



BACKHAUL SERVICES FOR WIRELESS SERVICE PROVIDERS

T1407GJ

FINAL DECISION (Non Statutory)

Jersey Competition Regulatory Authority

Guernsey Competition and Regulatory Authority

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CONTENTS

1. Executive Summary	3
2. Structure of this document.....	3
3. Background	4
Government Telecoms Strategy	5
Jersey	5
Guernsey.....	5
4. Draft Decision and Responses	5
Responses Received.....	6
Airtel	6
JT	6
Sure	7
Consideration.....	7
5. Final Decision	8
6. Next Steps.....	9
Annexes.....	9

1. EXECUTIVE SUMMARY

1.1 The Channel Islands Competition and Regulatory Authorities (CICRA) (the **Authority**)¹ is issuing this Final Decision closing the non-statutory consultation process on the proposal to issue a Direction to JT (Jersey) Limited (**JT**) and Sure (Guernsey) Limited (**Sure**) respectively to provide a solution for backhaul for a leased line. This Final Decision paper sets out the non-statutory decision of the Authority.

1.2 For the reasons set out in this document, the Authority now intends to issue an Initial Notice giving notice of its intention to direct JT under Condition 36 of its Jersey Licence, introducing a ‘Statement of Requirements’ process for JT and its wholesale customers to follow when making and receiving a request for network access or other wholesale services.

1.3 The Authority also intends to issue an Initial Notice giving notice of its intention to direct Sure under Condition 34 of its Guernsey Fixed Licence introducing a ‘Statement of Requirements’ process for Sure and its wholesale customers to follow when making and receiving a request for network access or other wholesale services.

2. STRUCTURE OF THIS DOCUMENT

2.1 This document sets out the conclusions which the Authority has reached, having taken full account of information gathered Call for Information – Mobile Backhaul Market² of 19 October 2018, and non-statutory Draft Decision – Backhaul Services for Wireless Service Providers³ of 29 May 2019, and responses to those documents.

2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Sets out responses to the Draft Decision and the Authority’s responses to those responses
Section 5	Contains the Final Decision
Section 6	Sets out the next steps

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. However, for the purposes of this document, the Authority refers to combined Channel Islands Competition and Regulatory Authorities (CICRA), unless the context requires otherwise.

² <https://www.cicra.gg/cases/2018/t1407gj-mobile-backhaul-market/t1407gj-mobile-backhaul-market-call-for-information/>

³ <https://www.cicra.gg/cases/2018/t1407gj-mobile-backhaul-market/backhaul-services-for-wireless-service-providers-draft-decision/>

3. BACKGROUND

Legal and Licensing Background

- 3.1 Telecommunication services are regulated in Jersey by way of the Telecommunications (Jersey) Law 2002 (the **Law**). The primary duty of the Authority with such regulation is to ensure that telecommunications services are provided both within Jersey and between Jersey and the rest of the world, so as to ensure that all current and prospective demands for such services are satisfied, so far as is reasonably practicable⁴.
- 3.2 The Law contains a number of duties imposed on the Authority⁵, including the requirement to perform its functions in such a manner as to protect and further the short-term and long-term interests of users within Jersey and perform them by promoting competition among those engaged in commercial activities connected with telecommunications in Jersey.
- 3.3 Further, the Authority shall have regard to whether services are accessible to and affordable by the maximum number of businesses and domestic users, innovation in services, and the provision of high quality and reliable services⁶.
- 3.4 Article 16(2) and (3) provide that the Authority has the power to give, and the licensee may be required to comply with any direction given by the Authority in respect of anything to which the licence relates. These functions are 'specified regulatory functions, and therefore the exercise of such power requires the Authority to follow the procedure set out in Article 11 of the Law.
- 3.5 JT (Jersey) Limited holds a Class III telecommunications licence in Jersey (the **JT Licence**). The latest version of this licence was issued on 30 June 2017.
- 3.6 Sure (Guernsey) Limited holds a Fixed Licence in Guernsey (the **Sure Licence**). The latest version of this licence was issued on 6 July 2017.
- 3.7 Licence Condition 36 of the JT Licence and Licence Condition 34 of the Sure Licence refers to 'Network Access', and states:

- | | |
|-----|--|
| (1) | <i>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.</i> |
| (2) | <i>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.</i> |

⁴ Telecommunications (Jersey) Law 2002, Article 7 – 'Duties of the Minister and Authority'

⁵ Telecommunications (Jersey) Law 2002, Article 7(a) – (f)

⁶ Telecommunications (Jersey) Law 2002, Article 7(3).

- (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.*
- (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.*
- (5) *The Licensee shall comply with any direction the JCRA may make from time to time under this Condition.*

Government Telecoms Policy

JERSEY

3.8 In January 2018, the Government of Jersey published its telecoms strategy⁷ which included a recommendation that CICRA should ensure that JT supplies other operators with wholesale access to the Gigabit network on a fair, reasonable and non-discriminatory (FRAND) basis, and that wholesale access seekers get access to wholesale products, which allow access seekers to compete based on differentiated retail services.

3.9 This is supported by an Action Plan⁸ which identifies specific actions for CICRA, under the heading ‘Ensure that JT supplies other operators with wholesale access to the fibre network, which allows access seekers to supply and compete on differentiated retail services’. These actions includes an action to ‘ensure fair, reasonable and non-discriminatory access to backhaul for mobile sites for all mobile providers’.

GUERNSEY

3.10 In June 2018, the Committee for Economic Development in Guernsey published a document ‘The Future of Telecoms’⁹ which confirms that the position of government, in order to encourage investment decisions, is that CICRA should consider the regulation of the interconnect cost of fibre backhaul to 5G sites and backhaul transmission are shared. In this way no operator can enjoy a commercial advantage when it comes to rolling out 5G to areas where fibre is scarce.

4. DRAFT DECISION AND RESPONSES

4.1 The Authority has considered in full the responses to the Draft Decision.

⁷ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=3377>

⁸ <https://www.gov.je/Industry/TelecomsStrategy/Pages/JerseyTelecomsStrategyActionPlan.aspx>

⁹ <https://gov.gg/article/165840/Guernseys-first-ever-Telecoms-strategy-published>

4.2 The Draft Decision¹⁰ of the Authority issued on 29 May 2019 was:

- (1) Within 28 days of this Direction coming into force, the Authority requires that JT Jersey and Sure Guernsey provide their respective solution for backhaul for a leased line including:
 - (a) the basis upon which pricing of the backhaul solution will be set, such evidence to include but not be limited to price comparisons with telecommunication operators in the UK; and
 - (b) written confirmation from operators to the Authority that these backhaul service will meet their technical requirements.

- (2) Within 90 days of this direction coming into force, the Authority requires that JT Jersey and Sure Guernsey provide their respective solutions for backhaul utilising Dark Fibre including:
 - (a) the basis upon which pricing of the backhaul solution will be set, such evidence to include but not be limited to price comparisons with telecommunication operators in the UK; and
 - (b) written confirmation from operators to the Authority that this backhaul service will meet their technical requirements.

Responses Received

AIRTEL

4.3 A response was received from Jersey and Guernsey Airtel (1 July 2019)¹¹ which welcomed the Draft Decision. In summary, Airtel stated that it had attempted to obtain a variety of bandwidths and justified pricing from JT and Sure, however had not been able to achieve this. Airtel has therefore slowed down on the promotion of its '4G internet product i.e. home broadband' due to the constraint of high pricing of leased lines / backhaul.

JT

4.4 A response was received from JT (4 July 2019)¹². The response supported the pan-Channel Island approach being proposed by CICRA for both the technical aspects of any new backhaul solution as well as pricing.

4.5 JT maintain that microwave will continue to be a suitable means of backhaul connectivity and a complementary technology to leased lines. In some scenarios it is more cost effective and easier to deploy than leased lines to remote mobile sites.

4.6 JT maintains that a 1 Gbps or 10 Gbps bitstream product could be used as a backhaul solution, providing access to a lower cost flexible speed solution in Jersey.

¹⁰ <https://www.cicra.gg/cases/2018/t1407gj-mobile-backhaul-market/backhaul-services-for-wireless-service-providers-draft-decision/>

¹¹ See Annex for a non-confidential version of the Airtel response

¹² See Annex for a non-confidential version of the JT response

4.7 JT is in the process of consulting with operators on their specific backhaul requirements. Once responses have been received, JT will meet with those operators to continue the discussion to identify what products are required.

4.8 JT's mobile team is in discussion with 5G vendors on what the specific backhaul / fronthaul requirements will be for 5G as standards have not yet been finalised. The output of these discussions between operators and the mobile network vendors will inform product requirements.

4.9 JT does not agree that Airtel has provided sufficient information for JT to create any new products, and states that it will consider responses from all respondents to its own 'Call for Information' before considering any new products or scoping changes to existing products. JT questioned the validity of the number of products Airtel has requested, and does not believe that most of these will be ordered. Airtel's demand may be cater for by the launch of the 1 Gpbs bitstream solution.

SURE

4.10 A response was received from Sure on 10 July 2019¹³. Sure refute that it had failed to respond to Airtel's requests and consider that it has actively engaged with Airtel, but has not received a specific and reasonable request for backhaul.

4.11 Sure stated that it is keen to listen to its wholesale customers and remains eager to engage with other operators.

4.12 Sure proposed the following solution to establish the most meaningful outcome in relation to backhaul services:

- Airtel specifically and fully considers its requirements for wholesale leased lines – both pricing and technical capabilities – and makes a formal request to each relevant SMP operator
- CICRA takes the role of facilitator in negotiations (those being required as part of the Network Access request) so as to ensure that SMP operators and Airtel (and any other relevant regulated parties) can meaningfully discuss, in a timely manner, how best such requirements can be fulfilled (assuming they are technically feasible)
- It may then be prudent for CICRA to review its position, if any market failures are proven, which could then result in a revised Draft Decision – one that reflects the outcome of an evidence-based process.

Consideration

4.13 CICRA has fully considered the three responses received to the Draft Decision in full which are summarised above, and concludes that it is not clear that there has been enough of a technical specification developed to proceed with a Direction to introduce a defined backhaul or dark fibre product at this time as outlined in the Draft Decision.

¹³ See Annex for a non-confidential version of the response from Sure

4.14 However, in order to meet government policy and ensure that demand in the market for such products is met, CICRA is minded to introduce a more defined process to ensure that reasonable requests from other operators are dealt with by the wholesale service providers.

4.15 The new process will be attached to the statutory Initial Notice which follows this Final Decision. The process will outline a process under which other operators will be required to formally submit a requirement for a new product or product variation to JT or Sure respectively. JT or Sure will not need to accept every request, but will need to provide reasons why a request is rejected. In particular, it need not accept unreasonable requests.

4.16 As wholesalers, JT and Sure will need to follow the new process when responding to requests and would need to treat all OLOs, including their own retail divisions, equally.

4.17 The introduction of this process will ensure that:

- (i) OLOs are aware of the information that they need to pass to JT or Sure when requesting a new or amended product; and
- (ii) JT and Sure will be aware of the process they must follow when assessing whether a request is reasonable. Reasonable means that the request is technically feasible and commercially viable.

4.18 The assumption will be that, having followed the process, the request will be accepted by JT or Sure, as appropriate. If rejected without good reason, the OLO may appeal to CICRA for a direction.

5. FINAL DECISION

5.1 For the reasons set out in this document, the Authority now intends to issue an Initial Notice giving notice of its intention to direct JT under Condition 36 of its Jersey Licence, introducing 'Statement of Requirements' process for JT and its wholesale customers to follow when making and receiving a request for network access.

5.2 The Authority also intends to issue an Initial Notice giving notice of its intention to direct Sure under Condition 34 of its Guernsey Fixed Licence introducing a 'Statement of Requirements' process for Sure and its wholesale customers to follow when making and receiving a request for network access.

6. NEXT STEPS

6.1 The Authority will now progress to its statutory Initial Notice, following the process outlined in Article 11 of the Law. This will give notice to JT and Sure of the regulatory function which the Authority intends to exercise.

ANNEXES

Response from Airtel

Response from JT

Response from Sure