Wholesale Broadband Prices- JT (Jersey) Limited

Consultation Document

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1. Executive Summary

A competitive communications market benefits consumers by providing better choice, value and innovative services. Individual customers experience those benefits directly, while improved choice, value and services to business customers helps improve the overall competitiveness of the economy. For Jersey's communications market to deliver these benefits, competitive access to broadband services is essential, which means wholesale rates for broadband services need to be at levels that allow for efficient market entry by other retail competitors to JT. These wholesale rates also need to reflect an efficiently provided service that encourages investment in the network and allows for a fair return on that investment.

JT's investment in the Gigabit Jersey project has the objective of connecting all homes to fibre by the end of 2016 and is a major investment in Jersey's communications infrastructure. This will support communication services and underpin economic growth in the Island for years to come. It is therefore critical, for these benefits to be fully realised, that the charges for access to JT's wholesale services are reasonable.

In larger jurisdictions, regulators have used detailed cost models to assess wholesale charges based on standard principles associated with the setting of wholesale charges. This consultation concerns wholesale broadband rates JT has proposed should come into effect in July 2014 and the Channel Islands Competition and Regulatory Authorities (CICRA) must now assess whether the charges proposed are appropriate and are set in a manner that reflects its legal duties and which take account of JT's obligations under its licence.

Having assessed JT's cost model we have formed the initial view that it would be unhelpful to the market to set wholesale charges based on a 'cost plus' approach at this stage based on the existing model. We are therefore minded to use a 'retail minus X' approach, and in order to assess the level of 'X' we have relied on benchmarking other fibre network roll-outs. JT has previously indicated that it supports the use of the "retail minus" approach for this product set.

We have carried out this exercise by looking at the relationship between retail and wholesale charges in markets where there is a clear delineation between the retail and wholesale provider of fibre services and benchmarked the margins available.

In October 2013 JT proposed revised wholesale broadband charges to come into effect July 2014. These were set on the basis of a 'retail minus X' approach. Based on the retail prices for its standard broadband product set presently in the market the discounts are as follows:

- Up to 20Mb Retail – 54%
- 50Mb Retail – 54%
- 100Mb Retail – 30%
- 1Gb Retail – 20%

JT’s proposed wholesale charge for its up to 20Mb and 50Mb fibre services allow for a margin with retail prices that are within the range of benchmark prices for comparable services.

For 100Mb and 1Gb fibre services, JT’s proposed wholesale charges allow for smaller margins than each of the countries benchmarked. The margins are also smaller than for the 20Mb and 50Mb services.

CICRA is not aware of any justification for margins being different between the lower Mb and higher Mb services. Nor do differences of this magnitude appear in benchmarked jurisdictions. The margin proposed by JT for lower speed services of 54% is more in line with benchmarked jurisdictions. CICRA would require compelling evidence and justification to support differential margins across JT’s higher speed 100Mb and 1Gb services.

CICRA is now consulting on the appropriate approach to setting JT’s wholesale broadband charges and on the proposed methodology for determining these charges over the near term. We intend, over time, to work with JT to seek to establish a means by which its cost model can be relied upon more fully to justify its wholesale charges for broadband services over the longer term.

2. Background

JT has decided to deploy a new fixed telecommunications network in Jersey based on fibre-to-the-home (FTTH) technology, through a project known as Gigabit Jersey.

Gigabit Jersey began in early 2012, and as at December 2013 over 5000 premises in Jersey were connected to the new fibre network. JT's intention is that all premises on the island using a broadband service will be connected to the network by the end of 2016. This deployment represents a very significant structural change to Jersey's telecommunications market. A distinctive feature of the roll-out of the JT fibre network, and one that distinguishes it from virtually every other roll-out of fibre networks in other European jurisdictions is that customers will be automatically migrated to the new network. At the end of the roll-out, JT's intention is that the current copper network will be completely removed.

In line with the scheduled roll-out of Gigabit Jersey, JT has introduced a number of retail services provided over its fibre-based network, i.e. residential[1] and enterprise[2] fibre broadband products, and has published retail and wholesale prices for those services. In October 2013, JT proposed revised wholesale prices for these services, with the new prices due to take effect in July 2014. These are set out in Section 6.

According to LC33.1 of its telecommunications licence, JT is required to submit to CICRA a formal notification of any new prices, discounts or additional services that JT plans to introduce to any market in which it holds S*ignificant* M*arket* P*ower (SMP)*, which includes the market for wholesale broadband services provided on a fixed line network. In order to satisfy that obligation, JT submitted to CICRA its FTTH cost model as evidence for cost-justification of the proposed retail and wholesale broadband prices.

Reviewing this evidence, CICRA considered that a review of JT's FTTH cost model was required. CICRA therefore appointed external consultants to conduct a comprehensive review of the model, the key aim being to establish if the outputs could be accepted as an objective measure of the relevant costs involved in the provision of fibre broadband products by JT. This exercise would have assisted in understanding the justification for the proposed wholesale fibre broadband pricing. It was concluded that the JT cost model is unsuitable for such an analysis. CICRA is therefore consulting with all stakeholders on an alternative approach to using JT's model to inform the setting of wholesale prices for JT's broadband products.

[1] *http://www.jtglobal.com/Jersey/Personal/JT-Fibre/Fibre-Tariffs/Tariff-details/*
[2] *http://www.jtglobal.com/Jersey/Business/Internet--Data/Broadband-services/JT-Fibre-for-Business/*

3. Structure and timetable of the Consultation

The consultation document is structured as follows:

Section 4:	*This section references the legal bases for CICRA's role and the relevant conditions contained in existing licences.*
Section 5:	*Sets out the methodologies available to CICRA in determining JT's wholesale charges for broadband services in Jersey*
Section 6:	*Sets out CICRA's approach to benchmarking JT's wholesale charges and proposed wholesale rates*
Section 7	*This section sets out the next steps in the consultation process*

Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to the following addresses:

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

Email: info@cicra.je

All comments should be clearly marked "*JT Wholesale Broadband Prices*" and should arrive before 5pm on 30th May 2014.

In line with CICRA's consultation policy, it is intended to make responses to the consultation 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.

4. Legislative Background

The Channel Islands Competition and Regulatory Authorities or 'CICRA' is the name given to the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA). The JCRA was established under the Competition Regulatory Authority (Jersey) Law, 2001, and the GCRA was established under the Guernsey Competition and Regulatory Authority Ordinance, 2012.

In Jersey, the telecoms and postal sectors are regulated by the JCRA, which is also responsible for administering and enforcing the Competition (Jersey) Law 2005.

Legal Background

The Telecommunications (Jersey) Law 2002 (the Law) provides the framework within which the JCRA may regulate the telecommunications market in Jersey.

Article 7 of the Law lists the statutory duties of the JCRA. These include performing its functions under the Law in such a manner it considers is best calculated to ensure telecommunications services are provided as satisfy all current and prospective demands for them.

Where it is consistent with this duty, the Law lists further objectives for the JCRA, including:

- protecting and furthering the short-term and long-term interests of users within Jersey of telecommunications services;
- promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;
- promoting efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey; and
- furthering the economic interests of Jersey.

In addition Article 7(3) of the Law requires the JCRA, inter alia, to have regard to whether telecoms services provided in Jersey are accessible to and affordable by the maximum number of business and domestic users.

To carry out these duties, Article 14 of the Law provides the JCRA with the authority to grant licences for the running of telecommunications systems in Jersey.

Regulatory framework

In April 2010, following a review of the markets for telecoms services in Jersey[3], the JCRA made the decision that JT has SMP in the market defined as 'Wholesale broadband services provided on a fixed line network.

Part IV of JT's licence outlines provisions that apply to services provided in markets in which the JCRA has determined that JT possesses SMP.

Condition 33.2 of JT's licence 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*." [4]

This condition, coupled with the finding that JT holds SMP in the market for wholesale broadband services provided on a fixed line network, therefore allows the JCRA to regulate the prices that JT charges for wholesale broadband services provided over the Gigabit Jersey network.

In establishing a price for these services, Licence Condition 33.3 provides the basis on which prices should be set:

"All published prices, discount schemes and special offers of, or introduced by, the Licensee for Telecommunication Services shall be transparent and non-

[3] JCRA, 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

[4] *Class III Licence issued to Jersey Telecom Limited.*

discriminatory; all prices and discount schemes shall be cost-justified and all special offers shall be objectively justifiable."[5]

[5] *Class III Licence issued to Jersey Telecom Limited.*

5. Price Setting Methodologies

A number of methods have been used to determine regulated prices for wholesale services in the telecommunications sector. The characteristics of the most common methods are:

- Setting wholesale prices with reference to retail prices, minus the costs that an operator avoids when providing wholesale services, compared to retail services (i.e. retail minus);
- Setting wholesale prices according to the estimated costs of providing that wholesale service (i.e. cost plus); and
- Setting a price cap for the wholesale price, such that prices of the regulated services in real terms converge to cost, typically lasting 3-5 years (i.e. wholesale price cap).

Retail Minus

Under a retail minus approach, regulated wholesale prices are calculated from the prevailing prices of equivalent retail service. That is, the wholesale price is set by subtracting from the retail price an estimate of the retail costs that would not be incurred if only a wholesale service was provided, compared to providing a complete end-to-end service. For example, an operator providing a wholesale service instead of a retail service is likely to save costs associated with retail billing and the provision of (retail) customer support.

A retail minus approach can be informed by the need to set prices in order to reduce the ability of dominant vertically integrated operators to pursue anti-competitive pricing policies that undermine the viability of efficient retail competitors or structuring prices between its wholesale and retail businesses in such a way as to earn excessive returns by the wholesale business. Retail minus can also be used by regulatory authorities to help facilitate efficient entry into the relevant retail markets where the retail business benefits from lower costs that are not due to greater efficiency and derived from aspects such as scale advantage or legacy advantages.

Cost Plus

Under cost-plus regulation, the prices of regulated services can be determined on a regular basis such that the regulated entity typically is allowed to recover its costs and earn its cost of capital on the assets used to provide service. This approach therefore ensures that prices are cost-oriented.

If a cost-plus system is used, this can be done through a measure of the actual costs that the operator incurs, i.e. a top-down approach, or a measure of efficient costs, i.e. involving some form of bottom up costing.[6] A bottom-up approach is more likely to result in tariffs being closer to efficient costs. However, this may not allow the regulated operator to recover its actual costs. For example, bottom-up models have been criticised (by operators) for underestimating the costs that an efficient operator would actually incur, through simplifying the cost drivers and cost volumes relationships faced by operators.

Wholesale price cap

Under a price cap mechanism, changes in the prices of the regulated services are capped at a particular level. Price caps are normally in place for a number of years, with, for example, a regulated firm required typically to reduce the price of a basket of services (or an individual service) by a given percentage (adjusted for inflation), when prices are above costs and/or costs are expected to fall. Price caps can be set with reference to estimates of the forward looking costs of providing the regulated services, such that by the end of the cap period, the charges for the regulated services may reflect projected costs.

Price caps are typically used where competition is not sufficient to constrain the regulated prices and where a regulator wishes to provide the firm with an incentive to improve its efficiency. Price caps provide such an incentive because, at least for the duration of the cap, the regulated firm is able to keep any additional profits it earns from cost savings in excess of those required by the cap. The strength of these incentives will depend on the characteristics of the cap, including the duration of the cap and the anticipated approach of the regulatory authority to revising the control at the end of the cap period.

Question 1- Do you agree that retail minus, cost plus and wholesale price cap are the three options that should be considered in the setting of wholesale charges? If not, what alternative approach do you propose and why?

Approach for setting the price in Jersey

Given the information available to it, CICRA's view is that, in the context of the Gigabit Jersey project, it is too early to set JT's wholesale broadband prices by using costs obtained directly from JT's cost model because:

[6] *When deriving charges under a cost-plus approach or another approach that relies on cost information (for example, a wholesale price cap), consideration should also be given to different approaches for annualising capital costs. This is particularly the case when considering the capital costs of a single investment, where demand for the associated services may increase over time.*

- The FTTH cost model provided by JT was originally built for the purpose of validating investment decisions not setting wholesale fibre broadband prices;
- The FTTH cost model is only a temporary solution in the absence of a ‘pure’ regulatory cost model, and
- JT’s FTTH network is at an early stage of deployment. Accordingly, costs assessed in the model are based on a number of assumptions as to future demand and cost inputs. These assumptions should, over time, be replaced with more accurate figures in any future version of the cost model

Due to the uncertainty of the cost model’s outputs, and as an interim solution, CICRA proposes to impose a price control obligation using the retail minus approach. Retail minus pricing has the characteristic that it does not seek to control the absolute level of prices but only the margin between retail and wholesale. CICRA considers that this control is the most appropriate for a market where demand profiles are uncertain and forecasts of product mix more difficult than for more established products.

Question 2- Do you agree that the application of a retail minus mechanism is the appropriate approach in the absence of a suitable FTTH cost model? If not, what other approach should be adopted and why?

6. Approach to setting Wholesale Charges

Following discussions between CICRA and JT in March 2013, CICRA understands JT's position to be that the company's decision to invest in the Gigabit Jersey project crucially depended on a suitable 'retail minus X' regime. The reasons for this included:

- The Gigabit Jersey project requires a big upfront irreversible capital investment and is intrinsically risky;
- Investors need a rational expectation of risk adjusted returns; and
- Retail competitors must be able to participate but not at more favourable risk/reward profile than JT.

JT has also noted that current ADSL wholesale broadband services are set using a 'retail-minus X' approach and that the structure of any consultation should focus less on the JT cost model (as respondents would not have access to the full model and it contains commercially sensitive information) but instead should focus on setting prices so as to:

- Maintain investment incentives
- Create a world class fibre infrastructure for Jersey; and
- Create wholesale products that allow for efficient competition at the retail level.

JT also clarified that, in its view, 'retail minus X' should cover avoidable retail and midstream costs and allow OLOs[7] to make normal returns. It should also recognise the potential for additional revenue generation from the bundling of new and existing services in the future. JT further suggested, however, that an excessive 'retail minus' approach, in addition to undermining the business case for infrastructure investment may also result in lost public and private benefits of ultrafast broadband.

JT did recognise the risks associated with using the cost model for price setting and stated that 'the cost estimates provide interesting data points but should not be used for price setting and should be viewed with care'. The model also assumes

[7] *Other Licensed Operators refers to competitors of JT as the incumbent telecom operator. These rely on the provision of wholesale broadband services from JT in order to operate in the market.*

knowable demand out to 50 years, is based on a Gigabit Jersey business plan that is evolving and does not include a risk premium associated with NGA[8].

JT's pricing is reflected in wholesale prices set on the basis of 'Retail – 40%' for legacy speed products (i.e. up to 20Mb) and 'Retail – 30%' for the 100Mb and 'Retail – 20%' for the 1 Gigabit service.

Setting JT's Wholesale Charges

CICRA's interest is to ensure that consumers benefit from the deployment of JT's fibre network. This requires Jersey to have a healthy competitive telecoms market that drives innovation and quality in the services available. Ensuring that the rollout of fibre enhances competition in Jersey is therefore a key consideration for CICRA.

A key determinant of whether competition develops to an optimal level rests on the degree to which all retail operators, including JT's retail arm, can adequately compete for business. To this end, the charges set by JT Wholesale for access to its fibre network are crucial.

Regulators would generally rely on detailed cost models to analyse the business case for the project and establish whether the charges proposed are reasonable, are reflective of a service that is provided efficiently and allowed for a reasonable return on investment by the operator.

JT's investment in Gigabit Jersey made some implicit assumptions on a number of key matters likely to have an impact on its business case. These include how wholesale charges might be determined and what level of return CICRA as the company's regulator may allow.

This specific point was set out in a letter to JT's shareholder in October 2011 prior to the project commencing. This stated that:

> *'The JCRA'S main concerns at a regulatory level relate to future changes in prices to customers and the need to enhance competition between operators at a retail level; in our view, it is essential that the business case is not predicated on assumptions about tariff increases or limits on the provision of wholesale access to other operators. We believe clarity on future access issues should be formulated <u>before any decision to proceed with Gigabit Isles is made, as future determinations on these matters may conflict with the business case as it currently stands</u>."*

[8] *Next Generation Access Network refers in this case to the high speed telecom network infrastructure currently being installed in Jersey through the Gigabit Jersey project.*

CICRA does however recognise the need to ensure that the investment in Gigabit Jersey does deliver on the wider economic and social benefits that underpin the initiative. To this end CICRA believes the overall aims of the Gigabit Jersey project are more likely to be realised in an environment where competition between retail telecoms providers is healthy and sustainable. A properly functioning wholesale market is critical in this regard.

CICRA is therefore minded at this time to support the setting of wholesale prices with reference to a 'Retail minus X' approach. The issue then arises as to how best to determine what percentage reduction from the retail price ('X') should be used that should allow JT, operating efficiently, to make a reasonable return on its investment and which would allow wholesale charges to be set to ensure a vibrant, competitive telecoms market.

The use of benchmarking to set prices in Jersey and Guernsey by CICRA has been accepted by operators in the Channel Islands as a proportionate approach. Mobile termination Rates in both Islands, for example, are set with reference to benchmarks and accepted by all operators, including JT. CICRA therefore proposes to rely on this approach to inform any decision.

Benchmarking Fibre Roll-out in Other Jurisdictions

In considering how best to use benchmarks to set JT's wholesale charge, CICRA has looked to other jurisdictions where fibre is being rolled out and where the structure of the markets has been designed to ensure a healthy competitive retail market. CICRA acknowledges that the approach adopted in jurisdictions to the rollout of high speed fibre networks vary considerably; each country's aims and objectives differ and the structure of their markets and regulatory models will have influenced the overall approach.

CICRA has therefore sought to benchmark jurisdictions where there has been a separation between the wholesaler of fibre services and the retail Internet Service Providers (ISPs) that ultimately provide services to customers. A key reason for taking such an approach is that the objective of setting wholesale prices in Jersey for broadband services which reflect the charges an efficient operator might charge are best achieved by benchmarking jurisdictions where there are clearer incentives on the wholesale to be efficient in how it sets its charges. Identifying wholesale providers in markets where separation of the retail and wholesale functions has occurred – either structural or functional separation – provides the best opportunity for CICRA to set charges in Jersey that will achieve a healthy, competitive market that drives innovation and benefits to consumers. It will allow operators greater freedom to bundle services and provide consumers with more enhanced packages than perhaps are available so far.

Question 3- Do you agree that in the absence of a reliable cost model with which to set wholesale prices, the benchmarking of the relationship between wholesale and retail charges in other developed markets is appropriate? If not what alternative approach do you propose and why?

Question 4- Do you agree that the principle that should inform appropriate benchmarks for purposes of this consultation is where there is separation of the retail and wholesale functions? If not what other approach should be adopted and why?

The rollout of fibre networks in Australia, New Zealand and the UK provide useful reference points.

In doing this analysis, CICRA is not seeking to benchmark the actual charges in these markets. We believe given the difference in the structure of the markets, the cost base of the countries concerned and their scale, to merely benchmark the retail and wholesale charges on offer in these three markets would be potentially unfair to JT for purposes of setting these wholesale broadband charges. Given our objective is to set wholesale charges by reference to a retail minus approach, we consider it more appropriate to look at the relationship between the retail and wholesale prices to help determine a reasonable margin for such charges in Jersey. **Table 1** provides a sample benchmark of retail offerings with the wholesale provider listed alongside. We set out briefly below an overview of how each market is developing its fibre network.

- **New Zealand**

In New Zealand, the Government has established a separate company, Crown Fibre Holdings Limited (CFH), to manage the Government's $1.5 billion investment in Ultra-Fast Broadband infrastructure. It is intended to roll-out Ultra-Fast Broadband to 75% of the New Zealand population, with a concentration initially on what it terms 'priority broadband users' such as businesses, schools and health services, plus green field developments and certain tranches of residential area.

CFH has contracted with four parties to actually build the Ultra-Fast Broadband network and to provide wholesale broadband services on the network. The Local Fibre Companies or LFCs each have been contracted to build in specific geographic areas of New Zealand. Among the LFC's is a company called Chorus, which was formed from the structural separation of part of the incumbent, Telecom New Zealand. Chorus has responsibility for the largest area, accounting for approximately 64% of the coverage. The other LFC's are Northpower Ltd, Waikato Networks Ltd and Enable Services Ltd.

Each LFC provides wholesale broadband services to a range of retail ISPs. Each LFC has its own wholesale reference offer but a review indicates that the monthly recurring charge applied by all four is the same..

- **Australia**

In 2009, the Australian government established a company (NBN Co) to roll-out the National Broadband Network (NBN). This is a national wholesale-only, open access communications network geared towards delivering high speed broadband and telephony services across Australia. It has a target of passing 100% of Australian premises by the end of 2021, using a mix of fibre, wireless and satellite.

NBN Co operates as a commercial entity with the long term objective of earning a commercial return for its shareholder, the Australian Government. With regard to roll-out and speeds, NBN Co has the following targets:

- 93% of Australian homes, schools and businesses with fibre-to-the-premises (Fibre) technology providing wholesale speeds of up to 100 Mbps, with a minimum coverage requirement of 90% of Australian premises
- all remaining premises to be served by a combination of next-generation Fixed Wireless and Satellite technologies providing wholesale peak speeds of at least 12 Mbps3
- The requirement for NBN Co to supply services to Retail Service Providers (RSPs) on a wholesale-only, open-access basis via Layer 2 services

NBN Co provides wholesale services only. Retail broadband services provided to end consumers are delivered by a wide range of retail ISP’s approved by NBN Co. Retails ISP’s hold a licence to provide communication services from the communications regulator.

- **UK**

In the UK there are a number of network providers rolling out fibre networks across majors parts of the UK. The most extensive networks are controlled by BT – through its Openreach wholesale arm – and Virgin Media on its cable network. In addition smaller providers such as Kingston Communications (Hull and East Yorkshire) are rolling out fibre in smaller, more targeted locations.

Openreach is rolling out fibre across major parts of the UK, using a combination of FTTC (fibre-to-the-cabinet) and FTTP(fibre-to-the-premises). It aims to cover approximately 2/3 of the country by the end of spring 2014. In addition to Openreach’s commercial operations, the UK Government is funding Broadband Delivery UK (BDUK) which aims, through the use of public funding, to support local authorities in areas where the commercial rollout of fibre is uneconomical to help extend higher speed networks to those areas.

Openreach makes its wholesale fibre services available to a wide range of retail ISPs with residential offerings of up to 80 Mbs available.

- **Jersey**

JT commenced its rollout of its fibre network in 2012 with an aim of having every home connected to its superfast fibre network by 2016. Currently JT offers a range of wholesale speeds on fibre. It currently matches its existing ADSL offerings (2/4/8/16/20Mb) on fibre and provides higher speed service (50/100/1000Mb) on fibre only. JT has however given notice of its intention to alter the range of both ADSL and Fibre wholesale services, collapsing the current sub 20Mb services to just a 20Mb service offering with the entry level FTTH service at 50Mb. It has indicated it plans to introduce this new product portfolio in July 2014.

Relationship between Wholesale and Retail Fibre Broadband charges

CICRA has undertaken a sample of wholesale and retail prices across the jurisdictions and the results are set out in the table below. Because of the range of retail ISP's in each jurisdiction, CICRA has attempted to choose wholesale and retail offers that most closely match the specifications of the JT offering[9]. While none precisely match JT's current product specification, and Table 1 focusses on the 'standard' product set, CICRA believes that a sufficiently sound basis for informing the margin between the wholesale and retail prices charged for both JT's 'standard' and 'superior' wholesale broadband product set, is provided by these comparisons. Note that the JT retail prices are based on those presently in the market and CICRA has no notification of changes to these retail prices.

[9] JT's notice of October 2013 sets out a wholesale broadband product set generally aimed at residential customers ('standard') and a product set generally aimed at businesses ('superior'). A key difference between these is the contention ratio and in some cases the upload/download speed.

Table 1

Fibre Prices Comparision

Country	Wholesale Provider	Product	Wholesale Price	Retail ISP	Retail Price	%Margin	Notes
New Zealand	Enable	30 Down/10 Up	37.50	Telecom	95.00	61%	80GB allowance
		100 Down/50 Up	55.00		125.00	56%	80 GB allowance
		30 Down/10 Up	37.50	Orcon	99.00	62%	unlimited
		100 Down/50 Up	55.00		129.00	57%	unlimited
	Northpower	30 Down/10 Up	37.50	Uber Group	79.00	53%	150 GB allowance
		100 Down/50 Up	55.00		99.00	44%	300 GB allowance
	UltraFast Fibre	30 Down/10 Up	37.50	Snap	75.00	50%	100 GB allowance
		100 Down/50 Up	55.00		95.00	42%	150 GB allowance
Australia	NBN Co	50 Down/20 Up	34.00	IINet	64.95	48%	40GB
		100 Down/40 Up	38.00	Internode	94.95	60%	300GB
UK	Open Reach	40 Down/2 Up	£6.90	Talk Talk	£15.40	55%	unlimited
		40/2	£6.90	Plus Net	£15.99	57%	40 GB allowance
		80 down/ 20 Up	£9.95	BT Infinity	£26.00	62%	unlimited - bundle package
		80/20	£9.95	Plus Net	£19.99	50%	unlimited
Jersey	JT	50 down/1 Up	£19.49	JT	£29.99	35%	80 GB allowance
		50 down /1 Up	£13.80		£29.99	54%	80 GB allowance
		100 Down / 20 Up	£31.50		£44.99	30%	100 GB allowance
		1GB Down /100 Up	£48.00		£59.99	20%	100 GB allowance

From this benchmarking it is clear that several of the margins proposed by JT between its existing wholesale and retail charges are smaller than what is available in those countries where there is a clear delineation between the wholesale provider and the retail ISPs. At the lower fibre speeds, currently JT's wholesale prices allow for a margin of 35%, falling to 30% for 100Mb services and 20% for the 1Gb service. Under JT's proposed wholesale pricing, based on existing retail prices, the margin for the up to 20Mb and 50Mb services will however increase to 54% and, if current retail prices remain the same the margins for the 100Mb and 1Gb services would apply.

In contrast, in the benchmarked countries, the lower broadband speed offerings margins range from 48% to 62% and for higher speed services (i.e. over 50Mb) the range is 42% to 62%.

It is further noted that in most cases the differential between the margin for higher speed fibre services and the lower fibre speed services is not significant. In Jersey, under JT's new proposed wholesale charges, there is a 24% difference in the margin for the 50 and 100Mb services and a difference in margin of 34% between the 50Mb and 1Gb wholesale services.

Proposed JT Wholesale Charges

JT's licence requires wholesale services to be priced in a cost-justified and objectively justifiable basis:

> "All published prices, discount schemes and special offers of, or introduced by, the Licensee for Telecommunications Services shall be transparent and non-discriminatory; all prices and discount schemes shall be cost-justified and all special offers shall be objectively justifiable."[10]

As noted earlier in this document, neither CICRA nor JT believe it appropriate to use the outputs from JT's FTTH cost model to set wholesale broadband charges at this time. The FTTH cost model provided by JT was originally built for the strategic purposes of validating investment decisions and JT has highlighted that assumptions have varied as the project has developed. The model is not a regulatory cost model and CICRA is reluctant at this time to rely on those outputs to set wholesale prices.

CICRA is therefore of the view that benchmarking the relationship between wholesale and retail broadband prices in a select number of markets is a reasonable and proportionate approach to take.

CICRA believes the results of this benchmarking is informative as to whether JT's wholesale charges for new wholesale broadband services will support the objective of a competitive, innovative communications market in Jersey. The availability of wholesale prices that reflect a service provided in a cost efficient manner whilst allowing for a reasonable return on such an investment are key matters for CICRA.

JT's proposed wholesale charge for its up to 20Mb and 50Mb fibre services allow for a margin with retail prices that are within the range of benchmark prices for comparable services. CICRA is therefore minded to accept this charge.

For 100Mb and 1Gb fibre services, JT's proposed wholesale charges allow for smaller margins than each of the countries assessed above. CICRA is not aware of any justification for why in Jersey the relationship between wholesale and retail prices should be as significantly out of line as they are. Given the margin proposed by JT for lower speed services of 54% appears more in line with the benchmarked jurisdictions CICRA would require a full explanation as to why such a margin should not apply across JT's higher speed 100Mb and 1Gb services.

In the event CICRA were to adopt this approach, this would result in revised JT wholesale charges.

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[10] *JT's licence (http://www.cicra.gg/_files/080415%20JT_Licence_in_effect.pdf)*

Question 5- Do you agree with the reasoning set out above as to what might inform the retail minus X approach and the margin itself? If not what alternative estimate/s of X do you propose and why?

7. Next Steps

CICRA has set out in this consultation document a number of matters upon which view are now sought. These include:

- Whether a retail minus approach to setting wholesale broadband prices is appropriate for Jersey
- Whether the proposed benchmarking of the relationship between wholesale and retail prices is appropriate
- How the proposed wholesale rates might be set and in particular whether JT's margin for those lower speed services should inform margins across the wholesale product set.

Once this consultation has closed the CICRA will review responses and will consider whether further adjustments are required to the proposed approach to price setting for JT's wholesale broadband products.

CICRA will issue an Initial Notice of a determination of prices for JT's wholesale broadband products under Condition 33.2 of JT's licence following consideration of responses.