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Dear Daniel

Wholesale leased Lines: Review of price controls

Cable & Wireless Jersey Limited ("CWJ") welcomes the opportunity to respond to the JCRA's Initial Notice: Proposed Directions to JT (Jersey) Limited issued as CICRA Document Number 12/37 on 26 July 2012.

CWJ believes that the proposed direction to JT to increase the discounts offered on wholesale leased lines from the current rate of retail minus 9% to retail minus 20%, effective from 1 April 2012, must be introduced without any further delay.

CWJ has made numerous representations to the JCRA regarding the wholly inadequate wholesale margins available to CWJ and other licensed operators ("OLOs"), and the JCRA has always promised action but has never delivered. We note that as far back as 2004, the JCRA issued and published on its website Direction 2004-5, directing JT to offer discount of 20% on leased lines as an interim measure pending the completion of JT's separated accounts. For reasons that have never been made clear to CWJ or we presume, OLOs, this Direction was never enforced by the JCRA. Of course, we are also still awaiting the publication of adequate separated accounts by JT.

Since 2004 the JCRA has continued to promise action on the inadequate wholesale margins offered by JT, including identifying it as a priority in its workplans for every year from 2008 onwards. In 2009, the JCRA also appointed Regulaid to undertake a review of JT's wholesale business. Regulaid noted 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..." and further, "...we conclude that margin is insufficient for effective competition in this market, and that a margin squeeze is likely to be present." One of the many recommendations contained in that review, therefore, was that the wholesale margins on leased lines should be increased to retail – 25%. Again for reasons unknown to CWJ, none of the Regulaid recommendations were ever enforced by the JCRA.

This lack of action is shocking, and has become increasingly so as the JCRA and its equivalent regulator in Guernsey, the GCRA, have worked more closely in recent years, culminating in the formation of CICRA. This has only served to bring into even starker relief the anomalies compared to Guernsey, where the wholesale margins on leased lines are cost-based, and generally equivalent to a margin of approximately 20-36% depending on the speed. These margins also need to be seen in the context of the significantly lower retail prices of leased lines in Guernsey across the majority of bandwidths.

CWJ therefore sees no justification for the current state of affairs in Jersey to be allowed to continue any longer given the severe and ongoing impact it is having on the ability of OLOs to compete with JT.

As far as the references to the Channel Islands Wholesale Access Project (CIWAP) are concerned, CWJ and its associated company in Guernsey, Cable & Wireless Guernsey Limited (CWG) are disappointed at the continued lack of progress in this project. We note that page 7 of the document states that the OUR (now GCRA) has imposed a price freeze on leased lines in Guernsey pending the outcome of the CIWAP. CWG is not aware of being notified of this decision and there is nothing published to that effect on the CICRA website. However, this incorrect statement does not alter the need for urgent action in the Jersey leased lines market and indeed without such action, the whole future of pan-island initiatives such as the CIWAP project would have to be called into question as the significant and unjustified disparities between the two islands would continue.

CWJ notes that in the absence of representations or objections, this Initial Notice should take effect on the 28th August. There is a lack of clarity, however, over what would happen and within what timeframes, in the event that representations are made. We cannot imagine what justifiable objections could be made to this direction given the number of times the JCRA has stated that current wholesale margins are inadequate and this has been confirmed both by independent consultants and benchmarking against similar jurisdictions. Surely it must be clear to the JCRA by now that the need for action on JT's wholesale leased line margins is long overdue. If any objections to this Notice are received - which presumably could only be in the form of a spurious objection from JT given OLOs have been crying out for action for years - it is now within the JCRA's power to simply issue a Final Notice giving effect to this direction immediately. We note that the recent amendments to the Telecommunications (Jersey) Law 2002 dispensed with the need for repeated Initial Notices to be issued even if representations are made. All that is required is for the JCRA to make a considered judgement call that those representations are without sufficient merit to warrant a new consultation.

In conclusion, CWJ believes that the JCRA must confirm without any further delay that it is implementing this Direction, effective from 1st April 2012. Failure to do so will mean that the JCRA will lose all credibility as an independent and effective regulator, and could also seriously jeopardise progress on pan-island regulatory initiatives such as the CIWAP.

We confirm that we have no objections to any part of this response being made public by the JCRA, including publication on CICRA's website.

Yours sincerely

Chris Durnell
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