Channel Islands Wholesale Access Project – Wholesale Line Rental (WLR)

Final Notice of modification to the 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

This paper constitutes the Final Notice (***FN***) of the Jersey Competition Regulatory Authority's (***JCRA***) decision on the licence modifications required for JT (Jersey) Limited (***JT***) to introduce Wholesale Line Rental (***WLR***) on its fixed telecommunications network in Jersey.

It follows the JCRA's Initial Notice (***IN***) and Guernsey Competition and Regulatory Authority's (***GCRA***) Draft Decision (***DD***) of November 2012 (documents CICRA[1] 12/52 and 12/53 respectively), setting out proposed licence modifications.

This paper summarises the responses and sets out the JCRA's decision to proceed with licence modifications mandating the introduction of WLR by JT in Jersey no later than 7 November 2013.

Background

Wholesale access to the fixed telecommunications networks of the incumbent providers in Jersey (i.e. JT) and Guernsey (i.e. Cable and Wireless Guernsey Limited (***CWG***)) is essential for the further development of fixed-line competition in the Channel Islands. Competitive access to the networks will stimulate greater competition in fixed-line services and provide consumers with more choice. This will lead to better pricing and innovation in the services offered. Increased competition in the retail market and wholesale access should, in time, remove the need for price controls on the incumbent's retail fixed-line services.

In November 2011, the Channel Islands Competition and Regulatory Authorities (***CICRA***) reported on the progress made by the Channel Islands Wholesale Access Project (***CIWAP***). In that paper CICRA explained the shortlisted options and sought views on which of these should be prioritised. Responses to that consultation informed the basis for the DD and IN to which this notice on WLR relates.

WLR allows other licensed telecommunications operators (***OLOs***) access to the incumbent fixed network to offer retail exchange line rental products to their customers, allowing them to provide a single bill that includes exchange line rental. Currently the incumbent operator maintains a direct commercial relationship with the customer for line rental as the only provider of the service. This is the case even if the customer uses a competitor for calls or broadband services. This gives 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 competitors cannot. It can be argued that needing more than one bill is less efficient, inconvenient for customers and deters

[1]CICRA (the Channel Islands Competition and Regulatory Authorities) comprises the JCRA and the GCRA.

them from switching services. This stifles some of the opportunities for competition, and the innovation and development of services for customers. WLR is intended to allow one approach to wholesale access to remove such obstacles to competition.

WLR is also one of the simplest options to introduce of those shortlisted in the November 2011 consultation, and the timescale for introduction is relatively short and the cost of implementation is relatively low. Feedback from operators at the time of CIWAP indicated that WLR could be launched in six to nine months from the commencement of the project, should it be confined to a single line service. 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.

After consideration of the issues and a high-level cost benefit analysis (***CBA***), the JCRA concludes that there is a substantial benefit to competition and to customers as a whole from the introduction of WLR. As such, the JCRA provides Final Notice of its decision to modify the licence of JT by creating an obligation on it to make available to other operators a WLR product for its fixed-line telephony network no later than 7 November 2013.

2. Structure of the Notice

This Final Notice is structured as follows:

Section 3	sets out the legal and licensing basis for this decision;
Section 4	lists the respondents to the Initial Notice and summarises the key points in the responses;
Section 5	sets out JCRA's consideration of these responses and the rationale behind its decision;
Section 6	sets down the decision;
Section 7	considers the next steps;
Annex A	sets out legal considerations;
Annex B	reports on processes, including (B2) the process flow diagram;
Annex C	contains the text of the licence modification for JT.

3. Legislation and Licensing

In Jersey, the general legislative background is provided by the *Competition Regulatory Authority (Jersey) Law* 2001 for the 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. Consultation Responses

In November 2011, CICRA carried out a pan-Channel Island consultation on the development of wholesale access products (CICRA 01/11). The responses to that consultation helped CICRA to identify WLR as the first in a series of wholesale access products to be considered in more depth.

Although the IN for Jersey (CICRA 12/52) and DD for Guernsey (CICRA 12/53) were published as separate documents, many of the issues are common to Guernsey and Jersey. The incumbents in one island are also OLOs in the other island, and there is a great degree of overlap on the issues. Moreover, some responses were received in common to both consultations. Therefore, in setting out and considering the consultation responses reference has been had to responses made on both the IN and DD.

Responses were received from:

- ACS Telecommunications Consultants (Jersey);
- Airtel (common response for Jersey and Guernsey);
- Cable and Wireless (common response for Jersey and Guernsey);
- JT (Jersey);
- Nitel (Jersey).

Copies of the responses are available on CICRA's website at www.cicra.gg or www.cicra.je.

ACS Telecommunications Consultants

ACS broadly welcomes the introduction of WLR and notes that one of the key advantages is the ability for new entrants to manage their customers through a single bill and simplify the management of customers. It notes that WLR has been available in other jurisdictions for many years and has been supplemented or superseded by other options such as LLU (local loop unbundling) or broadband-only products, and that to further open up competition, Fixed Number Portability (***FNP***) should also be introduced.

ACS comments that the absence of multiple-line WLR products will be detrimental to competition and limit the appeal of WLR. ACS notes that since the majority of the network and administration elements will be the same for both products it finds it difficult to understand the reasoning (for delay) that implementation of this product may be more complex to provision.

It also comments that Carrier Pre-Selection is a key element missing from the proposal and sees no reason why it should not be introduced on legacy System X switches (as it has been in the UK) or next generation IP-based switches. It notes a lack of clarity over the call products to be included and the bulk call usage discounts that would be expected and on the maintenance charges for inter-operator fault location.

On the proposed licence condition, ACS would prefer to see a broader amendment that would encompass other possible wholesale options such as broadband only and shared access over fibre.

Airtel

Airtel welcomes the decision to roll out WLR and would like to see ISDN (multiple-line) WLR services made available at the earliest opportunity.

Cable & Wireless (*CW*)

Cable & Wireless Jersey Limited and CWG submitted a joint response to the consultation for Jersey and Guernsey.

It urges CICRA to "do all it can to bring effective and efficient fixed-line competition to the Channel Islands".

The main point in CW's response is that the WLR product should be made available at the same time and the same price across both jurisdictions. CW is also disappointed that the regulator has not adopted a more proactive approach to shaping the WLR product.

CW takes the view that of the Wholesale Access Products being considered for progression under the CIWAP process, WLR offers the largest benefit to the consumer market across the islands because, unlike the naked DSL (Digital Subscriber Line)/bitstream products, it does not rely on the availability of FNP in order for operators to be able to compete effectively.

CW indicates that the setup costs of WLR are small and the ongoing costs relatively low, and that an appropriate level for WLR would be £8.00 per calendar month (pcm) in each island, to compare with existing (retail) line rental rates of £9.75 in Guernsey and £12.75 in Jersey. It strongly expresses the view that it would be grossly unfair to support a different WLR pricing strategy in each island, or a higher level of WLR for JT which would, in its view, support inefficiently incurred costs.

CW goes on to note that it disagrees with the view in the DD and IN that licensees should be entitled to share the efficient costs of the provision of WLR services equally with each of the OLOs. It notes that this would not incentivise the incumbent operator to minimise costs, instead contending that these costs should be borne largely by the wholesale arm of the incumbent operator and form part of the monthly recurring charge. For other charges, such as rental of exchange facilities, CW proposes that these should be at the lower of the two operators' charges on a pan-Channel Island basis.

In respect of call charges, while the response goes into some detail on the processes and proposals, CW proposes that receipts for the termination of incoming calls remain with the network operator – and no charges would be payable to the OLOs for the conveyance of traffic to WLR subscribers. Outgoing calls should be charged at wholesale rates, based on existing RIO/RO (Reference Interconnect Offer and Reference Offer) rates with the WLR service provider, subject to adjustment to remove retail costs. CW suggests that these calls should be charged on a "retail minus" basis.

JT

JT supports the development of wholesale access products which are "fit for purpose and future proof" but that it is not in CI customers' interests to develop legacy products and that WLR is not the appropriate product to take forward.

JT comments that the timescales are too short to deliver WLR and is concerned that JCRA has disregarded JT's previous comments on the timescales required. JT goes on to note the difficulty it has faced in engaging OLOs with the roll out of new fibre products; that one OLO will not connect with its fibre network and that another's preference for WLR over naked bitstream fibre services is an attempt to block JT's fibre roll out strategy.

It goes on to note that OLOs' requirements have altered over time and that its own discussions suggest there is a greater need for naked bitstream products than WLR. JT's number one priority is the Gigabit programme to provide 1Gbit/s fibre connections to premises in Jersey, which, it contends, is in the interests of all users in the island. JT considers that it would be efficient to offer WLR in conjunction with wholesale fibre broadband and that existing OLO (broadband) customers wishing to take a WLR service should do so with a migration to fibre. It also notes the complexity of changes required to its billing system in order to implement WLR and that it is "commonly understood" that out of scope elements included in an existing programme add to the time and cost.

Nitel

Nitel raised its concerns with the process and in particular the slow speed of progress in opening up competition and the lack of competitive wholesale products in the fixed-line market – since an initial direction from the JCRA in 2004. Nitel noted that in order to compete (in Jersey) on an equal footing they would need to see wholesale products offered at margin of 40% as in the UK and also highlighted issues of access to products and minimum order quantities, and a lack of clarity over access to wholesale calls. Finally, in respect of the Licence condition, Nitel was disappointed that it was so narrow and believed that it should be broader to allow ISDN (multiple-line) WLR to be added later.

5. Rationale and Response

In reaching its decision to require JT to implement WLR, the JCRA has taken into account the fact that WLR is already in place and available in many countries of various population sizes and GDP per capita. It has also taken careful account of the responses received to the IN.

Initial Notice

In the IN, the JCRA set out the rationale for treating WLR as a stand-alone product from other CIWAP proposals and the benefits arising from this decision. In particular, the increased competitive pressure in the market when customers have the choice to switch provider is beneficial to all customers, not only those that exercise the choice to switch. Incumbents have a strong incentive to respond to this competitive pressure in order to retain customers and maintain their position and reputation in the market, and OLOs and new entrants must continue to offer improved value and service in order to grow their business. This leads to improved efficiency and quality of service and reduced costs, to the benefit of all customers, whether or not they choose to exercise the right to switch provider.

JCRA noted that WLR is likely to contribute to the potential benefit of introducing other wholesale products in the future, including a naked DSL bitstream product. Introducing WLR will enable OLOs to offer bundled services and offer customers a single bill for all their services. This will improve their ability to compete against the incumbent and grow their market share. A higher market share enables an entrant more easily to market further services such as naked DSL bitstream, and to invest in order to enhance their own offering. If this kind of product were introduced later, having an existing commercial relationship with customers would be likely to reduce marketing and acquisition costs for selling new products, and offer opportunities for economies of scope in the range of services on offer.

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) in each island have been provided by CWG, which is low by any measure. In its response to the original (2011) consultation, JT estimated substantially higher costs, but neither the JCRA nor the GCRA were convinced that JT could justify the need for double the resources indicated by CW. JT did not supply any convincing evidence to support substantially more complex process requirements or any firm evidence of the additional costs involved. Given an annual cost of £30,000 to £40,000 for WLR to be introduced and operate 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.

On this basis, the JCRA in the IN expressed confidence that WLR meets the requirements of the high level CBA presented in the IN, with typical costs an order of magnitude less than the typical level of benefits accruing to customers that are able to take up bundled service offers from operators elsewhere. In the Channel Islands there are already examples of bundling of (other) telecommunications services on offer to customers. For example, even without WLR and the benefit of an exclusive relationship with a customer, JT mobile customers in Guernsey can realise a £7 discount to the stand-alone (monthly) price of broadband, if they take both services. For products like "JT Complete" in Jersey, where the incumbent is able to benefit from an exclusive customer relationship, the discount can be substantially greater and coupled with additional benefits such as the removal of download limits on broadband services. Even so, these figures appear less than some of the bundling benefits available elsewhere where WLR has operated for some time. In the UK, for example, some internet service providers offer bundled services that discount the entire cost of the broadband service and offer it for free in conjunction with mobile or TV and fixed-line calling packages.

The JCRA noted in the IN that using JT's estimate of annual costs, the cost per Jersey household for the provision of a WLR would be around £2.40 per annum. While this seems high in relation to the overall cost of providing a (retail) exchange line, it is still less than the benefits accruing to many customers elsewhere from the availability of bundled services and offers in the market place.

Responses to the CIWAP consultation identified three potential wholesale billing arrangements for the WLR product, namely:

- **Option 1** – this option would provide for the likely requirements of an existing operator that already has systems in place for the management of call related services
- **Option 2** – this option would enable existing licensed operators to offer WLR where they do not have the systems in place to manage call-related services
- **Option 3, along with further add-on services** – this option 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.

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.

In the IN, the preferred option (option 1) required the introduction of WLR and agreement between the incumbents and OLOs on the appropriate pricing for wholesale call charges. It also recommended that option 2, which in addition included the provision of enhanced billing services to be offered to OLOs by the incumbents, be provided as soon as feasible thereafter. However, this would not be mandated by the 3 June deadline and would be subject to demand from the OLOs.

Finally, in the IN for JT (and in the Draft Decision for CWG), the JCRA (and GCRA in Guernsey) proposed the introduction of WLR for single line customers with effect from 3 June 2013.

JCRA view of responses

The majority of respondents broadly welcome the proposed development of WLR and the expansion of competition in the wholesale market; albeit with reservations about the time it has taken and the extent to which it applies. The general tone of the responses was constructive and recognised that WLR is essentially a "billing" service, which can be applied equally well to fibre and copper networks and has been in place elsewhere for a number of years.

The JCRA recognises the concerns about timescales and implementation and have listened carefully to the operators and the OLOs on this issue and have regard to the discussions throughout the CIWAP process. The JCRA believes that a six to nine month lead time from the IN and DD to finalise and implement WLR is adequate and reflects the time required by all parties to negotiate and implement the service. However, in recognising the operators' (and in particular, JT's) concerns, the JCRA has pushed back the implementation date from the 3 June proposed in the IN and DD to 7 November 2013, almost 12 months after the date of the JCRA's IN. Recognising CWG's concerns regarding the importance of introducing WLR to both the Jersey and Guernsey markets at the same time, the GCRA has also moved the implementation date for Guernsey to 7 November 2013.

The JCRA notes the clarification sought by JT and confirms that in order to simplify the requirements and minimise the necessary changes, it will not require JT to offer a wholesale billing service for OLOs. As understood by JT from its response to the IN, this would mean that only those OLOs which have an existing capability to bill customers directly for calls and line rental could offer WLR on day one – and that this is the minimum requirement set out by both the JCRA and GCRA for the implementation of WLR.

In respect of call charges, these may either be provided through the provision of a "carrier select"[2] service or by the offer of wholesale calls at appropriate rates by the

[2] Carrier Select allows customers to choose their service provider for calls by dialling a prefix, or using a small carrier select box plugged into the master socket. It allows customers to take advantage of lower rates and better deals offered by competitors to the incumbent phone operator (this facility is available from JT in Guernsey and CW in Jersey). In many jurisdictions a "carrier pre-select" facility is enabled – which allows this capability without the need for a prefix code or dialler box.

incumbent operator. It should be noted that there was a clear expectation from all parties involved in the CIWAP process that wholesale calls would be included as part of the WLR product, as evidenced by the document extracted in Annex B1 below. In the first instance we would expect the request for the service and appropriate pricing to be agreed between the operators. The JCRA would only intervene if such agreement was not possible. As a guide, the JCRA would expect the cost for such calls to be on a wholesale basis and therefore to exclude the network operator's retail costs. Existing rates applicable through RO/RIO[3] agreements should provide a sound basis for this and the operators will need to agree the appropriate discount to retail prices for wholesale call charges. Whether revenues for terminating calls on a WLR subscriber line should fall to the OLO or network operator will also need to be agreed. In the absence of agreement to the contrary the JCRA would assume that such revenue remains with the network operator with appropriate consideration given in the pricing and other terms of wholesale access, and that in this instance, a "retail minus" approach to pricing wholesale call charges would seem appropriate.

The JCRA notes JT's comments in respect of the roll out of its fibre to the home (FTTH) network. JT has in the past raised objections to WLR on the grounds that it considers WLR an "old technology" specific to copper networks. It would prefer to progress a "naked DSL/bitstream" product instead of WLR, and has expressed concerns that the OLOs' preference for WLR is an attempt to block the roll out of its own fibre access products.

WLR is largely a change to the billing arrangements irrespective of the underlying technology (whether copper or fibre). It is important that the benefits of competition through enhanced wholesale access are available to all customers. As such, the JCRA would not support the exclusion of customers from the process because of their location or the technology employed in delivering their fixed-line service.

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. The JCRA fully expects JT to offer bundled services as a result of WLR in Guernsey, because WLR will give it an improved ability to compete. Nor does the JCRA agree that WLR will allow OLOs to block the roll out of fibre access. However, the JCRA is concerned that any move to exclude customers from this opportunity on the basis of the technology used to provide their existing service could be perceived as an attempt to foreclose part of the market from competition.

As noted in the IN, the JCRA's overarching reservation with JT's response to the CIWAP consultation, and WLR in particular, is in its identification of investment in fibre access networks as limiting the resources it has available to develop wholesale access products. The JCRA's view is that the business interests of JT are not the

[3] Reference Offer (RO) and Reference Interconnect Offer (RIO)

same as the overall interests of telecoms users and consumers in Jersey or across the Channel Islands as a whole and that where the company would choose to dedicate its resources is not the only factor to take into consideration. While JCRA notes JT's concerns regarding the engagement of OLOs in the negotiation process, competitors of JT have voiced similar concerns that it has failed to engage appropriately with them in the rollout of the fibre network and that its transparency could be improved. The existence of a vibrant competitive environment is key to the health of the market and it is the JCRA's aim to facilitate the existence and development of such a market. The move to fibre-based networks will likely involve OLOs in significant investment and accepting an approach that in Jersey only allowed increased competition and wholesale access through the fibre network would seriously restrict the extent of potential competition at the outset.

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. Access would largely rely on the speed at which JT is able 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 and would limit the access of customers in Jersey to the benefits of increased wholesale access competition.

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 potentially longer, given the timescale for rollout of JT's fibre programme, and further delay to wholesale competition is not in the best interests of consumers.

Nevertheless, the JCRA recognises that there may be some benefits to JT in terms of the efficiency of its fibre roll out project in being able to fast track some customers of the OLOs. The JCRA has some reservations that as part of a largely geographically based roll out programme, the benefits may not be substantial and the need to move teams from one location to another might have other impacts on that particular programme. The JCRA welcomes the realisation of any potential efficiency benefits and welcomes their reflection in the charges which JT will offer in its wholesale rates to the OLOs, and this should form part of the overall negotiation between the parties.

Finally, in respect of its billing system which is currently undergoing an upgrade, JT comments that it is commonly understood that out of scope elements add to the time and cost of the upgrade. However, the IN for WLR was issued in November 2012, and proposals for WLR have been on the table for some time before that, giving JT ample opportunity to scope its project accordingly and avoid substantial additional costs. CW operates a similar billing system to JT, and will need to make similar changes to accommodate WLR but on a system that is already in place. It is likely that retrospective changes made to an existing system will be more expensive than changes made prior to installation. CW has previously indicated that the cost would be minimal in terms of its impact on any CBA. In addition, the JCRA would expect that in the course of discussions between operators regarding implementation of WLR in coming months, CWG and JT will be able to take advantage of the fact that they now operate the same billing system, and may therefore share the burden of procuring or developing upgrades to allow for WLR.

6. Decision

The licence of JT (Jersey) Limited shall be modified to mandate the offer of WLR to Other Licensed Operators, as set out in Annex C to this Notice.

WLR will be made available to all OLOs by 7 November 2013, with the pricing to be determined between the JT and OLOs. Should they be unable to agree, then the appropriate wholesale prices will be determined by the JCRA.

In reaching this decision and considering the potential benefits of introducing WLR, the JCRA notes the availability of WLR worldwide, the ability it offers for other licensed operators and potential new entrants to offer services economically while building a customer base and the ability for service providers to bundle products and offer customers a single bill.

The ability to offer a single bill for the full range of telecommunications services appears to provide a significant benefit to customers, and the absence of significant bundling activity in the islands in fixed telecom services, other than by JT, is evident from our initial research. Where it does happen, the reduction in overall charges can be substantial, and this is a significant opportunity which the JCRA believes should be extended to all operators and customers in the Channel Islands.

As stated in the IN, it also appears to the JCRA there are further benefits to competition in removing the obligatory relationship which currently exists between the incumbent and all fixed-line customers for line rental regardless of who they take their calls or broadband services from. As explained already in this and previous documents, this weakens the relationship of an entrant with its customers.

The JCRA also takes the view that the introduction of WLR prior to consideration of any CBA of a "naked DSL/bitstream" product one of the other shortlisted access products from the CIWAP, will enable a sound basis on which to carry out future analysis, since better information and 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 adopted, which would increase the cost to around £2.40 per household, it is apparent that the overall benefits to customers would exceed the costs.

In the light of the responses received and the work previously carried out as part of the CIWAP and the IN (including CBA), the JCRA believes that WLR can be implemented in 6 months and the JCRA and GCRA have therefore set a common timescale to introduce WLR no later than 7 November 2013.

With regard to options for billing arrangements and extra services, the JCRA has decided that in the first instance, Option 1 should be made available by the deadline under this Final Notice. The JCRA takes the view that if there is sufficient demand from the OLOs, Option 2 should be made available as soon as feasible after the deadline, subject to agreement between the parties regarding the cost of any additional services that are to be provided.

The JCRA confirms its decision that the initial introduction of WLR will be for single lines only.

Operators will be entitled to share the efficient costs of the provision of the WLR service proportionately with each OLO that seeks WLR. The JCRA will intervene if JT and its potential customers are unable to agree on a price or other terms of wholesale access.

The diagram in Annex B2 sets out the processes required for the provision of a WLR product. These processes have not been contentious and will therefore be adopted in the new licence conditions, under this Final 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 (or as appropriate and with agreement between the parties, more frequently).

7. Next Steps

The modifications to JT's telecommunications licence are set out in Annex C and will take effect on 6 June 2013, mandating JT to offer WLR for single line services no later than 7 November 2013.

Following on from this, the JCRA will consider the introduction of additional wholesale access through the remaining products short listed as part of CIWAP - FNP (fixed number portability) and naked DSL/bitstream services - in due course.

The JCRA will also examine the provision of WLR on multi-line (ISDN) services to extend the benefits of this option to business customers and OLOs serving that particular market. In particular, the JCRA will look at the potential additional costs and complexity of the service compared with single line customers, and whether a separate cost assessment and CBA would be required.

However, the JCRA notes that there is no barrier to existing operators making such a product available without regulatory intervention and we would encourage bilateral and commercial agreement to offer these services where it is possible to do so.

Annex A – Considerations under Article 7 of 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)of the Law. 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 the price, quantity, quality, variety of, and innovation in, fixed-line services 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 single line WLR on the market. This approach is both proportionate and economic.

Article 7(2)(c) places a duty on the JCRA to perform its functions 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 OLOs at a disadvantage, and consequently consumers have not benefitted from competition to as great an extent as might otherwise be 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. The OLOs' improved ability to offer similar bundled services should lead, over time, to 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 B1 – WLR Product Description

As described under the CIWAP process, March 2011. Note that at that stage, the WLR proposal included multi-line customers but not fibre products, and has since been modified to exclude the former but include the latter.

WLR Product description

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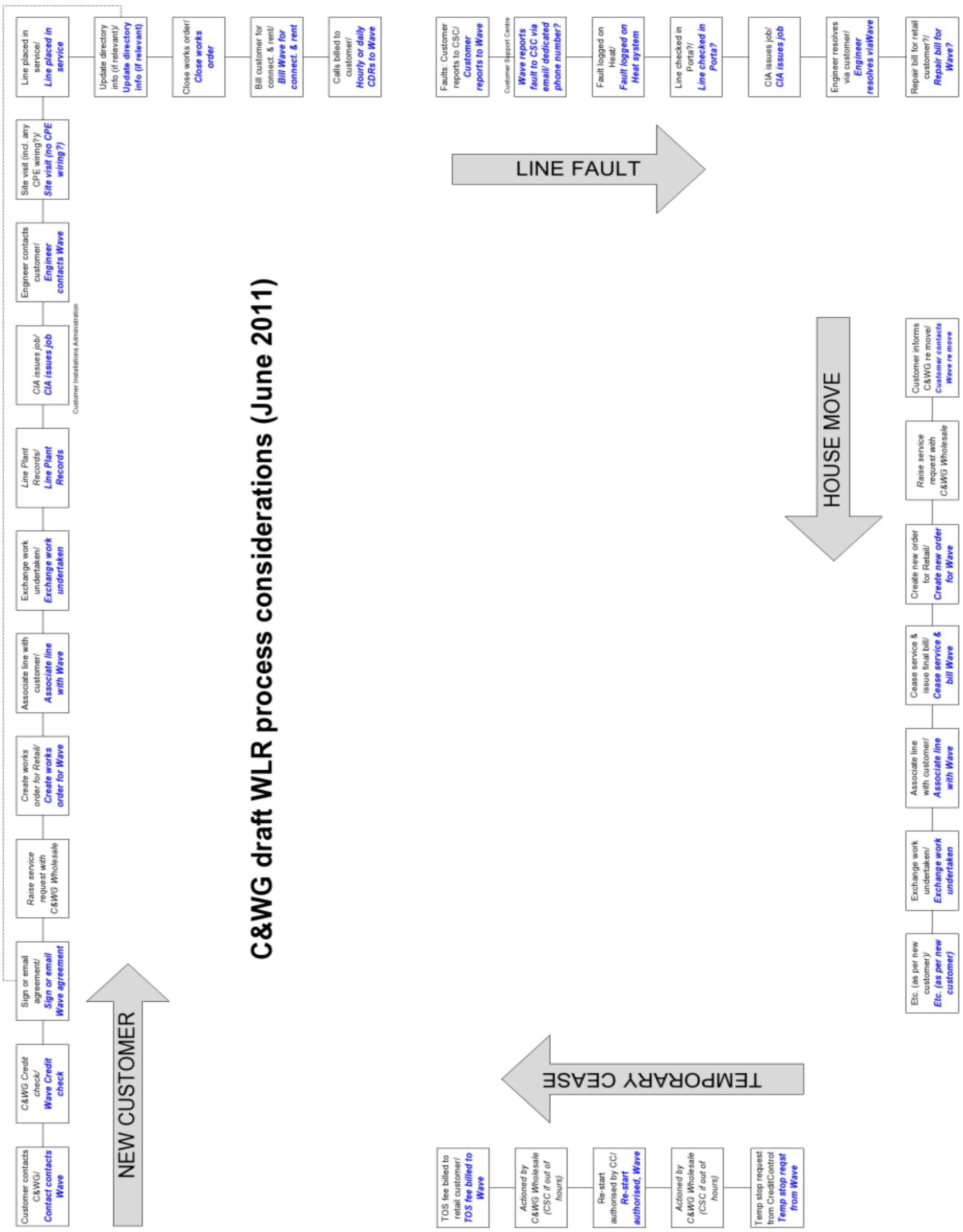
1. Wholesale Line Rental (WLR) is a PSTN voice Communications Provider (CP) product, which enables CPs to offer their own branded telephony service directly to their End Users using the incumbent network
2. The incumbent provides, repairs and maintains WLR lines, and provides a consolidated bill to the CPs for all of their services.
3. The CP sets their own prices and bills their end-users (single bill)
4. WLR contains wholesale calling and network features (some chargeable)
5. WLR includes an option for a CP to purchase wholesale call minutes
6. Pan CI Retail products supported
   - PSTN Residential single and multi-lines
   - ISDN 2, ISDN 30 (feature set change planned in Jersey in relation to NGN implementation)
   - Not supported on fibre access products as fibre technology is still in trial in Jersey and not available yet in Guernsey
7. Underlying service/products that need to be in place to support the product
   - a PSTN line connecting the customer to the network of the incumbent operator
8. Minimum term of 12 months applied to line rental

Annex B2 – Process Map



Annex C – Licence modifications

The modifications to JT's licence will arise through the insertion of new Licence Conditions 25A.1, 25A.2 and 25A.3. The new licence conditions are as follows:

25A WHOLESALE LINE RENTAL

25A.1

From the earliest reasonably practicable date after this Condition takes effect, and in any event no later than 7 November 2013, the Licensee shall make available a Wholesale Line Rental (WLR) service for single lines on its fixed-line Network to Other Licensed Operators. The WLR service shall be provided in conformance with the processes set out in Annex B2 of the Final Notice published as CICRA 13/20.

The Licensee must ensure that, upon reasonable notice from the JCRA, representatives of the Licensee attend meetings with the JCRA and/or its representatives (which meetings may include representatives of Other Licensed Operators), to discuss the implementation or operation of WLR.

The Licensee shall be entitled to share the efficient costs of the provision of the WLR service proportionately with each Other Licensed Operator that seeks a WLR service. Where a dispute arises in respect of WLR charges or other terms and conditions, the JCRA may set the maximum prices and any relevant non-price terms and conditions for the provision of the WLR service by the Licensee.

25A.2

For the purposes of this Condition 25A, Wholesale Line Rental or WLR shall be defined as a service provided by the Licensee to Other Licensed Operators which enables them to offer exchange line rental and calls over the fixed-line Network, such that a User is no longer obliged to hold a contractual relationship with the Licensee and is instead billed by the Other Licensed Operator for exchange line rental and/or calls.

25A.3

Where access to information regarding WLR, whether regarding prices, non-price terms or other matters, is made available by the Licensee to Other Licensed Operators, the Licensee shall also be obliged to provide such information to prospective Licensed Operators upon request.