



WHOLESALE ACCESS: BITSTREAM

T1452J

Draft Decision

Jersey Competition Regulatory Authority

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1. EXECUTIVE SUMMARY

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**)¹ is issuing this Draft Decision proposing a Direction to JT to provide certain wholesale access products to Other Licensed Operators in Jersey should commercial negotiations be unsuccessful.
- 1.2 The Authority has considered responses to its Call for Information of 25 February 2019 as well as analysis carried out by independent consultants on the financial model which has been proposed by JT.
- 1.3 The Direction will confirm the terms, conditions and charges on which the service shall be provided by JT, and JT will be required to comply with such Direction as soon as reasonably practicable after its issue.
- 1.4 This paper sets out the non-statutory Draft Decision of the Authority, and invites comments from interested parties. In due course, the Authority will issue a Final Decision, and start the statutory process to implement the Direction.

2. STRUCTURE OF THIS DOCUMENT

2.1 This document constitutes a non-statutory Draft Decision. The document sets out the conclusions which the Authority has reached, having taken full account of information gathered for CICRA 19/07 – Wholesale Product Services, Call for Information and CICRA’s analysis of the financial model proposed.

2.2 The document is structured as follows:

Section 3	Outlines the legal and policy background to this project
Section 4	Considers responses to the Call for Information
Section 5	Contains the Draft Decision
Section 6	Sets out the next steps

2.3 Respondents are requested to comment on the Draft Decision. All comments should be submitted before 09:00 on 21 October 2019 to:

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 the JCRA only as the Decision relates to Jersey only.

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2.4 All comments should be clearly marked ‘Comments on T1452J Draft Decision – Wholesale Access: Bitstream’.

2.5 In line with CICRA’s consultation policy, the Authority intends to make responses to the Draft Decision available on the CICRA website, the combined website of the JCRA and GCRA. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. The Authority regrets that it is not in a position to respond individually to the responses to this consultation.

3. 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 practicable².

3.2 The Law contains a number of duties imposed on the Authority³, 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 services⁴.

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.

² Telecommunications (Jersey) Law 2002, Article 7 – ‘Duties of the Minister and Authority’

³ Telecommunications (Jersey) Law 2002, Article 7(a) – (f)

⁴ Telecommunications (Jersey) Law 2002, Article 7(3).

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 Licence Condition 36 of the JT Licence and Licence Condition 34 of the Sure Licence refers to 'Network Access', and states:

- (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.*
- (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.*
- (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

3.7 In January 2018, the Government of Jersey published its telecoms strategy⁵ 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 Plan⁶ which identifies specific actions for CICRA, under the heading 'Ensure that JT supplies other operators with wholesale access to the fibre network, which allows

⁵ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=3377>

⁶ <https://www.gov.je/Industry/TelecomsStrategy/Pages/JerseyTelecomsStrategyActionPlan.aspx>

access seekers to supply and compete on differentiated retail services'. These actions include an action to 'as appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services'.

4. DEMAND FOR BITSTREAM SERVICES: CALL FOR INFORMATION

4.1 On 25 February 2019, the Authority issued a Call for Information 'Wholesale Product Services – Bitstream' seeking information on any need to reassess the current wholesale offering by JT and whether Bitstream is the correct long term solution and if so, on what basis.

4.2 Four responses were received to the Call for Information from Clear Mobitel, Homenet, JT and Sure, and are summarised below:

States of Jersey Policy

Question 1: Does the respondent agree that the States of Jersey policy is clear in its statement requiring 'that wholesale access products which allow access seekers to compete based on differentiated retail services' and that a wholesale Bitstream service could address the States of Jersey policy? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this to inform the Authority's considerations and next steps

RESPONSES

4.3 Clear Mobitel commented that the States of Jersey policy would seem to embrace a wider definition of alternative methods of differentiating services than only price differentiation, for example being able to tailor services to, for example, prioritise different types of traffic.

4.4 Homenet agreed that the policy would be addressed by implementing bitstream

4.5 JT agreed that the policy requires JT to offer wholesale products that allow retail providers to offer differentiated retail services, however commented that the definition of differentiated retail services is open to interpretation. Retail services could be differentiated by the addition of different elements. JT differentiates its retail products by including data allowances, parental control, wifi hotspots, contract length and bundles of services.

4.6 JT argue that CICRA and Sure seem fixated on speed as the only differentiating factor, when there are many other elements which could be added to a package of services. The vast majority of consumers seeking to purchase a bundle of services based on price, service and overall package value for money. Jersey benefits from a world class FTTH network and all consumers in Jersey, irrespective of their broadband service provider have access to a network with the fastest speed possible, should benefit from the highest speed.

4.7 JT believe a safeguard cap would also be appropriate to ensure that those on low incomes can afford access to a fibre broadband service.

4.8 Sure stated that it believes that the States of Jersey policy is absolutely clear that JT should be supplying wholesale products that will allow differentiated retail competition. Sure's retail strategy recognises that not all customers need or want, or may be able to afford, a 1 Gbps service. So, whilst Sure supports the availability of faster speed broadband services in Jersey, it should not be undertaken in such a way as to disadvantage competitors or end users for whom such increased speeds have no relevance.

4.9 Sure believes that JT's strategy of refusing to provide wholesale access products that would allow OLOs to differentiate their retail offerings is counter to the States of Jersey policy.

CONSIDERATION

4.10 CICRA is also of the view that the introduction of bitstream would address the States of Jersey policy to allow access seekers to compete on differentiated retail services.

Differentiated Retail Services

Question 2: Does the respondent agree that a Bitstream solution would provide retail broadband suppliers with a cost effective way of providing differentiated retail services. If the respondent has alternative views or evidence, the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps

RESPONSES

4.11 Clear Mobitel commented that a bitstream product should be provided in isolation, without a bundled telephone line. The unbundling of telephony and lowering of cost for broadband there would be ample opportunity for new entrants to tailor services differently to appeal to different market sectors.

4.12 Homenet agreed with the statement, if pricing is based on the true costs that an efficient telecoms operator would incur and excludes all access costs as these would be covered by line rental or included if bitstream is naked.

4.13 JT commented that a bitstream product would allow retail providers to offer a range of speeds and contentions to suit their needs. However, JT does not believe that speed is the key differentiator in a full fibre network environment.

4.14 In its response, Sure maintain that JT's uncooperative stance in relation to Sure's requests for wholesale series is one of the reasons why bitstream is the only viable solution for the medium / long term to enable fair and effective broadband competition in Jersey. Sure's more recent requests for wholesale services have been refused by JT. Sure has provided JT with examples of the types of product range (by speed and contention) that it wishes to provide to the market.

4.15 Sure has recently sought information from JT to ascertain the actual requirements of broadband customers as it believes there is no evidence to support that minimum broadband speeds should be as high as 250 mbps, let alone increasing to 500 mbps and to 1 gbps in 2020.

4.16 In contrast, Sure's intention for bitstream provisioned broadband speeds is that customers would choose which download and upload speeds suit them in line with their actual requirements, rather than being forced to pay for more than they need.

4.17 It is likely that many customers will be influenced more by price than speed. Sure would seek to match consumer preferences with the most relevant bitstream-provisioned variant, thereby allowing wholesale cost savings to be passed on to retail customers. This could result in a more cost-effective outcome than the current requirement that all broadband users must pay for at least 250 mbps, regardless of whether they consume that speed or not.

CONSIDERATION

4.18 The responses to the Call for information have confirmed the Authority's view that bitstream would provide retail broadband suppliers with a cost effective way of providing differentiated retail services.

Bitstream

Question 3: If a Bitstream service is the correct solution technical definition for such a service?

RESPONSES

4.19 Clear Mobitel commented bitstream should be considered as an IP only service with other products overlaid on the virtual bearer. Bitstream has been widely deployed on both copper and fibre networks.

4.20 Homenet agreed with the statement if price is based on the true costs of an efficient telco and excluding all access costs as this would be recovered by line rental and include if bitstream is naked.

4.21 JT have produced a technical document which was issued to Sure and [Homenet] in March 2019 as a discussion document providing options to move to a bitstream product. This has been the subject of further discussion. There has not yet been formal sign off on the design, however JT were hopeful that it would be possible to finalise the technical definition with Sure.

4.22 Sure is reasonably confident with JT's proposed technical design for the service, however if the design is used to justify increased costs for bitstream, Sure would expect to be given a clear explanation of the cost model to understand where design changes may be feasible to reduce costs.

CONSIDERATION

4.23 The Authority understands from the responses that the technical specification discussions to date have resulted in an appropriate technical definition for the service. The Authority will seek confirmation of this from the OLOs as part of the next stage in the consultation process.

4.24 The Authority is also in the process of developing a more formal Statement of Requirements process which may be used to support these discussions.

Pricing

Question 4: If Bitstream is the correct wholesale service, then what pricing methodology should be applied to this service to ensure it allows operators to compete with the dominant broadband supplier?

RESPONSES

- 4.25 Clear Mobitel commented that a cost-plus pricing mechanism would be more appropriate than retail-minus since the incumbent is providing a wholesale only product. The overheads of the bundled products are stripped away from the wholesale bitstream.
- 4.26 Homenet commented that pricing should be based on actual costs to provide the service, based on a format used in other jurisdictions or with access included for Naked Bitstream, but this should include the fixed line number being ported. Actual cost being the cost that an efficient operator would have incurred.
- 4.27 JT commented that the price should allow the wholesale network provider to recover its costs, to provide sufficient margin to make a reasonable return, and allow consumers to access an affordable broadband service.
- 4.28 Sure would be willing to consider any reasonable methodology proposed by JT, covering a port charge, a core network data charge and usage of the Service Provider interconnect link.
- 4.29 The proposed version of bitstream for Jersey would see the speed, contention and QoS control handed from JT to Sure, and should therefore see a reduction in the wholesale cost incurred per service for Sure, and ultimately its customers.
- 4.30 Sure propose that the port charge be set at 20% below the proposed price for a re-introduced 50 mbps product in CICRA 19/08 of £12.98 per month per port. JT would then recover capacity-based charges through the SP interconnect, which would grow in line with customer usage over time, ensuring a fair return for JT.
- 4.31 Sure believe that this price should be fixed for three years, and subsequent prices capped at Jersey RPI.

CONSIDERATION

- 4.32 As a result of the Call for Information and further discussion with JT, the Authority commissioned SPC, an independent consultancy, to review the cost model provided by JT for the price of a bitstream product. This model has been the subject of detailed discussions with JT over the past few months, and resulted in conclusions provided to JT in September 2019.

Timescale

Question 5: What do respondents believe is a reasonable implementation timescale following the agreement of a technical specification. Respondents should provide evidence based justification for their proposed timescales

RESPONSES

- 4.33 Clear Mobitel commented that it would appear likely that a relatively short implementation period should be required.
- 4.34 Homenet commented that, in its opinion, this should be reasonably quick as it is just the delivery method which needs to be tweaked, and therefore less than six months.
- 4.35 JT believe that an implementation of six months would be reasonable once the requirements are fully defined.
- 4.36 In response to the consultation, Sure responded that as JT has been aware of the request for some time, it should be reasonable to develop and launch the service by 1 November 2019.

CONSIDERATION

- 4.37 The Authority agrees with the comments that it should be possible for the service to be introduced within a relatively short time period.

JCRA Intervention

Question 6: Do respondents believe that it is appropriate for the JCRA to intervene at this stage to ensure a service such as Bitstream is introduced in a timely manner and the final solution is binding on JT's licence conditions. If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform the Authority's considerations and next steps.

RESPONSES

- 4.38 Clear Mobitel did not provide a response to this question.
- 4.39 Homenet commented that the JCRA should intervene in this matter.
- 4.40 JT state that if it had a clearly defined and agreed specification for a bitstream product, there should be no requirement for the JCRA to intervene. However, experience to date had been that the implementation of new products do not always go to plan if the OLOs have other conflicting interests and those interests distract the end goals of a project. Therefore JT believe it is appropriate for the JCRA to intervene in this project.
- 4.41 Based on JT's position to date, Sure requested CICRA's intervention and ongoing support to ensure appropriate product development from JT to meet the States of Jersey policy statement.

CONSIDERATION

- 4.42 The Authority is encouraged by commercial negotiations which had taken place before and subsequent to the Call for Information.
- 4.43 In line with Licence Condition 36, the Authority would prefer to see such negotiations concluded without the requirement to issue a direction to provide network access, or to issue a

direction on the terms, conditions and charges which should be applied. However, should such negotiations be unsuccessful, the Authority is minded to issue such a direction in due course.

5. DRAFT DECISION

5.1 The Authority is encouraged by the responses to the Call for Information and subsequent discussions on the development of a bitstream solution, which will help progress the States of Jersey policy and introduce greater levels of competition and choice for consumers in Jersey.

5.2 Whilst it is the Authority's clear preference that such commercial negotiations are allowed to conclude, it will consider responses to this Draft Decision and then decide whether to issue such a Direction.

5.3 The Draft Decision of the Authority is:

DRAFT DECISION

- i. Should commercial negotiations between JT and Other Licensed Operators in Jersey be unsuccessful, the Authority will issue a Direction to JT under Licence Condition 36 to provide such network access.
- ii. The JCRA will direct the terms, conditions and charges on which the service shall be provided.
- iii. JT will be required to comply with such Direction as soon as reasonably practicable after its issue.

6. NEXT STEPS

6.1 This Draft Decision stage provides the opportunity for public responses following which a Final Decision will be issued. The statutory process prescribed in the Law will then be followed.

6.2 While the Authority considers any Decision made as part of this pre-statutory process to be the starting point for later parts in the process and as a statement of current expectations, this Decision is not binding until such time as it has been included in the Statutory Notice of a Final Decision

6.3 The Authority invites responses to this Draft Decision as detailed above.