



Initial Notice: Licence Modification for JT (Jersey) Limited

Channel Islands Competition & Regulatory Authorities

Document No: CICRA 17/02

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1. Introduction

- 1.1 In October 2016, CICRA¹ issued a consultation² (the **2016 Consultation**) seeking views on the introduction of a new licence condition in Jersey which aims to support commercial negotiations between parties with respect to Network Access by requiring the provision of Network Access upon reasonable request from an Other Licensed Operator (**OLO**).
- 1.2 The same consultation asked whether respondents agreed that there was no requirement to introduce the same condition for the incumbent operator in Guernsey at the same time. If respondents disagreed, they were asked to produce an evidence based submission on the potential demand for Bitstream Access in particular, in Guernsey.
- 1.3 CICRA has considered the responses received in deciding that the same licence condition should also be introduced in both Jersey and Guernsey.
- 1.4 It has come to the conclusion that the licence issued JT (Jersey) Limited should be modified to include a condition which provides that the licensee shall negotiate with OLOs with a view to concluding an agreement for Network Access, and shall provide Network Access on reasonable request.

2. Structure and Timetable

2.1 This document is structured as follows:

Section 3: Legal Background and Regulatory Framework

Section 4: Bitstream Access

Section 5: Proposed New Licence Condition

Section 6: Next Steps

2.2 Responses to this document should be submitted in writing and should be received by CICRA before 5 pm on 24 April 2017. Submissions can be sent by email to info@cticra.je.

¹ CICRA is the name given to the Guernsey Competition and Regulatory Authority (GCRA) and the Jersey Competition Regulatory Authority (JCRA). Together they are the economic regulators in the Channel Islands for the telecommunications sector.

² CICRA 16/45

2.3 In accordance with CICRA's policy, non-confidential responses to the consultation will be made available on CICRA's website www.cicra.je). Any material that is confidential should be put in a separate annex and clearly marked as such.

3. Legal Background and Regulatory Framework

3.1 The Telecommunications (Jersey) Law 2002 (the **Jersey Law**) prohibits a person from operating a telecommunications system in Jersey unless that person has a telecommunications licence. The body authorised to grant telecommunications licences in Jersey is the JCRA. Such conditions may be included in a telecommunications licence as the JCRA considers necessary and desirable.

3.2 The JCRA has granted the incumbent operator in Jersey, JT (Jersey) Limited, a telecommunications licence with specific conditions applicable to licensees deemed to hold a position of significant market power in certain markets. Article 18 of the Jersey Law provides that the JCRA may modify any condition contained in a licence. The power to modify a licence including the power to insert a new condition, as well as amending or deleting an existing condition.

4. Bitstream Access

4.1 CICRA consulted in early 2016 seeking views on potential benefit to consumers on the introduction of further fixed line access services (Carrier Preselect, Fixed Number Portability and Bitstream Access) and, as a result, proposed next steps for the three services.

4.2 One of the services included was Bitstream Access (**BSA**). BSA is where a network provider allows access to a high speed (or internet) access service installed between the network provider and the end customers. This allows OLOs to provide high-speed services to the end user as well as introduce features that are not dictated by the network provider's own choice of retail products.

4.3 In October 2016, a second consultation sought views on the implementation of BSA; in particular, on an additional condition in Jersey. This additional licence condition would oblige JT (Jersey) Limited to provide such access on reasonable request from an OLO.

4.4 As no interest had originally been expressed for BSA in Guernsey in the February consultation, the provisional view was that the new licence condition would only be introduced in Jersey at that point in time, however the consultation also sought views on this provisional view.

4.5 The second consultation asked respondents to comment on the following questions:

- *Do you agree with CICRA's approach i.e. that it should support commercial negotiations between parties by way of the proposed licence condition? If not, please set out what alternative would you propose and why?*
- *Do you agree that there is no requirement to introduce the same condition for the incumbent in Guernsey at this time? If you disagree, please set out the reasoning behind your response. If appropriate this could usefully include an evidence-based submission on the potential demand for BSA in Guernsey.*

4.6 Three responses were received which are summarised below. Non-confidential versions of these will be made available on the CICRA website.

Jersey Telecom

4.7 JT supports the generic licence condition put forward but only if it is implemented in both Jersey and Guernsey at the same time. JT provided its explanation as to why the take-up of Wholesale Line Rental (**WLR**) services in Guernsey has been slow, and welcomed the opportunity to start discussions on new access products with Sure in both Jersey and Guernsey. It is of the view that market entrants in Guernsey should have the same opportunities to request new products as in the Jersey market.

Sure

4.8 Sure welcomed the proposed new licence condition setting out the parameters for future network access development in Jersey. It supports the implementation in Jersey only at this point as there is not yet any clear evidence of the benefit of opening up the fixed network market in Guernsey at this time.

4.9 It maintained that the benefits could be realised more quickly if Jersey operators were to focus on that jurisdiction for the time being; however, on the understanding that, at

the appropriate time in future, it would provide an equivalent service to its wholesale customers in Guernsey.

Response from Private Individual

4.10 A response from a private individual does not appear to support the commercial / licence condition approach proposed. Rather, he appears to suggest that competition would be better served more generally by separating JT's infrastructure and retail businesses, and by all operators transferring assets (specifically spectrum) to this company. This would, in his view, resolve the imbalance in negotiating power between the OLOs and the incumbent operator, providing the maximum competition possible.

4.11 He supported the introduction of a similar solution in Guernsey as users in both Islands will benefit from the proposed changes, OLOs and users would be treated equally and there are economies of scale if done on a Pan-Island basis.

CICRA Consideration - Jersey

4.12 The structural remedies proposed by the private individual are not within the CICRA's powers, the appropriate next step is to improve access as supported by two of the respondents, through the introduction of a new licence condition in Jersey. An Initial Notice will therefore be issued in Jersey.

CICRA Consideration - Guernsey

4.13 Although the provisional view was to introduce this licence condition in Jersey only, JT has subsequently indicated that it should be brought in for Guernsey as well, either now or at least at some stage in future. On the basis that there is an indication of demand, there appears to be no reason not to bring the licence condition in for both Islands at the same time.

4.14 The licence condition proposed is similar to that which supports the provision of BSA in the UK and uses the more generic term 'Network Access' to ensure all variations of the access product are covered. This will be similar to the condition proposed for Guernsey.

5. Proposed new licence condition

5.1 As discussed above, CICRA will continue to encourage OLOs to enter into technical and commercial arrangements with JT for Network Access, as these arrangements should rightly be a matter for agreement between the parties involved, allowing them to set product definitions and agree cost allocation between them.

5.2 In order to support this process, the JCRA will introduce a new condition into JT's licence. This will allow, if necessary, conditions to be set by the JCRA which are non-discriminatory, fair and reasonable for both parties and offer the greatest benefit to all users.

5.3 A copy of the Initial Notice of the JCRA is attached at Annex A

Q: Respondent views are sought on the proposed licence modification.

6. Next Steps

6.1 The JCRA intends to issue the Licence Modification on 24 April 2016.

Annex A – Initial Notice

JT (JERSEY) LIMITED

Modification of a Telecommunications Licence in Jersey

The Jersey Competition Regulatory Authority (**JCRA**), in exercise of its powers under Article 18 of the *Telecommunications (Jersey) Law 2002*, intends to modify the Class III licence granted to JT (Jersey) Limited by introducing a new licence condition. The new condition is attached to this Notice.

Following a consultation process (CICRA 16/45), the new condition is being introduced to provide that the licensee shall negotiate with Other Licensed Operators (**OLO**) with a view to concluding an agreement for Network Access, and shall provide Network Access on reasonable request. The licensee shall also provide Network Access as the JCRA may from time to time direct.

Copies of the existing licence arrangements and this notice are available for inspection at the offices of the Channel Island Competition and Regulatory Authorities (**CICRA**) at 2nd Floor, Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF, between the hours of 09:00 and 17:00 Monday to Friday.

It is intended that the licence will be amended on 24 April 2017.

Written representation or objections to the exercise of this specified regulatory function may be made by letter and delivered to 2nd Floor, Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF or by email to info@cicra.je on or before 17.00 12 April 2017.

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Licence Condition 36

Condition 36: Network Access

- 36.1 The Licensee shall, to the extent requested by another OLO, negotiate with that OLO with a view to concluding an agreement (or an amendment to an existing agreement) for Network Access.
- 36.2 Where an OLO reasonably requests in writing Network Access, the Licensee shall provide that Network Access. The Licensee shall also provide such Network Access as the JCRA may from time to time direct.
- 36.3 The provision of Network Access shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the JCRA may from time to time direct.
- 36.4 Where the Licensee acquires information from another OLO before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Licensee shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party for whom such information could provide a competitive advantage. This does not apply to the passing of information to the JCRA where the JCRA requires that information in order to carry out its functions.
- 36.5 The Licensee shall comply with any direction the JCRA may make from time to time under this Condition.