Fixed Interconnection Rates in Jersey

Final Notice

Determination issued to JT (Jersey) Limited

Document No: CICRA 12/54

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Jersey Competition Regulatory Authority,
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1. Introduction

1. Fixed line origination (***FORs***), and fixed line termination rates (***FTRs***), collectively known as fixed interconnection rates (***FIRs***), are the fees charged to other telecommunications companies by the operator of a fixed line network to originate or terminate calls on its network. They are a key component of the retail charge that telecoms customers ultimately pay for telephony calling services.

2. JT (Jersey) Limited (***JT***) owns and runs the main fixed line telecommunications network in Jersey and publishes its interconnection charges in its reference offer for interconnection services (***RIO***). Currently, JT charges the same price for origination and termination on its fixed line network. The rates charged differ by time of day: 0.6212 pence per minute (***ppm***) during daytime, 0.5376ppm in the evening and 0.4872 during the weekend.[1]

3. The issue of the level of interconnection rates on fixed line networks and the need to ensure such charges are set at levels that reflect the efficient and cost-effective provision of the services, is a matter currently under review by regulators in various European countries. Many National Regulatory Authorities (***NRAs***) in the European Union (***EU***) have decided that FIRs should be based on Long-Run Incremental Cost (***LRIC***), and it is anticipated that this will lead to reductions in FIRs in those jurisdictions in coming years.

4. On 24 September 2012, the JCRA issued an Initial Notice (***IN***) proposing to cap JT's FTRs at 0.428 ppm and FORs at 0.472ppm, the same rate as has applied for Cable & Wireless Guernsey Limited (***CWG***) in Guernsey since 2010. The IN also proposed that the change to FIRs be back-dated to 1 April 2012 and that FORs be implemented as a flat rate (i.e. no time of day or weekend distinction) and for calls to be charged on a per second basis (with no minimum call charge or minimum call duration), implementing common FIRs across the Channel Islands.

5. This document summarises the IN issued on 24 September 2012, the subsequent submissions on the IN, and sets out the determination that the JCRA issues under Condition 33.2 of the Class III licence issued to JT by the JCRA under Article 14(1) of the Telecommunications (Jersey) Law 2002 (the ***Law***).

6. This constitutes the Final Notice of the determination under Articles 11(4) and 11(5) of the Law.

[1] Daytime is defined as the period: 8am to 6pm, Monday to Friday, Evening is defined as the period: midnight to 8am and 6pm to midnight, Monday to Friday and the weekend is defined as the period: midnight Friday night to midnight Sunday night.

2. Legal Background & Regulatory Framework

7. Article 16 of the Law provides that the JCRA may include in licences such conditions as it considers necessary to carry out its functions. The Law specifically provides that licences can include:

- conditions for the prevention or reduction of anti-competitive behaviour; and
- conditions allowing the JCRA to make determinations.

8. A Class III licence, which JT holds, also includes conditions relating to the requirement to provide interconnection services and the production of a RIO. The JCRA has previously issued directions to JT on the production of a RIO[2].

9. In April 2010, following a review of the markets for telecommunications services in Jersey,[3] the JCRA concluded that JT held significant market power (***SMP***) fixed line origination and fixed line termination services.

10. Condition 33.2 of the licence issued to JT provides that:

> *"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 Service;*
>
> *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 the determination applies."*

11. Provided JT has a dominant position in the relevant market, Condition 33.2 allows the JCRA to regulate the prices that JT charges for telecommunications services in a way and for a time deemed appropriate.

12. In addition, Condition 34.1(c) of JT's licence is designed to protect fair competition in the markets in which JT operates, and provides as follows:

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[2] *Direction of the JCRA 2004/3 Re: Jersey Telecom Limited's Reference Interconnect Offer,* 29 April 2004, see http://www.cicra.gg/_files/040429%20Initial%20Notice%202004-3.pdf

[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*, 21 April 2010, see http://www.cicra.gg/_files/100420%20market%20review%20decision.pdf

The Licensee shall:…

(c) comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services.

13. This licence condition allows the JCRA to give directions to JT, including in relation to the prices that it charges, in the circumstances set out in that condition.

3. Fixed Interconnection Rates

14. The IN surveyed the measures recommended by the EC and adopted in Guernsey, and this analysis is summarised below.

15. In 2009, the EC published a Recommendation on the regulatory treatment of fixed and mobile termination rates in the EU.[4] The recommendation called for termination rates to be set based on a bottom-up "pure LRIC" cost model by the end of 2012. "Pure LRIC" cost models differ from most LRIC models that have previously been developed by most regulators and operators (sometimes referred to as Long Run Average Incremental Cost (LRAIC) models or LRIC+), in that only traffic-related incremental costs can be recovered via the termination rate.

16. The EC Recommendation contemplates a situation where it may not be economic for smaller member states to incur the significant cost of building the requisite LRIC cost model. In such circumstances, the EC recommends that NRAs set prices based on an alternative approach (e.g. benchmarking), provided that this methodology *"results in outcomes consistent with this Recommendation and generate efficient outcomes consistent with those in a competitive market"* and the outcome *"should not exceed the average of termination rates set by NRAs implementing the recommended cost methodology"*.[5]

17. The EC has given no such recommendation on fixed origination rates.

18. FIRs in Guernsey have, to date, been set by the Office of Utility Regulation (***OUR***) now known as the Guernsey Competition and Regulatory Authority (***GCRA***) as part of CWG's RIO.

19. FIRs were most recently updated in July 2010,[6] with the OUR abolishing differential time of day charging for FIRs and basing the charges of 0.428ppm for FTRs and 0.472ppm for FORs on regulatory accounts provided by C&WG.

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[4] Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, Brussels, http://ec.europa.eu/information_society/policy/ecomm/library/recomm_guidelines/index_en.htm

[5] Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, Brussels, 07.05.2009, paragraph 22

[6] OUR (2010), *C&WG Reference Offer and Interconnection Rates - Final Decision: OUR 10/09*, http://www.cicra.gg/_files/OUR1009.pdf

4. Representations and Objections

20. Newtel submitted that it considered the methodology outlined if the IN to be fair and proportionate, strongly agreeing with the direction to charge FIRs on a per second basis, effective from the first second.

21. In its submission, Airtel stated that it accepts and appreciates the JCRA's proposal and proposed that in the future, JT's FIRs be benchmarked based on other jurisdictions which have comparable and relevant scenarios.

22. CWJ agreed with the proposed determination back-dating FIRs to 1 April 2012, but submitted that there is a case for backdating even further, on the basis that the JCRA had originally promised to take action to reduce FIRs in 2011.

23. CWJ observed that the FIRs will remain in place until at least 30 September 2013 and that CICRA intended to review FIRs before that time. CWJ noted the costs involved, both for the regulator and operators, and asked CICRA to carefully consider the proportionality of implementing a LRIC model during the review.

24. The JCRA has made no final decisions about the structure or timing of the proposed review of FIRs. The JCRA encourages CWJ to share its views on the review of FIRs at the outset of such a review.

25. JT agreed with proposal to adopt pan-CI approach for FIRs, but submitted that FIRs should not be looked at in isolation, as interconnection links are required to originate and terminate PSTN traffic.

26. JT noted that while there are several interconnect links available for operators wishing to interconnect, both CWJ and Airtel have chosen to use the same service. JT then compared the cost of an interconnect link in Jersey and Guernsey, noting that monthly charges for maintaining an interconnect link are higher in Guernsey than in Jersey.

27. JT concluded that CICRA should include interconnect links in its review of FIRs during 2013, requesting that the launch of the review be brought forward to early 2013 as a priority.

28. JT also submitted that backdating charges is a substantial issue, due to the implementation of a new billing system which is testing JT's IT and billing resources. In addition, JT submitted that it is unable to provide sufficient resources to calculate and reimburse back-dated fees from 1 April 2012, and that JT's current billing system does not distinguish the call length of any calls that last 60 seconds. As such, JT submitted it is unable to back-date any calls lasting 60 seconds or less. JT submitted that it would be straightforward to make all of the recommended changes from 29 December 2012.

29. The JCRA notes JT's assertion that interconnect links should be included in the 2013 review of FIRs, if not before and will consider the appropriate scope of the fixed interconnection review as part of the initial project planning.

30. The JCRA is not satisfied that the introduction of a new billing system presents significant barriers to the calculation of any rebates payable to wholesale customers as a result of the backdating of the price change. The JCRA notes that backdating has been recommended for the price reviews of wholesale on-island leased lines and mobile termination rates (***MTRs***), and in those instances, the price changes have been backdated to 1 April 2012.

31. The JCRA noted in particular that JT had not made any submission in response to the initial notice on MTRs, which also recommended billing MTRs on a per second basis and the backdating of a change to MTRs to 1 April 2012. The implication of this is that JT had no objections to applying the proposed directions outlined in the MTR IN, including the backdating of charges on a per second basis.

32. The JCRA questioned JT about the differences between the capabilities of the billing system used for MTRs and the billing system for FIRs.

33. JT responded by stating that the same billing system is used for both fixed and mobile services and that its previous submissions, that it is unable to backdate FIRs and that it recorded all fixed line calls of a duration of less than 60 seconds as being 60 seconds in length, were erroneous. JT clarified that it is able to backdate all fixed origination and termination charges incurred on or after 1 April 2012 on a per second basis. JT apologised for this error.

34. However, in the interests of reducing the burden on JT of implementing the change, the JCRA is prepared to allow for any rebates for the period 1 April 2012 to 24 December 2012 to be paid by JT to its wholesale customers on 29 December 2012, to coincide with the introduction of its new billing system. For the avoidance of doubt, the JCRA expects JT to implement the price change for FIRs resulting from the determination on 24 December 2012.

35. Having considered the representations and objections made in response to its Initial Notice, the JCRA has decided that, other than the modification outlined in paragraph 34, it should confirm the proposed determination outlined in the IN.

5. The appropriate licence condition

36. As noted in section 2 of this Final Notice, Condition 34.1(c) of JT's licence entitles the JCRA to issue directions "for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services".

37. As stated, the JCRA has previously found that JT is dominant (or possesses significant market power, which the JCRA has regarded as synonymous with dominance for these purposes) in the markets for:
    - 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.

38. Absent regulation, it is inevitable that there will not be effective competition in this market, and that a likely outcome is that JT will have both the incentive and the ability to set excessive FIRs. At present, we observe that JT's FTRs[7] and FORs[8] are respectively 25% and 15% higher than the levels set in Guernsey in 2010, on a network that is smaller in scale than is found in Jersey. In our view, this constitutes evidence that the cost of providing termination services for an efficient fixed line operator in Jersey should be less than the current rate. In addition, we consider that charging excessive FIRs (i.e. FIRs at a level above efficient cost) is a practice that could constitute abuse of SMP.

39. The JCRA has considered whether it would be more appropriate for it to issue a determination in respect of JT's FIRs under Condition 33.2 of JT's licence. While the JCRA is confident that it would be empowered to make a direction with respect to JT's FIRs under Licence Condition 34.1(c), it considers that the margin of difference between the FIRs charged by JT and those charged by CWG is such that it could not necessarily be confident that abuse of SMP is taking place without obtaining further evidence with respect to JT's costs. As such, it has decided to issue this determination under Condition 33.2 of JT's licence.

[7] Calculated on an evenly weighted basis of the three charges (daytime, evening and weekend).
[8] Calculated on an evenly weighted basis of the three charges (daytime, evening and weekend).

6. Determination

40. For the reasons set out above, the JCRA makes the following determination under Condition 33.2 of JT's licence:

- the rate charged by JT for call origination on its public telephone network provided at a fixed location in Jersey (***the fixed origination rate***) shall be no more than 0.472 pence per minute;
- the rate charged by JT for call termination on telephone networks provided at a fixed location in Jersey (***the fixed termination rate***) shall be no more than 0.428 pence per minute;
- the fixed origination rate and fixed termination rate shall be billed on a per second basis effective from the first second;
- the fixed origination rate shall apply with respect to all calls originated on JT's fixed line network on a technology-neutral basis (i.e. from both copper and fibre networks) and irrespective of the destination of the traffic;
- the fixed termination rate shall apply with respect to all calls terminated by JT on its fixed line network on a technology-neutral basis (i.e. from both fixed line and mobile networks) and irrespective of the origin of the traffic;
- the determination shall take effect on 24 December 2012, and, unless otherwise stated, shall expire on 30 September 2013; and
- the determination shall be deemed to have come into effect on 1 April 2012. Any rebates payable by JT in respect of fixed interconnection services supplied between 1 April 2012 and 24 December 2012 shall be paid by JT to its wholesale customers on or before 29 December 2012.

By order of the JCRA Board **23 November 2012**