special offers or discounts offered by JT do not constitute a margin squeeze.

The publication of JT's separated accounts would also enable OLOs to consider the extent to which any special offer or discount notified by JT in advance of launch does indeed cover its incremental costs, and would allow OLOs to make any necessary submissions to JCRA if they believed that they could have anti-competitive effects.

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

C&WJ believes that JCRA should initiate a process of consultation in order to establish OLO requirements for CPS, and that any JCRA mandate to JT should be based on those OLO requirements. In the consultation period JT should make available technical information and its timetable for delivery to OLOs so that OLOs can understand any constraints on their own requirements*.*

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

C&WJ believes that the overall standard of supporting documentation for wholesale services is low in comparison to that offered by Cable & Wireless in Guernsey, in particular with respect to ADSL services. This leads to incorrect presumptions being made or project delays due to additional consultation with JT. C&WJ would be amenable to identifying the current deficiencies, but would consider a working group to be onerous. JT should be able to review its documentation without further OLO input.

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

C&WJ fully supports the recommendation to mandate the introduction by JT of wholesale line rental (WLR). C&WJ believes that the introduction of WLR involves no capital investment. C&WJ would like to fully understand how the JCRA would intend to direct on pricing and delivery obligations.

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

C&WJ would expect the numbers that would make use of fixed number portability to be quite low and does not believe it should be viewed as a priority for the JCRA. The introduction of WLR is of greater priority and C&WJ believes that this would still lead to an increase in competition even if it was not accompanied by FNP.

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

C&WJ supports in principle the sharing of ducts but a number of key prerequisites must be in place to support this. These include:

- Accurate records of duct size, material, location, depth, available cable space and also the type of services running through the cables. All of these points will need to be available for the OLO to consider if duct sharing is a suitable option.

- The agreement of a generic Rate Card should be considered to support the commercials for OLO access. This could be along the lines of the Mast Site sharing arrangements in place between all mobile operators. However on that note we would remind the JCRA of the difficulties C&WJ experienced in seeking to share facilities and location at the JT site in St Brelade. The JCRA concluded that they were not able to require such sharing and that the site sharing requirement was limited to mobile masts and their immediate site. If the JCRA does implement a duct sharing requirement it must ensure that similar arguments cannot obstruct the purpose

- Agreed procedures for maintenance on the duct and the cables within as ongoing network maintenance can and will impact OLO cables within the incumbent operators duct infrastructure

C&WJ is aware that JT uses CH2M as a 3rd party resource to manage the network on JT's behalf and believes this is positive as it means the separation from the main business to support OLOs has already been made. The principles behind BT's Openreach business would be easier to implement here as management of the JT ducting infrastructure is already outsourced to an independent 3rd Party.

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

C&WJ agrees that JT should publish its retail prices for enhanced service levels for leased lines.

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

C&WJ agrees that enhanced service levels should be available to OLOs at a wholesale price. C&WJ considers that the level of JT retail pricing for enhanced service levels is not reflective of its costs. C&WJ would like to see this remedied by a price cap for enhanced service levels, similar to draft proposal 5.22. Preceding that implementation, a wholesale discount is more typical of retail/wholesale margin differentials, being set at not less than 15% in the first instance.

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

C&WJ has no current requirement for wholesale IP bandwidth and so has no comment on this recommendation.

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

Please refer to the response to 5.16 below.

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

Currently in the pricing process C&WJ has to request on a per circuit basis when a service is under 300 metres, which adds to quote preparation times. By removing the under 300m category C&WJ have certainty of pricing. There should not be any other subdivision of circuits on say, same/different exchange, as this would simply add to cost variations that are not reflected in the value of the service to the end-customer.

However, to be clear this should not be deemed as an opportunity to increase the wholesale price since the majority of the circuits are already greater than 300m and also in C&WJ view the current price is far too high. Please refer also to the response to 5.22 below where we recommend that in addition to the introduction of a price cap that there is an immediate reduction in the current on-island wholesale leased line price to at least retail minus 25% initially.

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

C&WJ is not convinced that the introduction of LLU in Jersey is appropriate at this time and believes that further investigation would be needed before any final decisions are made. The Review correctly addresses the issues of exchange-based co-location/LLU against the rollout of kerbside MSANs (effectively increasing the number of connection sites). However, it suggests that co-location of OLO kit in external cabinets is a viable solution. This all sounds like a good idea in principle, but the practicalities of physical access and security will introduce problems as well as the requirement for OLOs to provide duplication in terms of investment in essentially identical equipment, which is unlikely to be viable. Better scaling and cost efficiencies are available if JT provide a single unit capable of serving the needs of all OLOs, rather than all operators (JT included) having to purchase multiple smaller units. Multiple units will inevitably dictate either significantly larger cabinets in order to cater for physical access requirements of operators, or the deployment of multiple cabinets – all of which ultimately means additional cost to the consumer. There would also be environmental impacts of larger or multiple cabinets, which does not seem to have been recognised in the Review but will be particularly relevant on a small island such as Jersey.

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

Please refer to the response to 5.19 below.

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

C&WJ believes that JCRA should initiate a process of consultation in order to establish OLO requirements, and that any JCRA mandate to JT should be based on those OLO requirements. In the consultation period JT should make available technical information on its wire centres available to C&WJ so that C&WJ can understand any constraints on requirements it wishes to make.

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

C&WJ would welcome the opportunity to identify new requirements. Our response to this question is rolled into the replies to Section 7 recommendations.

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.

We believe that RIO prices should in principle be based on a properly derived cost model. However, given the issues related to the JT cost model and the points made by Regulaid related to the current costs in the model being higher than they could be and the lack of resources to implement in the short term a verifiable and robust cost model (especially given the pending variations related to NGN costs) then we can agree to the recommendation to consider the implementation of a price cap subject to a proper consultation process and that the intent should be to give the OLOs the correct economic signals. It will take time to agree and implement a price cap so it is important that recommendation 4.3 is implemented in the meantime, whereby an average rate of 0.736 ppm is used for calls originating and terminating on JT's fixed network, effective from January 2009.

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

Ideally, the wholesale price should in principle be cost based but again given the uncertainty related to the accuracy of the cost models we agree with the principle of a price cap on JT's wholesale on-island leased lines. However, the starting price for this price cap would need to be reviewed and should not be retained at the current level. The Regulaid report clearly states that "JT makes large profits from its leased line business, and hence the 9% discount is not a good approximation for cost based wholesale prices." Given this fact the wholesale on-island leased line prices should be immediately reduced with a minimum discount of 25% in order to offer immediate competition on domestic leased lines and then this should be the starting point for the price cap with future efficiency factors built in. It must be noted that the situation in Jersey is different from Guernsey in that the price set for the price cap for wholesale on-island Leased lines was not reduced initially because there had already been substantial reductions of over 30% over the past few years.

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

C&WJ considers the 25% discount to OLOs for its off-island leased lines to be entirely appropriate as a starting point, and requests that this change, being only administrative, is implemented without delay.

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

Whilst C&WJ agrees with the proposal to move towards cost based wholesale prices, subject to a wholesale price cap, it is concerned that this may take some time to achieve. In the meantime, it believes it is important to ensure that the current regime of wholesale prices based on retail minus is implemented fairly, and with sufficient margin to ensure OLOs can compete effectively with by JT.

On 14th September JT introduced 18 month DSL contracts, which reduced the effective retail minus 40% in place for 12 months contracts, to 34.5%. C&WJ challenged JT on this issue, asking amongst other resolutions, for JT to introduce 18-month contracts at Wholesale. JT have rejected the proposal and C&WJ currently has little recourse given that retail minus 40% was never formally agreed with JCRA. C&WJ would like a short-term resolution to this negative step from JT Wholesale, and in the longer term would welcome a move toward ADSL wholesale cost based price on customer access lines, with a price cap subject to there being a starting price with a sufficient margin immediately and future efficiency incentives built in.

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

C&WJ welcomes a move toward ADSL wholesale cost based pricing on DSL backhaul lines, with a price cap. As with the previous question, however, it is concerned with the time that it may take to implement such a regime and believes it is important that in the meantime the retail minus regime allows OLOs sufficient margin to compete effectively with JT. Similarly, the price cap starting point should be set at the appropriate level to allow sufficient margin immediately and with future efficiencies incentives built in on all contract terms.

5.26 JT should include the router costs in its backhaul prices

C&WJ understands that JT have already implemented this change on its new ethernet DSL backhaul service, and welcomes this inclusion. C&WJ is however concerned that JT appears to have derived this price by taking the recommended retail price of the router, and adding margin, as opposed to taking its cost price, plus margin. C&WJ requires a JT breakdown of the DSL backhaul prices in order to demonstrate that cost plus pricing has been correctly derived.

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

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

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

C&WJ would welcome the changes, as set out in recommendations 5.27 to 5.29, to communication of pricing and product notifications.

5.30 JT should initiate the payment of penalties, not the OLO

C&WJ's experience is that JT's provide and fault repair performance on JT Wholesale private circuit portfolio is very good, and that breach of the SLA is rare. C&WJ is concerned with payments only where they consider the breach to be material, and is satisfied therefore to maintain the status quo and to initiate any request for payment.

Wholesale and retail functions in JT

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

Whilst noting the positive statements made in respect of the wholesale function in Guernsey (although noting that it is in fact incorrect in stating that the C&W Guernsey wholesale function previously reported to the Director of Legal & Regulatory Affairs), C&WJ would urge the JCRA to concentrate on the actual behaviour and attitude rather than reporting structures.

The key issue is that the wholesale function must act in a commercial manner whilst maintaining the appropriate separation from the JT retail function. It is the attitude and response of the individuals concerned that will show and direct their behaviour rather than their job titles.

C&WJ would therefore support a recommendation which emphasises and concentrates on the simple need to make the wholesale function more commercial, flexible and practical in its approach. That may require change of behaviour of individuals rather than job titles or reporting lines.

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

Again whilst C&WJ would welcome any change which makes the wholesale function more commercial and recognises the value and opportunity offered by the wholesale function and its wholesale customers, it is the actual impact and effect that is key.

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

C&WJ's experience is that JT's Wholesale private circuit portfolio provide and fault repair performance is very good, and has no concerns that JT shows preference to its Retail arm operationally. However C&WJ is concerned with provisioning performance on DSL lines and would like to see total KPIs distinguishing retail and wholesale performance. The supporting data for each wholesale customer should be available to that customer to allow the wholesale customer to reconcile this reporting.

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.

C&WJ welcomes this recommendation to separate Retail and Wholesale customer records.

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

C&WJ does not support the recommendation that any operator with a Class 1,2 or 3 licence issued by the JCRA should be eligible for wholesale services at wholesale rates from JT

C&WJ believes that to allow Class 1 licence holders access to JT wholesale services would have a severe impact on the ability of the Class 2 licence holders to continue to build and operate a sustainable fixed access network and supporting product portfolio and it would also severely compromise continued and future investment on infrastructure build by those Class 2 operators.

There is no evidence that Class 1 licence holders, who are operating on the perimeter of telecommunication service delivery, would provide any benefit to the market other than just act as a "re-seller" of JT services. Also there is a serious concern that other non - Telco business could apply and be awarded Class 1 licences with the sole aim to access JT's Wholesale services to cut their own telecommunication costs and not with the intention of adding additional competition to the market***.***

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

C&WJ cannot comment on such a specific recommendation but would support any change which will ensure a clean break with JT's retail interests and a non-discriminatory approach. The JCRA must ensure that there is no discrimination or collusion and that the retail function is not given preferential treatment or service to that offered to the wholesale customers.

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.

C&WJ welcomes this recommendation to improve communication. In Guernsey the quarterly Broadband Forum, involving all OLOs, appears much more effective than the quarterly leased line meetings, which are on a per OLO basis. For this reason C&WJ would prefer a quarterly meeting including broadband, leased lines, and also Reference Offer. C&WJ proposes that all of these meetings take place over a full day for logistical reasons, and that OLOs would attend in accordance with those products that they purchase, or have committed to purchase, from JT.

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

C&WJ's experience is that the provision of forecasts is an administrative burden that offers no material value, and indeed C&WG has dropped this requirement from its Wholesale High Speed Internet Agreement in Guernsey. In order to protect JT from risk of failure to meet its service delivery SLA the Agreements should be worded such that should a high volume of orders be provided in a short period of time, JT would have the flexibility to deviate from the SLA. Example wording might be: Where orders in any week exceed the average run rate for the previous 4 weeks by a factor of 3 times, then JT would assign RFS dates to OLO, to be no later than if the orders had been submitted at a run rate less than 3 times the average run rate for the previous 4 weeks.

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.

Whilst C&WJ agrees that in principle operators should first seek to resolve disputes between them, the JCRA must accept and recognise that certain matters may not allow for this step, whether due to time constraints or it being readily evident that the operators will not able to resolve themselves. The JCRA cannot abdicate its responsibility to regulate. It is noted elsewhere in the Review[4] that "*telecommunications regulation in Jersey is mainly "ex post"*" and C&WJ comments that there is also need for "ex ante" regulation.

[4] Paragraph 3.1.7

The recent dispute between the operators over JT's proposed new termination rates, and specifically the role the JCRA did or did not have to play in such matters must not be allowed to re-occur. It is not sufficient to say any process must be "sanctioned" by the JCRA. It must be clear whether the JCRA is the final arbiter, and if not who is, and what responsibility the JCRA has.

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

C&WJ supports this recommendation within the context of ensuring a commercial rather than legalistic or antagonistic approach to the wholesale function referred to above and in earlier recommendations.

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

Documentation must neither replace a commercial and pro-active approach to wholesale and relationships with OLOs, nor make it more inefficient or dilute the requirement for effective and proportionate regulation by the JCRA

Next Generation Networks (NGN) issues

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

C&WJ would be keen to understand the current and final network architecture of JT core network in order to understand the potential customer products that could be built using those core components.

7.2 JCRA should set up a multi-operators 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.

C&WJ believe that such a forum would be beneficial, but is concerned with the complexities that may arise from conflicting requirements amongst operators. The independent guidance of the JCRA is essential to ensure that such a useful opportunity for OLO input is successful.

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.

C&WJ agrees that OLO Statement of Requirements (SoR) is useful, but believes that an understanding of JT's core network per 7.1 above, is a pre-requisite. This will ensure that the breadth of the SoR is constrained, ensuring OLO input is appropriately focused on deliverable products, rather than toward a theoretical wish-list.

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

Whilst C&WJ has no immediate requirements for SIP interconnect, it is interested in network architecture per 7.1 above in order to understand its potential impact.

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 capacity based interconnect charge for services which are bundled at the retail level with the line rental.

C&WJ would welcome the introduction of a price cap for call termination but does not believe that the complexities and challenges of a move to capacity based interconnect, or the other proposed methods discussed in the Review, would be appropriate at this time. C&WJ agrees, therefore, that the current charging mechanisms should remain for the immediate future, although it may be useful for this to be reviewed as part of the NGN discussions. In the interim, the fundamental principle should be that interconnect charges are cost based and that fixed costs are recovered with fixed elements and variable elements recovered by variable elements. It is these drivers that historically drive certain elements being charged on a capacity basis and other elements by the minute.

With respect to the principle that there may be a need for capacity based charges to apply to services that are bundled at the retail level with the line rental, this appears to assume that the wholesale offering will be similarly bundled. However, if the individual components of the bundle are available at the wholesale level this issue goes away. The individual components will be available either at a capacity or per minute basis as appropriate. With the introduction of NGN, these individual elements may not be obvious and thus may require more consultation.

With respect to the linkage to retail rates and more specifically time of day rates there are arguments on both sides related to cost model outputs and justifications through network inefficiencies and reducing arbitrage issues. Such linkages need to be considered on a case by case basis to see which is the most appropriate. Of more concern to C&WJ are more basic and easy to implement changes such as ensuring that the interconnect prices are based on verifiable and robust cost models and in the absence of that that rates are set with the correct incentives in place and the removal of the unjustified minimum 60 second charging for wholesale calls.

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.

C&WJ's expectation is that JCRA and JT would propose cost allocation methodologies, and that JCRA would make these methodologies transparent for OLOs to review as part of a consultation process.

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.

C&WJ does not have concerns with a risk that JT will fail to provide a fit for purpose bitstream service. Rather C&WJ requires the introduction of clear rules setting out the relationship between JT wholesale and retail customer bitstream access pricing, irrespective of retail minus, cost based, or other methodology deemed appropriate. Without certainty OLOs cannot evaluate commercial risk and are subject to incumbent behaviour typified in the example in response to 5.24 above.

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.

C&WJ notes that this recommendation arises out of the recognition by Regulaid that there are gaps in the ex ante regulatory framework in Jersey, which seriously impact the competitive environment in Jersey. Further, that Regulaid believes that the remedies adopted by the European Union would form a good model for ex ante regulatory remedies for Jersey but that some form of market review would be necessary before any remedies are imposed.

C&WJ agrees in principle that an EU-type model of ex ante regulation could be appropriate for Jersey although it will need to be implemented in a way that is proportionate for a jurisdiction of the size of Jersey. With this in mind, C&WJ believes that Regulaid's proposals for the slightly revised market definitions that should apply in Jersey are reasonable and so there should be no need for JCRA to spend time revisiting market definitions. Instead it should focus on collecting and analysing the necessary data (both qualitative and quantitative) relating to these markets. This should not take too much time given that a lot of the relevant quantitative data is already collected on a quarterly basis by the JCRA. It should be possible, therefore, to update the market analysis fairly quickly and certainly within three months.

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

C&WJ welcomes this recommendation to take part in the development of wholesale products that are dependent on NGN technology. C&WJ does not see the need to define separate working groups at the outset. Rather it envisages a single group chaired by the JCRA. Should the agenda vary between commercial and technical issues then representation from JT and OLOs should change as appropriate. Should separate working groups be required to resolve particular issues, then those should be convened as and when required.

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

C&WJ believes that this current process, whereby operators have been invited to provide responses to the draft Regulaid Review, should be treated as the first stage of the public consultation, to avoid any unnecessary delays in acting on the findings of this report.

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.

C&WJ welcomes this recommendation.

Cable & Wireless Jersey Limited

9 October 2009