



BACKHAUL SERVICES FOR WIRELESS SERVICE PROVIDERS

T1407GJ

INITIAL NOTICE OF A PROPOSED DIRECTION TO JT (JERSEY) LIMITED

Jersey Competition Regulatory Authority

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1. EXECUTIVE SUMMARY

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**)¹ is issuing this Initial Notice of its intention to exercise a specified regulatory function to direct JT (Jersey) Limited (**JT**) to provide certain backhaul services for licenced wireless service providers.
- 1.2 The Direction introduces a new Statement of Requirements process and requires JT to enter into negotiation with Other Licensed Operators on submission of an appropriately competed document. The negotiations will be with a view to concluding an agreement, or an amendment to an agreement, for a backhaul solution for that OLO in line with Licence Condition 36.
- 1.3 This process will also be used for all future such requests for services, including from JT's own retail division.
- 1.4 This Initial Notice sets out the direction of the Authority. In due course, the Authority may issue a Final Notice or a new Initial Notice if responses are received, following the process outlined in Article 11 of the *Telecommunications (Jersey) Law 2002* (the **Law**).

2. STRUCTURE OF THIS DOCUMENT

- 2.1 This document sets out the Direction which the Authority intends to make, having taken full account of information gathered for CICRA 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. The conclusion of this consultation process can be found in the non-statutory Final Decision (CICRA 19/36).
- 2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Sets out the Statutory Notice of a Decision
Section 5	Sets out the next steps

3. LEGISLATIVE 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

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) co-ordinate their activities in the Channel Islands. For the purposes of this document, the Authority refers to the JCRA as the Initial Notice refers to Jersey only.

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/>

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 latest version of this licence was issued on 30 June 2017.

3.6 Licence Condition 36 refers to 'Network Access', which states:

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| 36.1 | <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> |
| 36.2 | <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> |
| 36.3 | <i>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.</i> |
| 36.4 | <i>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.</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).

36.5 *The Licensee shall comply with any direction the JCRA may make from time to time under this Condition.*

States of Jersey Policy

3.7 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.

3.8 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'.

4. BACKHAUL SERVICES FOR WIRELESS SERVICE PROVIDERS

4.1 Airtel has requested certain products from JT in Jersey with a view to reaching an agreement, or an amendment to an existing agreement, for backhaul services.

4.2 Under the terms of Licence Condition 36, JT is required to negotiate with an OLO such as Airtel with a view to concluding an agreement for such network access. To date, such access has not been provided by JT.

4.3 On 19 October 2018, the Authority issued a Call for Information – Mobile Backhaul Market⁹ and on 29 May 2019, the Authority issued its non-statutory Draft Decision – Backhaul Services for Wireless Service Providers¹⁰.

4.4 Taking the submissions to those documents into account, the Authority is of the view 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.

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

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

⁹ <https://www.cicra.gg/cases/2018/t1407gj-mobile-backhaul-market/t1407gj-mobile-backhaul-market-call-for-information/>

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

5. INITIAL NOTICE

- 5.1 The Authority remains of the view that, in the absence of any changes to backhaul services, operators who do not have the necessary fixed infrastructure will not be able to compete equally with operators' mobile businesses that are owned and controlled by the same party that controls fixed infrastructure necessary to support backhaul. This in turn could impact on the consumer experience.
- 5.2 Accordingly, the Authority was of the provisional view that fixed network operators should consider the development of leased line services and/or dark fibre to meet the specific requirements of wireless network operators licensed in the Channel Islands.
- 5.3 To this end, the Authority is issuing the attached Statement of Requirement Process which will be implemented in both Jersey and Guernsey, and is minded to direct JT to follow the process for the request for wholesale services from Airtel or any Other Licensed Operator (**OLO**), when such a request is made.
- 5.4 Before exercising a regulatory function, the Authority is required to give 'Initial Notice'. This Initial Notice gives notice that the Authority intends to make the following Direction to JT in relation to the provision of backhaul services.
- 5.5 The Authority intends to make the following Direction on or about 23 October 2019.

DIRECTION

1. On submission of an appropriately completed Statement of Requirements, the Authority requires JT to enter into negotiations with Other Licensed Operators (**OLO**) with a view to concluding an agreement (or an amendment to an existing agreement) for a backhaul solution for that OLO, in line with Licence Condition 36.
2. This process should be followed for all future requests for service, including from JT's own retail division.

- 5.6 Written representations in respect of this exercise of regulatory function may be made by 22 October. If such representations are made, they will be considered by the Authority before giving Final Notice or fresh Initial Notice or decide not to take action by issuing this Direction.

6. NEXT STEPS

- 6.1 This is Initial Notice of an intended Direction of the Authority. If representations from the licensee are received before 22 October regarding the proposed decision, the Authority will consider them

and either decide not to issue this Direction, to issue a new Initial Notice, or to issue a Final Notice confirming the Direction. If no responses are received, the Direction will be made on or about 23 October. At such time as any statutory final decision takes effect, it becomes binding on all parties.