26th May 2016

Jersey Competition Regulatory Authority
2nd Floor
Salisbury House
1-9 Union Street
St Helier
JE2 3RF

Dear Sirs

Second Initial Notice on JT Retail Price Control 2016
Written response of JT (Jersey) Limited ("JT")

I refer to the second initial notice in respect of retail price control on fixed line services issued to JT by the JCRA in April 2016 (the "**Second Notice**"). This letter (including its appendices) constitutes JT's written response to the Notice.

Executive summary

JT strongly objects to the price controls proposed by the JCRA, and considers that any price control at all is wholly unnecessary. WLR has been introduced in Jersey to regulate and regularise upstream, wholesale prices and, while still in relative infancy, provides JT and its competitors with certainty as to the costs and charges of acquiring wholesale fixed line product, allowing downstream, retail products to be sold from a fixed base. In the face of developing market diversification, which WLR is helping to nurture, downstream control is entirely superfluous.

Efficiency must be at the centre of any review of this nature. Prices can only be directed to be reduced if there are efficiencies to be made to accommodate decreasing revenue. JT is operating efficiently and yet still making a loss on those products under review. In such circumstances, downward price control cannot be implemented without unwarranted detriment to other areas of the business.

The price control proposed is wholly unfit for purpose. Jersey and Guernsey are different markets and it serves no party's interests to try to artificially align the two. The JCRA's attempts to do so are therefore inappropriate and unwarranted. The JCRA's calculations in concluding firstly that JT's prices are too high, and secondly that Sure's Guernsey prices are an appropriate bar against which JT's prices should be set, are incorrect and do not take account of all relevant information and variables. Given the cross-jurisdictional comparison that shows that Jersey's consumers pay below-average prices for fixed line products, even lower prices are totally unnecessary; Jersey consumers continue to receive very good value.

There is the real prospect that if price controls are imposed by the JCRA, Jersey consumers will suffer as a consequence of the increased loss JT will be directed to incur. Continued investment and innovation is only possible if JT is able to continue to operate competitively and profitably. Steps such as retail price control, particularly in circumstances where such control is so patently unnecessary, serve only to curtail such development and stagnate innovation.

The JCRA has no discernible strategy for dealing with or developing the market. The Second Notice is presumptive and pre-emptive, and has been issued to address a problem that does not exist. The future strategy for the telecommunications sector in Jersey is under high-level and on-going discussion, which

directly impacts on matters such as fixed line price control, and *ex-ante* regulation generally. Any move by the JCRA to pre-empt those discussions by imposing a 3-year price control would be ill-judged and inappropriate.

Procedural context of the Second Notice

The Second Notice has been issued on the back of:-

1. a report prepared by Frontier Economics Ltd ("**FE**") for CICRA entitled *Retail Price Cap Review in the Channel Islands* and dated March 2015 (the "**FE Report**");

2. a consultation document issued by CICRA in March 2015, which was informed by the FE Report, and which effected a pan-Channel Island consultation on retail price control on fixed line services (the "**Consultation**"); and

3. an initial notice issued to JT in December 2015 in respect of retail price control on fixed line services (the "**First Notice**").

JT provided detailed responses to the JCRA in response to both the Consultation (on 8 May 2015, the "**First JT Response**") and the First Notice (on 1 February 2016, the "**Second JT Response**").

Consistent with its recent treatment of JT's reasonable and valid objections and concerns, the JCRA has failed to deal in any meaningful way with the issues raised by JT in both the First JT Response and the Second JT Response. Instead, the JCRA has myopically proceeded with a patently inappropriate course, despite robust counter-arguments which remain unanswered. This failure to take proper account of JT's views has been remarked on previously, inter alia, by the Court (in its judgment in relation to WLR), and by JT in its very recent response to the JCRA in relation to its investigation into purported margin squeeze of retail broadband prices.

With the above in mind, the First JT Response and the Second JT Response have been appended to this letter (and thereby constitute part of this response) because the concerns and issues raised therein have not been dealt with properly or at all by the JCRA; objections to the Consultation and First Notice (from which the matters raised in the Second Notice do not materially depart) remain unanswered and form part of these written representations.

JT does not propose to rehearse in detail issues previously traversed in either or both of the First JT Response or the Second JT Response. Those documents set out in detail, and with some force, JT's firm opposition to the course proposed by the JCRA, and all objections raised therein are repeated in response to the Second Notice. This letter therefore supplements the issues raised in those earlier submissions.

Why price regulation at all is inappropriate and unnecessary

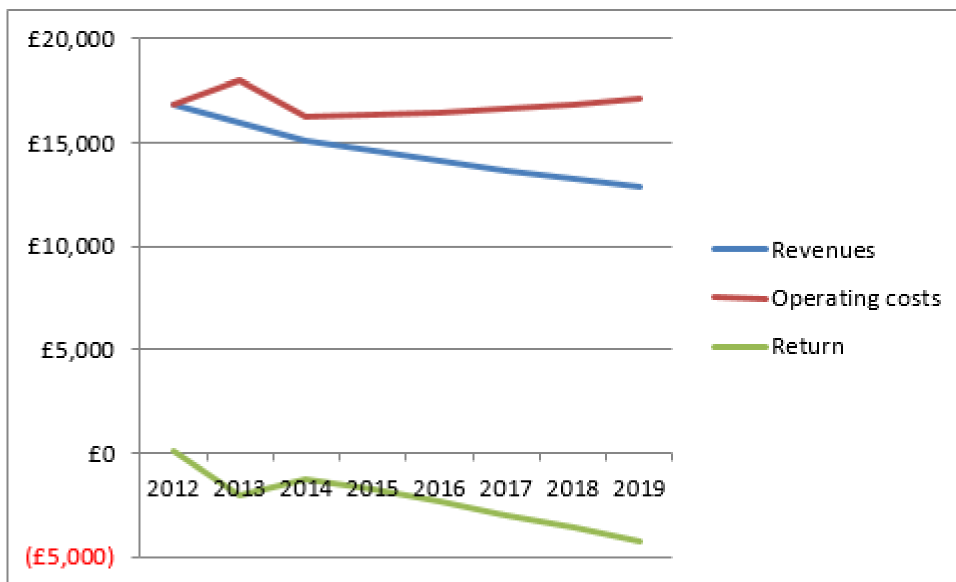
JT's objection to the price controls proposed by the JCRA relate principally to the notion that any price control at all is wholly unnecessary. JT has notification and cost justification obligations in its licence which require it to advise the JCRA and competitors of price changes 21 days before they come into effect. These obligations should be sufficient for the JCRA to have oversight of any price changes in advance of them coming into effect and in our opinion make the price control proposals superfluous and an act of over regulation. Additionally, the market that the JCRA is seeking to price control is a declining market, with users moving away from the traditional fixed line call to using voice call functionality on WhatsApp, Facebook, Facetime, Viper and Skype to name a few of the alternate methods of making voice calls today. While the usage of JT's fixed voice network is decreasing JT's costs are not decreasing in line with this decrease.

Using JT's separated accounts data and extrapolating the trends forward, JT projects that the gap between revenue and cost is increasing year on year. The analysis is detailed in the table and graph below and shows increasing losses with fairly stable operating costs.

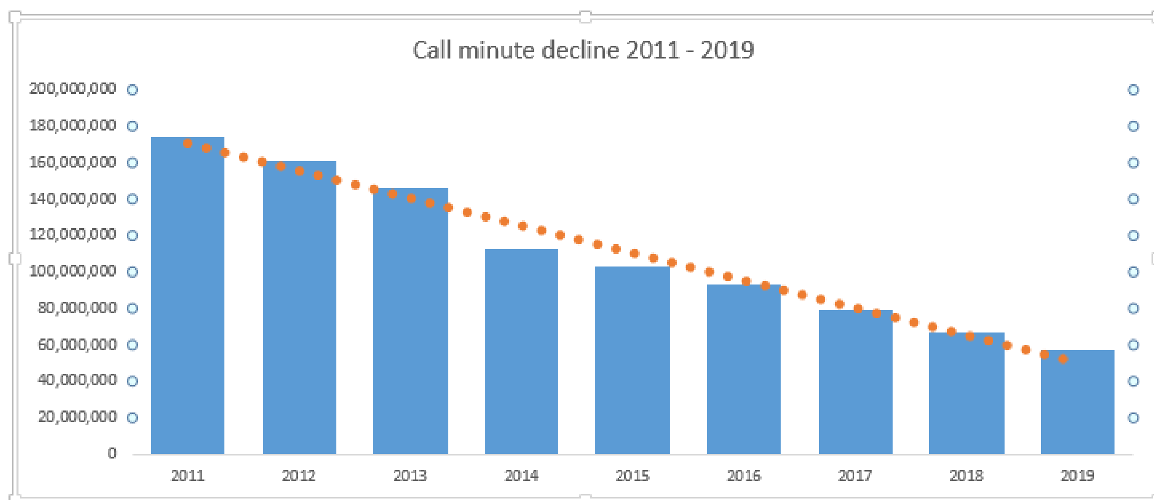
Fixed access and calls combined 000's

	2012	2013	2014	2015	2016	2017	2018	2019
Revenues	£16,872	£15,997	£15,070	£14,572	£14,101	£13,656	£13,236	£12,838
Operating costs	£16,813	£18,011	£16,304	£16,355	£16,463	£16,624	£16,835	£17,093
Return	£59	(£2,014)	(£1,234)	(£1,783)	(£2,362)	(£2,968)	(£3,599)	(£4,255)
ROT	0%	-13%	-8%	-12%	-17%	-22%	-27%	-33%

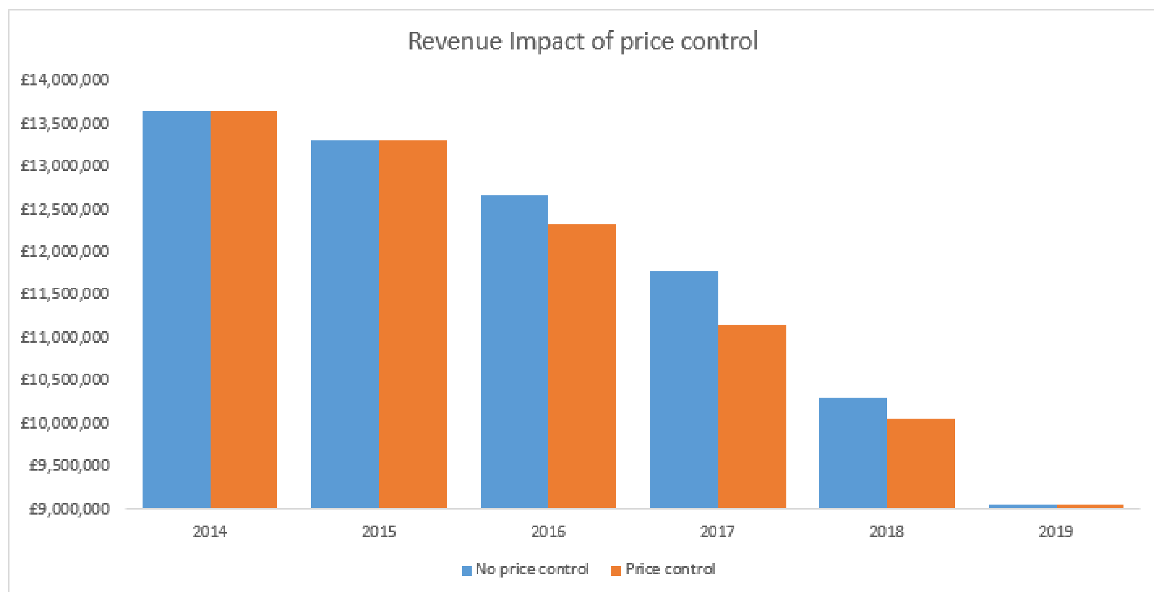
Revenue, costs and return 2012-2019 (000's)



The graph below demonstrates the decline in traditional voice call minutes in Jersey between 2011 – 2016 and JT's projected decline during the period 2016 – 2019.



The graph below demonstrates the revenue impact to JT of the proposed price control (shown in orange) and is contrasted with no price control (shown in blue). The no price control line is based on pricing following the prevailing retail prices index (RPI).



JT has separate, significant concerns with the specific price control proposed (which concerns are dealt with below), but any objections raised in that narrower regard should not be misinterpreted as a concession by JT that some, different calculation of price control might be appropriate; JT is firmly of the view that *ex-ante* regulatory control at all of downstream, retail prices is unwarranted and inappropriate.

<u>Organic development of the market</u>

As the Second Notice acknowledges, WLR has recently been introduced in Jersey to regulate and regularise the upstream, wholesale prices JT may impose for its wholesale product. While still in relative infancy, WLR provides both JT and its competitors with certainty as to the fundamental costs and charges of acquiring wholesale fixed line product, allowing retail products to be sold from a fixed base.

The JCRA's treatment of WLR is confused and contradictory. The Second Notice claims that WLR *"has not altered the competitive landscape"* of the market, but at the same time acknowledges that *"WLR is…a recent development in the Channel Islands"* and that *"the effect of* [WLR] *on the development of effective competition has not yet been proven"*. This latter statement is fair; WLR is comparatively recent and, as the Second Notice observes, its full effect - and effectiveness - is yet to be confirmed. There is, however, clear evidence that it is starting to have the desired effect (JT processes around 30 WLR connections per day, and the Second Notice notes that around 3,000 had been processed at the time of its publication) and drawing conclusions at this stage (which the JCRA purports to do) is premature.

This confusion is typical of the position the JCRA adopts in the Second Notice. There is a clear sense that in issuing this notice, the JCRA has 'jumped the gun'. For example, the Second Notice states that (emphasis added):-

> *"The need for regulatory oversight of JT's prices arises from its position of dominance, which <u>would</u> allow it, absent of control, to raise prices independently of its customers or its competitors. Regulatory control is therefore appropriate for as long as this concern remains."*

Accordingly, the price controls proposed by the JCRA have been suggested because the JCRA is concerned that JT, as dominant operator in the market, <u>may</u> at some point raise its prices *"independently of its customers or its competitors"*. There is nothing in the Second Notice (nor indeed, the FE Report) to suggest that that is

what JT is doing or has done; it is merely the JCRA's concern that JT might do so in the future. Additionally as mentioned earlier, JT already has notification and cost justification obligations in its licence which require it to advise the JCRA and competitors of price changes 21 days before they come into effect.

In fact, even in the relatively short period between the First Notice and the Second Notice, as the Second Notice admits, the price difference between JT and Sure has decreased significantly (even on the JCRA's figures, which do not take account of all relevant factors, from 33% to 13%). It is wholly unclear why, in the face of such clear organic market development and natural convergence of pricing, the JCRA feels compelled to interfere. There is a dynamic and evolving market in Jersey, in which customers are evidently freely moving between competitors (the JCRA's own customer satisfaction survey indicated that a third of JT customers were considering switching away from JT, and, as above, around 30 WLR connections are processed by JT per day). In the face of such developing diversification, and with the recent introduction of WLR, downstream control is entirely superfluous.

Saturation of the market

The Second Notice refers repeatedly to some *"potential new entrant to the Channel Island market"*, commenting that *"too short a price control could be seen as a potential barrier to entry that would deter a new entrant wishing to enter the market in the face of a lack of certainty in the wholesale charges JT may make"*.

As the Second Notice observes, Jersey is a very limited market with finite possibilities for expansion and exploitation. Jersey is not the UK, where even within regions there are possibilities for a new entrant to join the market and grow. There seems to be an unrealistic expectation in the Second Notice (and the JCRA's approach generally) that the fixed line market in Jersey would be able to support a greater number than the three operators it already has (or indeed, that it would be desirable for it to do so). The fact that the market is declining with reduced usage of fixed line services and customers using alternative technologies, as mentioned previously in this response, has not been properly taken into consideration.

It seems likely to JT that the market has in fact reached its natural saturation; three operators servicing somewhere in the region of 60,000 lines. With such a comparatively small customer-base to target, and three operators already established within it, the disincentives or 'deterrents' for new entrants are unlikely to be the margins they are able to achieve on fixed line products as against their wholesale cost, but rather the realistic rewards they can hope to achieve even if they were able to successfully (and economically) launch in the market. In order to make such a prospect attractive for any *"potential new entrant"* (as the JCRA seems determined to do), there necessarily needs to be an artificial suppression of prices (which the JCRA seems determined to effect), which serves neither the existing operators, hypothetical new operators, or the customers themselves (since forced price cuts force compromises in investment in other areas of the business, such as customer service and product innovation; a consequence wholly inconsistent with the JCRA's duties under Article 7 of the Telecommunications (Jersey) Law 2002).

Such interference is, as noted above, wholly unnecessary in a market that is developing organically.

Efficiency

It is JT's firm view that efficiency must be at the centre of any review of this nature. It must surely be a matter of common ground that prices can only be directed to be reduced if there are efficiencies that can be made to accommodate the decrease in revenue. If it is the case that JT (or any such dominant operator) is operating efficiently and yet still making a loss on those products under review, downward price control cannot be implemented without unwarranted cost to other areas of the business.

The FE Report confirms FE's view that JT is operating efficiently (view shared by JT), stating:-

> *"…we conclude that…JT* [does] *not seem to have costs significantly above those of operators in other jurisdictions…We find no obvious indications of inefficiencies within…JT from our cost benchmarking. Thus…it is difficult to assess whether it could be reasonable to assume that the operators could achieve general improvements in productivity beyond those implicit in general economy-wide inflation."*

Fixed line rental is a loss-making product for JT. This is partially, but not wholly, due to the PrimeTalk subsidies (which the JCRA has refused to take into account in its analysis). On the basis that JT is an efficient operator, providing loss-making products, it is wholly inappropriate for the JCRA to try to impose a further layer of regulation that would require those losses to increase.

If the JCRA is determined to pursue this matter, it is JT's view that an efficiency review must be central to any investigation and consultation. Absent such key data, the proper effect of the controls the JCRA is seeking to impose cannot be properly assessed. If there are no available efficiencies to be made in operating costs, it is unclear how the JCRA expects JT to reduce prices. The same overheads will continue to exist, and the JCRA therefore unreasonably appears to expect JT to simply absorb greater losses on its fixed line products for the sake of hypothetical 'new entrants' to the market.

Broader context

It is evident from the Second Notice, and its approach generally to this matter, that the JCRA has no clear strategy for dealing with or developing the market. As set out above, the Second Notice is unnecessarily presumptive and pre-emptive, and has been issued to address a problem that does not exist. The JCRA has, on the face of it, taken action in respect of a price discrepancy (between jurisdictions) that existed almost 2 years ago, and has arbitrarily suggested a staggered decrease in JT's prices that will bring them in line, not with some broad, cross-jurisdictional average, but with the historical prices of a single operator in a single jurisdiction. Such an approach is hopelessly reactive and takes no account of the evolution of the market in the meantime, or the place of the Jersey market in the broader international context.

As the JCRA will well be aware, the future strategy for the telecommunications sector in Jersey is the subject of high-level and on-going discussions, the conclusion of which will directly impact on how matters such fixed line price control, and *ex-ante* regulation generally, should be resolved. JT therefore considers that any move by the JCRA to pre-empt those discussions and make the Second Notice final, would be ill-judged and inappropriate. Imposing a 3-year price control with such extant discussions on-going would be a blinkered and controversial step.

At page 12 of the Second Notice, the JCRA remarks, in discussing the period the suggested price controls are proposed to last, that (emphasis added) *"if the market was considered to be working well for consumers the JCRA would contemplate removal of the price control in advance of the three year control period."* Given that (1) consumers in Jersey pay prices for fixed line products that rank some way below those of operators in proximate jurisdictions (in the UK, for example, BT has recently increased the price for its equivalent product to £18.99) and below the cross-jurisdictional average; and (2) there is clear evidence that the customer base in Jersey has appetite and is able to switch providers as it chooses, it is unclear on what basis the JCRA considers that the market is not *"working well for consumers"*.

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

Why the price regulation proposed is unfit for purpose

As the foregoing ought to make clear, JT is firmly opposed to price control of any kind; JT's view is that it is completely unnecessary. The comments that follow in respect of the specific price control proposed (supplementing and incorporating comments in the First JT Response and the Second JT Response) do not depart from or dilute that fundamental position. The following comments are provided notwithstanding this overarching objection.

Price control proposed

The JCRA has proposed that in order to ensure the Jersey market is *"working well for consumers"*, it must homogenise to the Guernsey market, which the JCRA seemingly considers to be (1) equivalent; and (2) *"working well"*.

To achieve this, the JCRA has proposed that JT's prices be controlled so that they are brought into line with historical prices of Guernsey's dominant operator, Sure. In doing so, the JCRA has disregarded Sure's own admission that prices in Guernsey have been too low for some time (and has, over the period since the First Notice, steadily increased prices as a result), and insisted upon a 'race to the bottom'. JT must, according to the JCRA, match the price of an operator in a different jurisdiction, who competes with JT in this jurisdiction.

The levelling of the prices is proposed to take place over the course of 3 years, but given the distribution of the prescribed reductions, that period is in effect 2 years. Even on this accelerated timescale, which the JCRA claims would align JT's prices with Sure's, the prices to which JT would be aligning would, by that time, be almost 5 years out of date.

The price control proposed is wholly unfit for purpose. Despite what the JCRA seemingly believes, Jersey and Guernsey are different markets. It serves no party's interests to try to artificially align the two exactly, and any such move is inappropriate and unwarranted. No consideration has been given to the different ownership and investment strategies of JT and Sure Guernsey which do have an impact on the cost base. The JCRA and Frontier have disregarded JT's fibre investment on the basis that they believe that the investment should be solely recovered from the broadband market. This is totally illogical when both the fixed line voice service and the broadband service share the same underlying infrastructure.

Notwithstanding the benchmarking issues set out below (and in the First JT Response and the Second JT Response), there are further variables that the JCRA has not taken into consideration in arriving at the proposed control. For example, as a direct consequence of the recently imposed EU-wide control on roaming charges within the EU, some international carriers within the EU are applying a surcharge for selected non-EU jurisdictions to terminate calls within their country. JT is now subject to these increased costs and these additional charges will only escalate and broaden in their application as more countries begin to try to recoup revenue lost from inter-EU charges. We raised this matter with Ofcom and their response was that it was perfectly legitimate for the EU operators to increase charges outside of the EU. The table below demonstrates these additional charges to fixed line calls applied to non-EU operators:-

Destination	Surcharge EUR	Surcharge £
Austria	0.09	0.07
Austria-Corporate	0.09	0.07
Austria-Mobile	0.20	0.16
Austria-Mobile-Hutchinson	0.20	0.16
Austria-Mobile-Lycatel	0.20	0.16
Austria-Mobile-Mobilcom	0.20	0.16
Austria-Mobile-T Mobile	0.20	0.16
Austria-NGN	0.09	0.07
Austria-Vienna	0.09	0.07
Croatia	0.09	0.07
Croatia-Mobile	0.20	0.16
Croatia-Mobile-HT	0.20	0.16
Croatia-Mobile-Vipnet	0.20	0.16
Czech Republic	0.01	0.01
Czech Republic-Mobile	0.04	0.03
France-Mobile	0.03	0.02
France-Mobile-Bouygues	0.03	0.02
France-Mobile-Orange	0.03	0.02
France-Mobile-SFR	0.03	0.02
Germany-Mobile-E Plus	0.14	0.11
Germany-Mobile-O2	0.14	0.11
Greece	0.01	0.01
Greece-Mobile	0.04	0.03
Greece-Mobile-Vodafone	0.04	0.03
Greece-Mobile-Wind Hellas	0.04	0.03
Hungary-Mobile	0.04	0.03
Italy-Mobile-H3G	0.17	0.13
Italy-Mobile-Telecom Italia	0.05	0.04
Italy-Mobile-Vodafone	0.05	0.04
Italy-Mobile-Wind	0.05	0.04
Lithuania	0.10	0.08
Lithuania-Mobile	0.24	0.19
Portugal-Mobile	0.35	0.28
Portugal-Mobile-Optimus	0.35	0.28
Portugal-Mobile-Vodafone	0.35	0.28
Switzerland-Mobile	0.23	0.18
Switzerland-Mobile-Orange	0.21	0.17
Switzerland-Mobile-Swisscom	0.21	0.17

As set out above and elsewhere, the fixed line rental products are loss making for JT; price controls that constrain prices on those areas of profit (such as call charges) that currently balance the loss making elements for 3 years and prevent JT responding to external market changes as outlined in the table above, commit it to a period of steadily increasing loss.

Benchmarking

The First JT Response and the Second JT Response each contain a detailed analysis of why the benchmarking adopted by the JCRA in assessing and formulating the proposed controls is inappropriate, and incomplete. This analysis is adopted and repeated in this response, but not set out again in full in what follows to avoid repetition. All of JT's previous concerns in this regard remain, however, and it does not consider that proper, or indeed any, consideration has been given to those concerns by the JCRA in issuing the Second Notice (which is principally the same as the First Notice).

As JT has made clear previously, the JCRA's calculations in concluding firstly that JT's prices are too high, and secondly that Sure's Guernsey prices are an appropriate bar against which JT's prices should be set, are incorrect and do not take account of all relevant information and variables.

For example, the JCRA has dismissed entirely the impact of the PrimeTalk tariff and excluded it from the fixed line bundle it has considered. Despite PrimeTalk accounting for over a quarter (28%) of all JT's line rental customers, and over half (53%) of its line rental only customers (who the JCRA is seemingly most concerned to protect in this instance), the JCRA has inexplicably determined that it is inappropriate to include the PrimeTalk figures (and therefore over half JT's line rental only customers) from its analysis. As the Second JT Response makes clear, while PrimeTalk has been closed to new customers, it continues for existing customers and, since JT's share of the fixed line market will only decrease in the future, in the short to medium term the proportion of JT's line rental customers (and particularly line rental only customers) who subscribe to the PrimeTalk tariff may actually increase, notwithstanding the tariff is no longer open to new customers.

The JCRA's analysis also expressly excludes the additional charges imposed by Sure (such as, for example, charges for alternative payment methods, late payments and paper bills), which are not charged by JT (or, in other words, which are included in JT's price). This materially increases the real cost of the product offered by Sure, but is dismissed by the JCRA, which argues that *"It is open to JT to introduce such charges outside the price control mechanism. However, it will be required to justify such charges."* The double-standard and inconsistency of this approach is plain.

JT has made clear its view that simply benchmarking prices in Jersey to those in Guernsey is myopic and unduly insular. Not only does it circularly cross-refer to prices that are also themselves regulated by CICRA (thus providing no international context for the prices Jersey consumers are paying), it inappropriately assumes that the Jersey and Guernsey markets are sufficiently similar to justify regularised pricing. JT does not agree with this conclusion.

The Second Notice comments that:-

> *"The key basis for the recommended level of control did not ultimately rely on* [other] *comparator jurisdictions…the assessment looked in greater detail at what was considered the strongest comparator in the Guernsey market given the similarities between that jurisdiction and Jersey."*

While Guernsey is undeniably the closest market to Jersey geographically, it does not automatically follow that it is the most appropriate comparator. Ignoring for a moment the cross-jurisdictional average that indicates Jersey's prices are fair or even low (compare again BT's recent introduction of its £18.99 tariff in the UK), it is informative to consider the prices in the Isle of Man. In this regard, compare Manx Telecom's 'Choice' tariff (£13.95 per month), Sure Isle of Man's 'Home' tariff (£13.50 per month), JT's 'Coreline' tariff (£13.50 per month) and Sure Guernsey's 'standard line' tariff (£11.99 per month). It is clear that Sure Guernsey's prices are low.

When considered in the context of prices in a comparable market (the Isle of Man), including Sure's own prices in that market, it seems clear that it is Sure Guernsey's prices that are (presumably deliberately) out of line with equivalent products and operators, and not JT's that are unduly high. Suppressing JT's to meet those prices would therefore artificially and unnecessarily manipulate the market.

Additionally, the JCRA seems to have forgotten that the prices for WLR were agreed on the basis of the package of services that use the fixed line infrastructure (ie broadband and voice services) and are not the same in Jersey and Guernsey. The price for WLR in Jersey is £11.10 and the price in Guernsey is £10.00. The proposed direction does not correlate to the lengthy discussions which took place during the implementation of WLR on pricing the services and the agreed historical differences in the jurisdictions. To attempt to align retail line rental prices now, on one product type only, when the underlying wholesale prices are different does not make sense. JT must also point out that the price control basket includes ISDN lines, which are a higher price in Guernsey than Jersey but CICRA are not seeking to align these prices. The JCRA cannot pick and choose which prices it wishes to align and if the strategy is to align Jersey and Guernsey pricing then this should be set out in its strategic objectives and be consistently applied.

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

Adverse consequences for consumers of proposed price control

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

<u>PrimeTalk</u>

JT has made clear that exclusion of the PrimeTalk tariff from the JCRA's analysis is inappropriate. PrimeTalk accounts for over a quarter of JT's fixed line customers, and over half of its line rental only customers. Given that the plan has only been closed to new customers, those proportions will remain for the short and even mid-term.

It is plain that the JCRA has excluded PrimeTalk from its consideration in this matter at all. By its nature, PrimeTalk is heavily subsidised by JT, being offered, as it is, at a vastly discounted rate. The tariff is intended to help ensure that Jersey's retired population, a group at significant risk of vulnerability and income constraints, is able to access an essential service affordably and easily. While the tariff is no longer available to new customers, a significant number of subscribers still rely on it and will continue to use it for many years to come.

If JT is directed to comply with the price controls the JCRA is proposing, and thereby directed to bear increasing losses on already loss making products, it is inevitably that decisions will have to be made within the business to absorb and counter those increased losses. Given the level of loss JT suffers as a result of continuing to provide the PrimeTalk tariff, it is likely that costs pressures would render continuation of the tariff at all (even to existing customers) commercially unviable. However, there are major issues to be dealt with in removing the PrimeTalk tariff completely, which the JCRA is well aware of, and these issues are not wholly within JT's control.

<u>Restrictions on product investment and innovation</u>

Given that JT is already operating efficiently, any belt-squeezing exercise necessary to absorb the increased losses directed by the JCRA would necessarily bleed into other areas of the business. There has, for

example, been a focus on CICRA's part to improve the operators' customer service, and bi-annual reviews in this regard have been implemented.

The Second Notice claims that *"the benefits of competition"*, which it considers the price controls will serve to promote, *"would manifest in the extent of switching by consumers between providers, prices that are in line with relevant benchmark, significant improvement in current customer satisfaction levels as well as greater variety and innovation in service provision."*

Improvements in customer service require regular investment to ensure that better standards are achieved, but also maintained. A reduced budget for such investment (as increased losses would demand) would inevitably and unavoidably compromise and slow such initiatives. Jersey's consumers would therefore suffer.

Innovations in products and services would clearly continue, but again be compromised. JT has invested significantly recently in the telecommunications infrastructure in Jersey, which has resulted in dramatic improvements to the standard of service users are able to enjoy. It is quite wrong for the JCRA to dismiss the advantages fibre installation brings as relating only to broadband customers; quite aside from the improvements in voice services that correspond with the installation of fibre (including, but not limited to reliability and quality), it is clear that Jersey's society generally benefits from its position as a key offshore commercial and financial centre. The installation of fibre helps to better serve those businesses operating in this sector, the performance of which has a direct effect on and corresponding benefit for the economy of the Island. It is narrow-sighted to suggest investments and initiatives of such scale and scope do not have benefits for all telecommunications users, irrespective of whether they use broadband.

Such investment and innovation is only possibly if JT is able to continue to operate competitively and profitably, and is not confined to large-scale projects such as fibre; initiatives such as JT's replacement for PrimeTalk, Senior Home Service, rely on the business continuing to be able to diversify and innovate. Steps such as retail price control, particularly in circumstances where such control is so patently unnecessary, serve only to curtail such developments and stagnate innovation. Again, it is the Jersey consumers who would ultimately suffer.

The way forward

As this submission, which incorporates the First JT Response and the Second JT Response, has made clear, JT fundamentally disagrees that there is any cause for or merit in downstream retail price control. As has been illustrated by other investigations (such as the recent margin squeeze matter), the JCRA evidently has no clear strategy for dealing with the development of the telecommunications market in Jersey, and has pursued a course of action here that is disconnected from the realities of the market. The result is a proposed price control that is wholly unnecessary and ill-considered.

As JT pointed out in its recent response to the JT's margin squeeze investigation, the future strategy for the telecommunications sector in Jersey is the subject of high-level and on-going discussions, the conclusion of which will have direct bearing on how matters such as *ex-ante* regulation and price control should be approached. JT therefore considers that any move by the JCRA to pre-empt those discussions and make directions that would commit JT (and the wider market) to a course now that conflicts with the broader strategy under discussion, would be ill-judged and inappropriate. The policy the JCRA is seeking to effect is short-sighted and superfluous and should be carefully reconsidered when the broader strategy for the market is settled. Even then, JT struggles to foresee a need for regulation of both upstream and downstream prices.

I trust this letter (and its appendices) sets out JT's position on this matter clearly, but should you require any further clarification, please let me know.

Yours faithfully

DARAGH MCDERMOTT
DIRECTOR CORPORATE AFFAIRS