



Channel Islands Wholesale Access Project – Wholesale Line Rental

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

Document No: CICRA 14/29

June 2014

*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*

CONTENTS

1. Introduction	2
2. Structure of the Initial Notice	3
3. Legislation and Licensing	4
4. Background	5
5. Wholesale Line Rental (WLR) Product	6
6. Next Steps	8
Annex A - Considerations under Article 7 of the Telecommunications (Jersey) Law 2002	9
Annex B - Licence modification	11

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.

Wholesale Line Rental (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 November 2013, the Royal Court of Jersey delivered its judgement on the appeal by JT against the decision of the JCRA to introduce WLR in Jersey. The appeal was allowed. A further consultation was issued (Consultation Document on Wholesale Line Rental (CICRA (14/12)) was issued on 24th March 2014. Responses to that consultation have informed this initial notice.

After consideration of the responses to this consultation, the JCRA has decided to give initial notice of its intention to exercise a specified regulatory function by modifying 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 1st June 2015.

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 describing the WLR product and the timing for delivery of the WLR product by JT. Annex A sets out the considerations under Article 7 of the Telecommunications (Law) Jersey 2012, Annex B sets out 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: lisa.white@cicra.gg

Any comments should be clearly marked "*Initial Notice on Wholesale Line Rental Product*" and should arrive before close of play on 18th July 2014.

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), 7(2) and 7(3) of the Law.

4. Background

In March 2014, CICRA published a consultation on Wholesale Line Rental (WLR). Responses to that consultation have been considered. It is apparent from those responses and subsequent enquiries that there is general agreement that the Wholesale Line Rental should be introduced into the Channel Islands as a remedy to increase competition in the access market.

At the time of the previous consultation in 2011 the JCRA decided to carry out a high-level Cost Benefit Analysis on the introduction of WLR. It continues to be 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 Sure 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. Any Cost Benefit Analysis should therefore in the JCRA's view take into account the benefits to all customers and not only those that might be expected to actually change provider,

The JCRA further considers that WLR is likely to contribute to the potential benefit of introducing other wholesale products 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 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. Wholesale Line Rental (WLR) Product

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). The subsequent consultation in March 2014 also sought industry comments on the introduction of multi-line PSTN and ISDN-2).

This initial notice is for the introduction of single line/PSTN WLR at this stage of the Wholesale Line Rental project. Feedback from operators indicates that WLR could be launched in six to eight 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.

Responses also informed JCRA on the requirement for the inclusion of wholesale calls in the WLR product. This initial notice includes the requirement for JT to provide calls on a wholesale basis for any operators that requires wholesale calls as part of the WLR service.

A deadline date of 1st June 2015 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 proportionately 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 1st August 2014, 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.

The product description for Wholesale Line Rental is as follows (as a minimum product description). The implementation of WLR should be technology agnostic and the ability to rent a line on a wholesale basis should apply equally to copper and fibre networks.

WLR Product Description

- 1. Wholesale Line Rental (WLR) is a public switched telephone network (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 supports single line PSTN type service (whether provided over copper or fibre)*
- 7. Understanding service/products that need to be in place to support the product*
 - a. A line connecting the customer to the network of the incumbent operator*
- 8. Minimum term of 12 months applied to line rental*

6. 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 B.

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), 7(2) and 7(3). 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 in 2014, 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. 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 without the JCRA taking this decision. 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.

Article 7 (3), requires the Authority to have regard to a number of matters. Some specific issues are particularly relevant to this consideration. The introduction of WLR is expected to result in keener competition which is expected to improve affordability, either through driving down prices and/or improving quality of service. Affordability is in the JCRA's view closely linked to the need to set fair and efficient pricing levels for the wholesale charges for the WLR product. While WLR offers

limited ability for competitors to JT to innovate given it is a rental product with no technical means of altering the exchange line product, there is some scope for innovation in terms of how offers are combined and priced for consumers. The JCRA has had regard to the provision of a service such as PrimeTalk and considers the provision of this product is not formally obliged by the States of Jersey. Nevertheless, the JCRA recognises that this product presents challenges for JT in a market where its competitors do not have any obligation to offer a similar product. The JCRA intends to support JT to the extent that the licensee wishes to approach the relevant States department to seek clarification as to its obligations by the States in the provision of a service of similar nature.

Annex B – 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 1st June 2015, 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 5 of the Initial Notice published as CICRA 14/29. The Licensee shall be entitled to share the efficient costs of the provision of the WLR service proportionately 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.”