Retail price control

Initial Notice

Determination issued to JT (Jersey) Limited

Document No: CICRA 13/53 **December 2013**

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

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1. Introduction

On 31st December 2013, the existing one year price control[1] applying to certain services supplied by JT (Jersey) Limited (***JT***) at a retail level will expire.

Since January 2010, the telecoms industry in the Channel Islands has been working together with the Channel Islands Competition and Regulatory Authorities (***CICRA***), comprising the Jersey Competition Regulatory Authority (***JCRA***) and the Guernsey Competition and Regulatory Authority (***GCRA***), on the development of new wholesale access products, aimed at increasing choice and competition in fixed-line telecoms services.

Creating fairly-priced wholesale access products is central to the development of fixed-line competition. Competitive network access is intended to stimulate further competition in the fixed-line market and provide consumers with greater choice and better pricing as well as helping to drive innovation in the services provided to telecoms users. In the event that competition is increased in retail fixed-line services, the need for retail price controls reduces and there may be scope to significantly reduce, or remove entirely, JT's products from price controls.

However, JT successfully challenged the JCRA's decision (Final Notice 13/20) to introduce fixed line competition through wholesale line rental, and that decision has been remitted to the JCRA for reconsideration. Given this outcome, the time period in which sufficient competition might develop in fixed-line services, and therefore the nature of any future price control that might take account of increased competition, is now open to uncertainty.

In the absence of greater retail competition, the JCRA believes it is necessary to retain a price control on certain JT services for the time being, and that the services to be price controlled should remain those covered by the existing price control.

The JCRA has had preliminary discussions with JT regarding its intentions with respect to prices for the services covered by the existing price control in 2014 (namely, local calls, calls to the UK and international calls, connection of fixed subscriber lines and exchange line rental). JT has not proposed increases in its call charges. However, based on its separated accounts for 2012, JT submits that a cost-orientated price for standard exchange line rental would be £14.92 per month (ex-GST), compared to the current monthly charge of £12.75, which would involve an increase of 17%.

The JCRA is conscious of the potential impact of such an increase on telecommunications consumers. Moreover, it notes that standard exchange line rental for Sure in Guernsey is currently £9.99 per month. The JCRA is also aware that part of the cost-underpinning for JT's standard exchange line rental is the subsidy provided to older customers through the

[1] *Final Notice of Determination: T817J,* 23 December 2011

PrimeTalk tariff. The JCRA considers that in order to allow such a substantial increase in exchange line rental, a comprehensive review of JT’s exchange line rental costs, and the existing price control structure, is required.

A new interim price control is therefore set out in this Initial Notice that allows for an overall increase based on RPI inflation to the combined existing price control baskets under the present 2013 control. Following this, the JCRA intends to carry out a full review of JT’s price control, including its exchange line costs, commencing in Q2 of 2014. The interim price control set out in this Notice will remain in place until the conclusion of that review, which may leave this interim control in place, replace it with an alternative control or allow it to lapse.

2. Structure of the Initial Notice

This Initial Notice is structured as follows:

Section 3: Sets out the legal and regulatory framework for the telecoms sector;

Section 4: Discusses the background to the current price control and subsequent developments;

Section 5: Explains the JCRA's proposals for the price control; and

Section 6 : Outlines the next steps.

Interested parties are invited to submit comments in writing or by email on this Initial Notice to the following address:

JCRA,
2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF

Email: ***info@cicra.je***

All comments should be clearly marked "**JT Retail Price Control – Initial Notice**", reference CICRA 13/53 and should arrive before midnight on 17 January 2014.

3. Legal Background

The legal basis in Jersey that provides for the JCRA to subject JT's services to price control is the licence issued to JT by the JCRA under Article 14 of the *Telecommunications (Jersey) Law 2002*. JT's Licence, in particular Condition 33.2, states as follows:

"The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunications Services within a relevant market in which the Licensee has been found to be dominant. A determination may:

a) provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunications Services;
b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies."

This condition allows the JCRA to regulate the prices that JT charges for its telecommunications services in a way and for a time that it deems appropriate, where JT has a dominant position in the relevant market. In April 2010, the JCRA determined that JT has a dominant position in, inter alia, the following markets[2]:

- Access to the public telephone network at a fixed location for residential and non-residential customers;
- Call origination on the public telephone network provided at a fixed location; and
- Call termination on individual public telephone networks provided at a fixed location.

[2] *Response to the Consultation Paper 2009 – T3 "Review of the Telecommunication Market in Jersey" and Decision on the Holding of Significant Market Power in Various Telecommunications Markets*, 19 April 2010

4. Previous price controls and subsequent developments

The current one year price control is due to expire at the end of December 2013. It followed a three year price control that ran from 2009 to 2011, and further one-year roll overs of the price control in 2012 and 2013.

CICRA has worked with the telecoms industry as part of the Channel Island Wholesale Access Project (CIWAP) initiative, to look at ways of increasing competition in the fixed-line services. Evidence from the local mobile telecommunications services sector, where greater competition was facilitated in 2008 through the introduction of mobile number portability (MNP), and from fixed line markets elsewhere demonstrates that enabling consumers to choose from whom they obtain services provides a significant boost to competition. In the long term, effective competition can deliver better outcomes for customers, better prices and better service than regulation alone can achieve.

The JCRA wishes to avoid setting a price control for an unnecessarily long period, and anticipates that it might be appropriate to remove aspects of retail price controls from some services offered by JT before the end of 2014, depending on the development of competition in fixed-line services. While a significant amount of work had been undertaken by the CIWAP, any new wholesale services are however not likely to be available in the first half of 2014. Conversely, having no price control in place risks a situation where consumers are inadequately protected, given JT is the sole provider of exchange line services and has a powerful market position in many other aspects of fixed line service provision.

5. Price Control

JT's dominance

JT has been found to be dominant in the following markets[3] which are relevant for the purposes of this proposed price control:

- Access to the public telephone network at a fixed location for residential and non-residential customers;
- Call origination on the public telephone network provided at a fixed location; and
- Call termination on individual public telephone networks provided at a fixed location.

JT is the only provider of fixed exchange lines for residential customers in Jersey. Based on its knowledge of alternative products available in the market, the JCRA also believes that JT would continue to have a market share of well over 80% of calls on fixed lines (compared to a market share of 90% in 2009 and 88% in 2010). In addition, the JCRA does not believe that competition from mobile telephones as a substitute for a fixed line or broadband-facilitated calling services, whether voice over internet protocol, or (VoIP), or calls made using WiMax spectrum through the service offered by Y:Tel), as yet exert sufficient pressure on JT that would lead to a conclusion that fixed-line markets are competitive. Therefore, the JCRA remains of the view that JT is dominant in the markets listed above. As a consequence, the JCRA believes that a continuation of a control on the prices charged by JT for services in these markets is warranted in the circumstances.

Price Control process

In 2008, the JCRA set a price control for the period 2009-2011 which included the following features:

- That the appropriate level of the Weighted Average Cost of Capital (WACC) for the period of the price control is 11.6%;
- That a price control of RPI – 3% should apply to JT in respect of its charges for local calls, calls to the UK and international calls; and
- That a sub-cap of RPI – 1% should apply to JT's charges in respect of the connection of fixed subscriber lines and line rental.

As with the current 2013 control, and in particular given this is an interim price control, in the JCRA's view it would be inappropriate to expend the resources necessary to re-calculate an appropriate WACC for JT. This may be reviewed as part of the review which the JCRA will carry out in 2014.

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[3] *Response to the Consultation Paper 2009 – T3 "Review of the Telecommunication Market in Jersey" and Decision on the Holding of Significant Market Power in Various Telecommunications Markets*, 19 April 2010

The existing 2013 price control retained the two sub-baskets used for the 2009-2011 price control. Under the existing price control, JT was required to freeze charges for the baskets (i.e. allow no change to tariffs in nominal terms) for 2012 and 2013. The JCRA believes that for the interim price control for 2014, JT should be allowed to increase these prices by the equivalent of the annual change in Jersey RPI, which stands at 1.2% for the year to September 2013.

In the absence of effective market competition in fixed line services, and in light of JT's submission that the cost-oriented price for its standard exchange line rental would be £14.92 per month, a 17% increase from the existing rate of £12.75, the JCRA has taken the view that before considering any further price increases, it should complete a comprehensive review of JT's exchange line rental costs, and the existing price control structure. This review will commence in Q2 of 2014. The interim price control set out in this Notice will remain in place until the conclusion of that review, which may leave this interim control in place, replace it with an alternative control or allow it to lapse.

The decision to allow a price increase in line with Jersey RPI as an interim measure is in the JCRA's view appropriate in the circumstances.

The JCRA notes that in Guernsey, Sure is allowed to rebalance charges between the baskets of charges for line rental and calls, and it would seem appropriate to allow JT a similar degree of freedom in setting its own charges. In many jurisdictions, including in the Channel Islands (Jersey and Guernsey) it has become common practice to include a package of calls alongside line rental for a fixed monthly fee. This practice moves away from the clear distinction between a fixed monthly charge for line rental and various charges for calls.

The JCRA has therefore considered that JT should be allowed flexibility to adjust charges between its existing control baskets and that for the purposes of this control, the revenues from these baskets should be considered on a combined basis. Combining the baskets is appropriate at this time and will allow JT a greater degree of flexibility in its retail offering. This also ensures there is an overall pricing constraint on the telecom services which are taken together by many islanders[4]. For the avoidance of doubt any bundling of exchange line services with calls should be carried out in such a manner so as not to contravene either the competition law in Jersey or JT's licence conditions.

Despite allowing the flexibility to adjust charges between its existing control baskets, the JCRA will continue to require that JT report separately on exchange line and call costs and revenues in the company's regulatory reporting and accounts, in accordance with the current format for separated accounts. This will ensure the appropriate level of transparency and

[4] *The combining of the existing price control baskets would be achieved by weighting the index of each basket by its Basket Cost for 1st January 2014, as reported by JT in respect of its 2009-2011 price control under the heading Primary Compliance Test and updated to 1 January 2014.*

clarity of JT's underlying costs is available to support the assessment of any such subsidies that occur, and whether they are detrimental to fair competition. In the event of specific concerns in this area, fair competition provisions in JT's licence are available to address any valid concerns.

Determination

For the reasons set out above, the JCRA gives Initial Notice of its decision to make a determination under Condition 33.2 of JT's licence as follows:

- That the charges levied by JT for local calls, calls to the UK and international calls, connection of fixed subscriber lines and exchange line rental shall be allowed to increase overall by 1.2%, relative to the charges for those services applying on 31 December 2013;
- The specifics of individual price changes are for JT to determine. JT may rebalance or adjust individual charges within this basket of services provided that it remains within the price cap which limits the overall increase in prices to no more than 1.2%.

It is proposed that the determination will take effect on 18 January 2014, and will remain in place until replaced or removed following a review that will commence in Q2 2014.

In the event that representations or objections are received in response to this Initial Notice, the effective date of the determination will be set out in a Final Notice issued under Article 11(4) of the *Telecommunications (Jersey) Law 2002*.