Channel Islands Wholesale Access Project – Wholesale Line Rental

Initial Notice of modification of licence of JT (Jersey) Limited

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Guernsey Competition and Regulatory Authority
Suites B1 & B2, Hirzel Court,
St Peter Port, Guernsey, GY1 2NH
Tel: +44 (0)1481 711120
Web: www.cicra.gg

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier, Jersey, JE2 3RF
Tel: +44 (0)1534 514990
Web: www.cicra.je

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1. Introduction

Wholesale access to the fixed networks of the incumbent telecommunications providers in Jersey and Guernsey is key to the further development of fixed-line competition in the Channel Islands. Competitive access to the network of JT (Jersey) Limited (***JT***) will stimulate greater competition in fixed-line services in Jersey, providing consumers with greater choice and better pricing, and helping drive innovation in the services provided to telecoms users. In the event that competition is increased in fixed-line services, the need for price controls on JT in the longer term should also be reduced.

In November 2011, the Channel Islands Competition and Regulatory Authorities (***CICRA***) reported on the progress made by the Channel Islands Wholesale Access Project. That consultation also explained the shortlisted options and sought views on which of these should be prioritised. Responses to that consultation have informed this initial notice, which relates to the wholesale line rental product (***WLR***).

WLR allows competitors to the telecom incumbents to offer a single bill that includes exchange line rental. Currently, the incumbent (in Jersey, JT) maintains a commercial relationship with the customer, given it is the only provider of exchange line rental, even if the customer uses a competitor for calls or broadband services. This allows the incumbent several potential advantages, including the obligatory continuation of a commercial relationship with all customers who take fixed-line services, and the ability to bundle products in a way its competitors cannot. WLR is intended to allow a measure of access competition to remove such obstacles to competition.

In terms of implementation, WLR is the least complex to introduce of those wholesale products shortlisted in the November 2011 consultation, while the timescale for introduction is relatively short and the cost of implementation is relatively low. After consideration of a high-level cost benefit analysis, the JCRA has decided to give initial notice of its intention to modify the licence of JT through the addition of a new licence condition, which would require JT to make available to other operators a WLR product for its fixed-line telephony network by 3 June 2013.

2. Structure of the Initial Notice

Section 3 sets out the legal and licensing basis for the Initial Notice, and the decision to modify JT's licence by adding a new condition. Section 4 provides background to the consultation process, with Section 5 explaining the cost-benefit analysis undertaken and consideration of issues raised. Section 6 assesses the alternative processes required to support the WLR product and the timing for delivery of the WLR product by JT. Annex B contains the proposed process for WLR, while Annex C has the text of the proposed new condition for JT's licence.

Interested parties can make submissions in response to this Initial Notice by post or email to the following address:

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

Email: info@cicra.je

Any comments should be clearly marked "Initial Notice on Wholesale Line Rental Product" and should arrive before midnight on 19 December 2012.

Responses to this Initial Notice will be made available on the CICRA website. Any material that is confidential should be put in a separate Annex and clearly marked as such so that it may be kept confidential.

3. Legislation and Licensing

The general legislative background is provided by the *Competition Regulatory Authority (Jersey) Law* 2001 for the Jersey Competition Regulatory Authority (***JCRA***).

The sector-specific legislative framework is provided by the *Telecommunications (Jersey) Law* 2002 (***the Law***), together with the telecommunications licences of the licensees in Jersey. In addition to specific legislation, there is scope for the States of Jersey to give formal directions to the JCRA.

Article 18 of the Law states:

(*1) The Authority may, of its own motion or on the application of any person, modify any condition contained in a licence by virtue of Article 16.*
(2) The Authority may refuse to modify any condition so contained on such ground as the Authority sees fit.
(3) The power to modify a condition contained in a licence includes the power to insert a new condition or amend or delete an existing condition but any new condition, or condition as amended –

> *(a) may only be a condition that a licence may contain by virtue of Article 16; and*
> *(b) shall be taken, as from the date when the modification takes effect, to be a condition contained in the licence by virtue of that Article.*

Article 16(1)(b) of the Law provides that a licence may contain conditions "that, in the opinion of the Authority, are necessary or desirable, including (but not limited to) conditions prohibiting, regulating, or *requiring*, any one or more of the following…

> *(a) the provision by the system that is the subject of the licence of any telecommunication service or a telecommunication service of any description*

The Law also requires the JCRA to perform its functions in a manner consistent with the considerations set forth in Articles 7(1) and 7(2) of the Law.

4. Background

In November 2011, CICRA published a consultation on wholesale access products. Responses to that consultation have been considered; in particular, the implications for any high-level cost-benefit analysis (***CBA***). It is apparent from those responses and subsequent enquiries that a number of interdependencies between the products listed exist. The nature of the assumptions required further increases the complexity and cost of carrying out a CBA of all wholesale products together. Such interdependencies include relative take-up, timescales and cross-elasticity of demand between the products. Specific examples include the fact that the benefits from introducing the naked digital subscriber line (***DSL***) bitstream product are potentially influenced by the length of time any WLR product might be available prior to its introduction. There is also an argument that WLR may be justified as a stand-alone product, given it may have an important role in preventing foreclosure of the market to allow the benefits of the naked DSL bitstream product to be realised when it is implemented at a later date.

Given this further information, in the JCRA's view, the complexity and resulting cost of carrying out a CBA of all the products with these interdependencies at this stage is disproportionate to the scale of the project. The range of outcomes seem especially prone to wide confidence intervals when carrying out a CBA on this basis. In particular, there appears to be an alternative way forward that is less burdensome on operators and which has the potential to offer significant benefits in a shorter timeframe.

For these reasons, the JCRA has chosen to carry out a CBA only on WLR at this stage. It is also the case that the needs of the market are in the JCRA's view appropriately met at the present stage of competition by removing the advantage that incumbents currently have over their competitors in terms of ability to bundle their offers. A more even playing field is also enabled through the removal of the ability of JT and Cable and Wireless Guernsey Limited (***CWG***) to enjoy an exclusive billing relationship with their customers in the Jersey and Guernsey markets in which they are the incumbent.

In terms of the benefits arising from this decision, the JCRA's view is that irrespective of whether customers choose to switch or not, the improved level of competitive pressure in the market is beneficial to all customers, and not confined to those that switch away from the incumbent. This is because the incumbent is likely to have to react to this competitive pressure in serving its existing customers, with related benefits to those customers who remain with it.

The JCRA further considers that WLR is likely to contribute to the potential benefit of introducing other wholesale products, including a naked DSL bitstream product, in the future. The ability of other operators to offer bundles will improve their ability to compete against the incumbent and grow their market share. A higher market share enables an entrant to more easily market further services such as naked DSL bitstream if it were introduced at a later stage since an existing commercial relationship with customers is likely to reduce marketing and acquisition costs when selling new products.

5. Cost-Benefit Analysis

The JCRA has taken into account the fact that WLR is currently made available in many countries of various population sizes and levels of GDP per capita. The processes required for WLR are also relatively simple and well understood. Reliable cost estimates of around £30,000-£40,000 per annum (including set-up costs) have been supplied by CWG for the provision of a WLR product in Guernsey. Even for a small market such as Jersey, with a population of 97,000, the benefits per customer stemming from WLR would only need to be very modest to outweigh these estimated costs.

JT, in its response to questions submitted by the JCRA on the specific proposal by CWG and issues around the introduction of WLR in Jersey following the November 2011 consultation, has indicated it would require double the staffing resource proposed by CWG to provide a similar WLR solution, with an estimated annual cost of the order of £110,000, and potentially further costs from a change in specification required for the billing process.

The JCRA has considered the alternative costs suggested by JT and is not convinced that JT can justify requiring twice the resource estimated by CWG to introduce the same product. Not only are there greater economies of scale in Jersey given its higher population (as a result of which we would expect JT's costs per population to be lower than in Guernsey), but JT has offered no convincing evidence to support the argument that JT must develop and implement WLR processes that are materially more complex (and costly) than those proposed by CWG. The process design and implementation would seem to the JCRA to be very similar between CW and JT and the billing package used by JT, Comverse, is the same as that used by CW in Guernsey. Given an annual cost of between £30,000 and £40,000 for WLR to be introduced in each island, this amounts to between £0.67 and £0.87 per Jersey household and £1.00 to £1.40 per Guernsey household per annum. Even if JT's estimate of annual costs were accepted, this would still set the cost per household in Jersey for the provision of a WLR product at around £2.40 per annum.

In considering the potential benefits, WLR offers a means for all market operators to bundle their services. The absence of significant bundling activity in the islands in fixed telecom services, other than by JT, is evident from our initial research. Where this is in evidence, the JCRA notes that the reduction in total bill can be substantial. For example, the current bundling offer from JT, 'JT Fibre Complete', indicates that the bundled price for mobile, broadband and fixed line calls is around £8 lower per month than the total price of the separate component products. While the JCRA has previously raised concerns around the composition of JT's bundles, it is nevertheless apparent that the price point for the bundle that JT believes is commercially feasible represents a significant reduction on the sum of the individual services sold separately. In addition, there are enhanced features offered as part of the JT Fibre Complete bundle that are not included for free in the standard individual products with which this price comparison is made, which would indicate the benefit to consumers is considerably greater than £8 per month.

It also appears to the JCRA that there are further benefits to competition in removing the compulsory relationship that the incumbent has with all customers regardless of which operator they take their calls or broadband services from. As explained already in this document and previous documents, this weakens the relationship of an entrant with its customers; WLR removes this limitation to competition.

The JCRA also takes the view that the introduction of WLR prior to consideration of any CBA of a naked DSL bitstream product will enable a sounder basis on which to carry out that analysis, given actual penetration figures following the introduction of WLR will be available at a later stage. The ability of other operators to compete in the market should also be improved as a result, and the extent to which the introduction of WLR will have improved the scale of their customer base will have implications for lowering their customer acquisition costs. WLR could also provide economies of scope and scale in marketing services, informing operators' options on how much to invest in naked DSL bitstream and fixed number portability in the future.

Given an annual cost of between £30,000 and £40,000 for each island, amounting to between £0.67 and £1.40 per household per annum in the Channel Islands, the JCRA concludes that the benefits from bundling alone, which WLR facilitates, exceed the costs of implementing the product on a high level CBA. Even if JT's higher cost estimates were taken and the cost threshold was £2.40, it is apparent that the benefits exceed the costs.

Objections to WLR have been raised by JT on the grounds that it would prefer that the naked DSL bitstream product is progressed instead of WLR, as it considers that WLR is an "old technology" and is specific to copper networks, and because it considers that there is no business case for JT Guernsey to offer WLR in Guernsey.

Given the success of bundled offers generally in telecoms and, in particular, JT's own record in Jersey of seeking to bundle fixed-line calls, mobile and broadband, the JCRA does not consider JT's objections reflect its own practice in Jersey. The JCRA would also fully expect JT Guernsey to offer bundled services as a result of WLR, given this offers an improved ability to compete. Also, WLR is primarily a billing service and therefore not specific to copper networks, contrary to what JT has argued.

The JCRA does, however, agree with JT's view that the availability of naked DSL bitstream may offer a more significant step forward in terms of the flexibility available to other operators. However, the JCRA has reservations about whether naked DSL bitstream can be delivered in a comparable timescale to that of WLR. Naked DSL bitstream is a more complex product and the risk of delay is that much greater as a result. It is also the case that the resources required to provide the wholesale product are more significant and JT's repeated concerns around availability of resources would seem even more relevant to naked DSL bitstream than WLR.

An overarching reservation that the JCRA has with JT's response to the CIWAP consultation is that JT cites its current investment in fibre access networks as determinative of the resources it has available to develop wholesale access products. The business interests of JT and where it believes it should dedicate its resources are not the only factor to take into consideration in Jersey. The existence of a vibrant competitive environment is key to the health of the market for fixed-line telephony services. Indeed, competitors of JT have voiced concerns that it has failed to engage appropriately with them in the rollout of the fibre network and transparency has been poor. JT appears to be of the view that access by entrants will largely rely on the speed at which it chooses to roll out its new network, which is taking place over a five year timespan. Delays of this magnitude for competitors of JT are clearly not in the interests of furthering competition in the fixed-line telecoms market.

While JT has offered to 'fast-track' Jersey customers to fibre where they wish to switch to another operator, other operators have clear reservations about relying exclusively on such arrangements. The reality is that a large proportion of the network in Jersey will still rely on copper networks to deliver access services for at least another 18 months, and further delay to wholesale competition is not in the best interests of consumers. The JCRA has therefore given greater emphasis to the speed at which it seeks to facilitate competition, but will consider the introduction of additional wholesale access measures as provided by the remaining short-listed products at a later stage, ideally drawing on evidence of the success of WLR and more reliable assumptions as to the potential benefits of naked DSL bitstream.

JT has cited the additional burden of developing wholesale processes for WLR as detracting from resources needed to achieve fibre rollout. The JCRA does not accept these arguments given the relatively straightforward processes entailed, much of which already exist through the provision of wholesale broadband. However, in the event these arguments had merit, it seems more likely that a naked DSL bitstream product, which is more complex and resource-intensive than WLR, would detract from JT's resources to a greater extent than WLR. Despite this, JT has indicated a preference for the launch of the naked DSL bitstream product.

An issue raised in the November consultation is whether WLR should include both single-line and ISDN services. This Initial Notice does not propose to introduce a WLR-ISDN product and is limited to the single-line product at this stage. A reason for not including WLR-ISDN is that the complexity, cost and timescales for implementation may be substantially greater than for single line WLR, which potentially involves more resource and greater complexity to provision. The consultation sought views on whether a separate CBA may be needed for each alternative given the above issues. The estimated costs of single line WLR have been provided and the JCRA considers it has a reliable basis on which to proceed with a decision on that product. The same is not true of WLR-ISDN at this stage of the WAP project. The JCRA intends to investigate further the additional complexities of the

WLR-ISDN service and the estimated cost as part of the on-going project. Operators such as Newtel Jersey have placed a particular priority on the provision of such a wholesale service and the JCRA is mindful of this demand. The JCRA therefore intends to progress with an assessment in this area at the earliest opportunity when it has a sufficiently reliable base of information with which to carry out a CBA analysis.

6. Processes

The diagram in Annex B sets out the processes required for the provision of a WLR product. These processes have not been contentious and will therefore be adopted as part of this Initial Notice. The specific billing processes are, however, likely to depend on the precise requirements of operators. In terms of the processes, it appears to the JCRA that the retail processes are likely to involve a daily process, leading to the provision of a high-usage report and the availability of call detail records on a daily basis. Responses have identified three alternative wholesale billing arrangements that therefore may need to be available to other licensed operators (***OLOs***) as part of the WLR product, namely:

1. **Option 1** - these processes would provide for the likely requirements of an existing operator that already has systems in place for the management of call related services
2. **Option 2** –these processes would enable existing licensed operators to offer WLR where they do not have the systems in place to manage call related services
3. **Option 3, along with further add-on services** – these processes would provide the wider services of an incumbent operator to new entrants (for example) who may wish to provide a white-labelled service.

Options 1 to 3 require a progressively greater level of involvement in the OLO’s billing processes by the incumbent since the incumbent draws to an increasing extent on its own systems to provide WLR due to the absence or lower level of investment by a potential OLO in such processes. It would appear that Option 1 is likely to be the preference for OLOs currently providing their own call billing; Option 2 may be more applicable to existing OLOs that do not at present provide their own call billing but may choose to do so given the availability of WLR. Option 3 may be more relevant to future operators who would look to offer only a white-label service, relying to a larger extent on the incumbent’s billing processes.

Whether all of the above options for billing need to be made available at the launch of WLR is questionable given the low likelihood of operators requiring the final two services from the incumbent. It is therefore not the JCRA’s intention to mandate that all of the above options should be in place at launch. The JCRA intends to mandate that in the first instance, Option 1 should be made available by the deadline under this Initial Notice and if there is demand, Option 2 should be made available also as soon as feasible after the deadline. This appears to cover all of the parties that have displayed an interest in the wholesale access project to date. In the event that further entry into the fixed market did take place which required greater support in the provision of billing processes than provided by Options 1 or 2, then the JCRA would consider that further.

WLR is a service which allows alternative communications providers to rent access lines on wholesale terms from the (incumbent) network owner and resell those lines to customers. For this service, the communications providers effectively lease an exchange line and decide how best to route a customer's calls. The November 2011 consultation document explained that this would generally include residential and business customers (single line/PSTN & ISDN-2).

This initial notice is for the introduction of single line/PSTN WLR at this stage of the wholesale access project. Feedback from operators indicates that WLR could be launched in nine months from the commencement of the project, should it be confined to a single line service. However, the majority of OLOs and operators were keen to see WLR implemented as quickly as possible in order to compete in the market with single provider solutions. While operators appear to agree that in the long term, naked DSL with Bitstream and the availability of fixed number portability offers the most opportunities to develop retail products for customers, single line WLR provides the most immediate opportunities for competition and should therefore be the highest priority at this stage.

A deadline date of 3 June 2013 is therefore set for the introduction of this access product.

The licence condition to be inserted as the new Licence Condition 17.10 will not mandate the price at which JT is required to offer the WLR product, although it does stipulate that JT is entitled to share the efficient costs of the provision of the WLR service equally with each of the Other Licensed Operators that seek WLR. The JCRA will intervene if JT and potential customers for the WLR product are unable to agree on a price.

The proposed modification of JT's licence will take effect on 19 December 2012, unless the JCRA receives representations or objections about the proposal prior to that date, in which case the effective date will be specified in a final notice issued by the JCRA.

7. Next Steps

Parties are invited to comment on this Initial Notice. In the event that there are representations or objections raised, the JCRA will consider those prior to issuing a Final Notice. The condition that the JCRA intends to add to JT's licence is set out in Annex C.

Annex A - Considerations under Article 7of the Telecommunications (Jersey) Law 2002

The Law requires the JCRA to perform its functions in a manner consistent with the considerations set forth in Articles 7(1) and 7(2). The JCRA's consideration of these factors is detailed below.

The JCRA has a primary duty under Article 7(1) to perform its functions in such manner 'best calculated to ensure that (so far as reasonably practicable) such telecommunications services are provided…as satisfy all current and prospective demands for them, wherever arising.'

Having consulted with operators over an extended time period, there is a clear demand conveyed by operators that customers would respond to alternative choices to the incumbent in Jersey in the fixed telecoms market. This demand is also reflected in the policy adopted by the States of Jersey to liberalise Jersey's telecommunications markets and thereby 'to abolish the exclusive privilege of the States in telecommunications.'

It is apparent from other jurisdictions where WLR has been introduced that a fully effective WLR product is likely to bring major benefits to consumers in terms of increased choice, innovation and lower prices. Consumers will also have the opportunity to choose alternative suppliers who provide combined access and call services. The benefits arising are likely to be enjoyed by all consumers in Jersey since the benefits of choice and more competitive offers will be available to all consumers, regardless of whether they switch away from the incumbent since the incumbent will need to respond to competition.

As a mature fixed line market with high penetration, the benefits of access to existing customers is that much greater in such a market and the availability of WLR will facilitate that access.

Under Article 7(2)(a) the JCRA has a duty to perform its functions in such manner as it considers 'best calculated to protect and further the short term and long term interests of [telecommunications] users within Jersey…' and to perform them, wherever it considers appropriate, by promoting competition between telecommunications operators in Jersey.

Telecommunications users in Jersey will benefit in terms of price, quantity, quality, variety and innovation arising from the competition between telecommunications operators. Operators will for the first time have access to the complete set of fixed line services that they can offer their customers, whether residential or business given exchange line rental will no longer remain with the incumbent in Jersey.

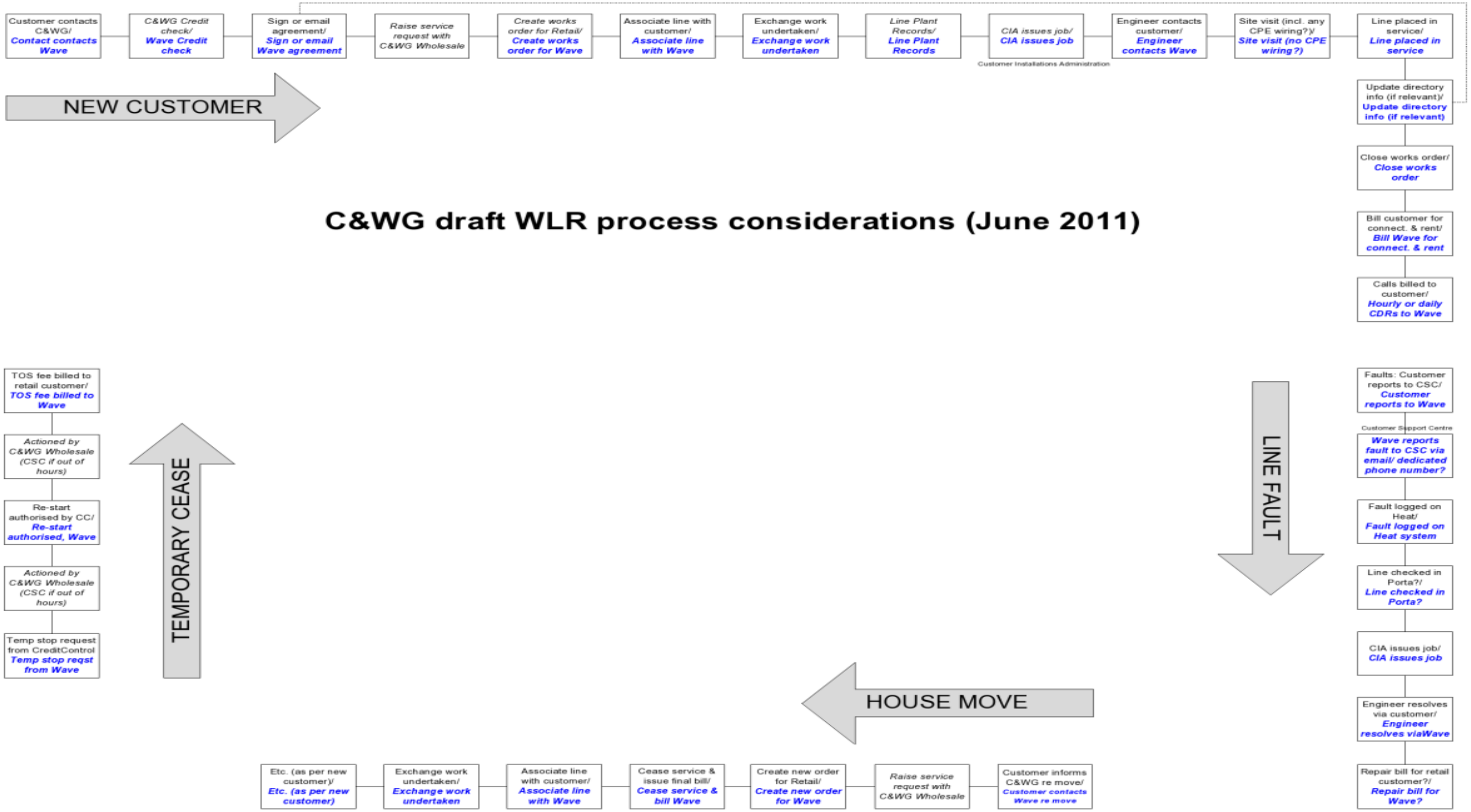
Article 7(2)(b) places a duty on the JCRA to perform its functions in such manner as it considers 'best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey'. The WLR decision fulfils this duty in that it is generally recognised that competition serves to increase productivity, dynamic and allocative efficiencies. The JCRA has adopted a cautious approach to imposing obligations on JT and, indeed, JT has suggested a more comprehensive wholesale access product would in its view have been preferable, namely naked DSL bitstream. Given this, the JCRA is of the view that its regulatory intervention is proportionate and least intrusive given the clear benefits from the introduction of access products and the demand from other operators. The JCRA has also decided not to introduce WLR-ISDN at this stage as it wishes to gauge the benefits of WLR-PSTN on the market. This approach is both proportionate and economic.

Article 7(2)(c) places a duty on the JCRA to perform its function in such a manner as it considers is best calculated to further Jersey's economic interests. The absence of a WLR product has in the view of the JCRA placed other operators at a disadvantage, and consequently consumers have not benefitted from competition to the extent possible. JT has been able to charge exchange line rental prices substantially above those in its neighbouring market, and it has attempted to bundle fixed-line service with calls and broadband, to the disadvantage of its competitors. Improved ability by the operators will allow them offer similar bundled services, with potentially less need for the JCRA to intrude in the commercial decisions of JT, thus lowering the regulatory cost.

Article 7(2)(d) places a duty of proportionality on the JCRA, namely to ensure that the minimum of restriction is imposed on telecommunications operators in achieving its legitimate policy objectives. The proposed modification satisfies this duty since further access would not be achievable with the JCRA taking this decision. There is resistance from the incumbent to making available the access product in Jersey. Proportionality issues have been considered previously and the JCRA takes the view that it has adopted the minimum level of regulatory intervention in this area of telecommunications market at this stage.

Article 7(2)(e) requires the JCRA to have regard to the need to ensure that telecommunications operators have sufficient financial and other resources to conduct those activities. Given the estimated costs available, these are relatively low when set against the benefits to the wider telecommunications market in Jersey of the measures taken. By reference to efficient costs, the JCRA has taken an estimate of the costs of making available the WLR product which should be attainable by JT. Given the level of costs identified, the JCRA takes the view that JT will have available the necessary financial and other resources to deliver this access product.

Annex B – Wholesale Line Rental Processes



Annex C – Licence modification

The proposed addition to JT's licence will be Licence Condition 17.10. The licence condition proposed is as follows:

"From the earliest reasonably practicable date after this licence condition takes effect, and in any event no later than 3rd June 2013, the Licensee shall provide Wholesale Line Rental (WLR) for single lines on its fixed-line network to Other Licensed Operators. WLR shall be provided in conformance with the processes set out in section 7 and Annex B of the Initial Notice published as CICRA 12/52. The Licensee shall be entitled to share the efficient costs of the provision of the WLR service equally with each of the Other Licensed Operators that seek WLR and will ensure that it makes representatives available to attend meetings, upon reasonable notice, with the JCRA and/or its representatives to discuss the implementation or operation of WLR. Where a dispute arises in respect of WLR charges, the JCRA may set the maximum price for the provision of such a service."