Retail price control

Initial Notice

Determination issued to JT (Jersey) Limited

Document No: CICRA 12/50 **November 2012**

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

CONTENTS

1. Introduction

On 31 December 2012, 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 have 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. If successful, competitive access to JT's network may stimulate further competition in the fixed-line services, providing consumers with greater choice and better pricing and helping to drive innovation in the services provided to telecoms users. An Initial Notice and Draft Decision, requiring JT and Cable and Wireless Guernsey Limited (***C&WG***) respectively to introduce a Wholesale Line Rental product was issued on 21 November 2012. In addition, it is intended that CICRA will consult in the near future on the introduction of fixed number portability in both Jersey and Guernsey.

In the event that competition is increased in fixed-line services, the need for price controls will be less and there may be scope to significantly reduce, or remove entirely, JT's products from price controls. However, 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 time period in which sufficient competition might develop in fixed-line services, given the likely introduction of new wholesale fixed-line products during 2013, is such that the JCRA proposes to refrain from setting an entirely new price control for an extended period of time (i.e. the normal three year price control) given the resources involved and the possibility that the period of such a control may need to be revisited if effective competition develops over a shorter time period. Instead, the JCRA proposes to set a further one year price control. The detail of the proposed one year control is set out later in this Initial Notice.

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

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**" and should arrive before midnight on ***19 December 2012***.

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 is due to expire at the end of December 2012. It followed a three year price control that ran between 2009 and 2011.

As stated earlier, CICRA is working 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. More effective competition may provide scope to remove or significantly reduce the scope of JT's price controls. The JCRA believes that the evidence from the mobile telecommunications services sector, where greater competition was facilitated in 2008 through the introduction of mobile number portability (MNP), demonstrates that enabling consumers to choose from whom they obtain fixed-line services would provide a significant boost to competition and as a result delivers better prices and better service than regulation alone can achieve.

While a significant amount of work has been undertaken by the CIWAP, any new wholesale services will probably only be available to consumers from the middle of 2013. The JCRA wishes to avoid setting a price control for an unnecessarily long period, since it anticipates that it might be appropriate to remove retail price controls from some services offered by JT from as soon as 2014, depending on the development of competition in fixed-line services. However, having no price control in place risks a situation where consumers are inadequately protected.

Therefore, the JCRA considers that a further one year price control should be imposed from 1 January 2013. This will enable a view to be taken during 2013 on whether further price controls are required and, if so, the duration of any further control. The detail of the price control being proposed is set out in the next section.

5. Price Control

JT's dominance

As stated earlier, JT has been found to be dominant in the 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.

The JCRA understands that JT continues to provide 100% of all fixed exchange lines for residential customers. 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 (e.g. voice over internet protocol, or VoIP, including 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.

[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 JCRA believes that, as this is a one year price control, it would be inappropriate to expend the resources necessary to re-calculate an appropriate WACC for JT. In the event that the JCRA contemplates a price control for JT lasting for a longer period at some point in the future, then it would reserve the right to produce a new calculation of WACC.

The existing 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. The JCRA believes that the same stance should be adopted for 2013. A number of factors have informed the JCRA's proposed decision.

As already noted, CICRA has recently issued an Initial Notice and a draft decision requiring JT and C&WG to introduce WLR by 3 June 2013. The notice also contemplates that JT and C&WG should, at least initially, be given the opportunity to propose the prices that they intend to charge for the WLR service. In the event that CICRA considers that one or both of the prices are not cost-justified, then it may become involved in setting this price, which in turn will require detailed work on the costs involved in providing exchange lines. Any such work could inform decisions on the retail charges should be charged by JT for this service in the future. Prior to WLR prices being announced or determined, the JCRA believes that it would be premature to make a detailed determination with respect to the appropriate level for JT's retail exchange line prices.

The JCRA has also taken account of the fact that since January 2009, JT has made significant changes to its cost base through its business transformation programme. It has further made significant changes to the underlying equipment used to deliver certain services (including the Next Generation Network, and a new billing system), and the JCRA expects that these combined measures would impact the cost of providing the services which are the subject of the proposed price control. The JCRA believes that before allowing further price increases, a detailed assessment of these costs (and their impact) should be made. As it may be necessary to undertake a costing exercise as part of the introduction of WLR, the JCRA does not believe that it would be an efficient use of either its own or JT's resources to run parallel exercises in this area. The JCRA notes that even if a prize freeze is adopted, JT's standard line rental at its current £12.75 (excluding GST) will still be significantly higher than line rental charges applied by C&WG in Guernsey (£9.75) and that call charges are also higher, with a minimum local call charge in Jersey of 7p compared to 3.3p (peak) or 2.9p (off-peak) in Guernsey.

Finally, the JCRA notes that it expects to receive separated accounts from JT for the 2011 year shortly. In the absence of those figures, the JCRA is unable to be satisfied that any new charge for the price control services would be cost justified.

In light of these factors, the JCRA proposes that no change should be made to the price controlled services covered by this proposed decision for the period to December 2013. In the event that any costing work undertaken in 2013 as part of the wholesale access project identifies reasons why this should be amended earlier than December 2013, the JCRA will consider this at that time.

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 shall be capped at the rates applying on 31 December 2012; and
- That the charges levied by JT in respect of the connection of fixed subscriber lines and line rental shall be capped at the rates applying on 31 December 2012.

It is proposed that the determination will take effect on 1 January 2013, and will expire on 31 December 2013.

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*.