



WHOLESALE BROADBAND SERVICES – 50 AND 100 MBPS

T1453J

NON-STATUTORY FINAL DECISION

Jersey Competition Regulatory Authority

Document No: CICRA 19/49

Date: 4 October 2019

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier,
Jersey, JE2 3RF
Tel 01534 514990, Fax 01534 514991 Web:
www.cicra.je

Guernsey Competition & Regulatory Authority
Suite 4, 1st Floor,
La Plaiderie Chambers, La Plaiderie,
St Peter Port,
Guernsey, GY1 1WG
www.cicra.gg

CONTENTS

1. EXECUTIVE SUMMARY	3
2. STRUCTURE OF THIS DOCUMENT	4
3. BACKGROUND.....	4
LEGAL AND LICENSING BACKGROUND	4
<i>Licence Condition 33</i>	4
<i>Finding of SMP</i>	5
<i>Licence Condition 34</i>	5
<i>Licence Condition 36</i>	6
GOVERNMENT OF JERSEY TELECOMS POLICY.....	7
THE DUTIES OF THE AUTHORITY	7
4. JT WITHDRAWAL OF 50 AND 100 MBPS WHOLESALE BROADBAND PRODUCTS	9
JT'S UPLIFT OF WHOLESALE BROADBAND SERVICES.....	9
5. DRAFT DECISION AND RESPONSES	10
DEMAND FOR DIFFERENTIATION IN SPEED OF BROADBAND SERVICES	10
JT'S INVESTMENT IN FIBRE TO THE PREMISES	11
STATES OF JERSEY POLICY.....	12
INTRODUCTION OF 50 AND 100 MBPS SERVICE	13
WILL THE INTRODUCTION OF 50 AND 100 MBPS SPEED BE SUFFICIENT TO SUPPORT DIFFERENTIATED RETAIL COMPETITION.....	13
REQUIREMENTS AND TIMESCALE TO INTRODUCE 50 AND 100 MBPS SERVICES	14
WHOLESALE PRICES FOR 50 AND 100 MBPS SERVICES.....	14
HOW LONG SHOULD THESE PRODUCTS BE MADE AVAILABLE AND THE FUTURE REMOVAL OF JT'S WHOLESALE BROADBAND SERVICES	15
JT'S RESPONSE TO THE REQUEST FROM SURE AND THE PERFORMANCE OF SURE'S BROADBAND SERVICES IN GUERNSEY.....	16
JT'S INTRODUCTION OF A BITSTREAM SERVICE	16
OTHER MATTERS RAISED IN RESPONSE TO THE DRAFT DECISION.....	17
CONCLUSION	17
6. FINAL DECISION	17
7. NEXT STEPS	18

1. EXECUTIVE SUMMARY

1.1 JT (Jersey) Limited ('JT')¹ has invested in a fibre to the home ('FTTH') network in Jersey and is actively seeking to reach its stated objective of making Jersey a "gigabit island".

1.2 Over recent years JT's retail division ('**JT Retail**') has progressively moved its retail customers to higher speed broadband services. This has mainly been achieved by providing upgrades to its customers and by uplifting the lower speed retail services.

1.3 In Jersey, retail competition for broadband services relies on the provision of 'upstream' wholesale services by JT. Both Sure (Jersey) Limited ('**Sure**') and Home Net Limited (**Home Net**) compete with JT Retail in the retail broadband market by purchasing wholesale services from JT's wholesale division ('**JT Wholesale**').

1.4 Alongside moving its retail customers to higher speeds JT has also made changes to its wholesale product portfolio which has resulted in a similar effect, that is, JT's wholesale customers have had to purchase higher speed wholesale products for its end users (retail consumers).

1.5 The Jersey Competition Regulatory Authority (the '**Authority**')² has cause for concern that, in making changes to its wholesale broadband portfolio, JT is failing to take into account two key factors:

- First, operators have requested that JT Wholesale provides it with wholesale products to meet its customers' demands for slower broadband speeds, and
- Second, the States of Jersey Telecoms Policy is clear in its objective to ensure that there is competition based on differentiated retail products in Jersey.

1.6 The Authority issued a Call for Information³ in order to seek input from stakeholders on what the Authority considers to be an important matter. The Authority considered the responses to that Call for Information and issued its Non-Statutory Draft Decision⁴ in May 2019. The Authority has considered the responses to that Non-Statutory Draft Decision and is issuing this Non-Statutory Final Decision as the next stage in its regulatory process on this matter.

¹ JT has two divisions, one that provides retail services and the other that provides wholesale services. Whilst the divisions are separate, they are part of the same corporate entity.

² The Jersey Competition Regulatory and the Guernsey Competition and Regulatory Authority (the '**GCRA**') are collectively known as the Channel Islands Competition and Regulatory Authorities ('**CICRA**')

³ Wholesale Broadband Service – 50 and 100 Mbps, Call for Information, CICRA 19/08, 25 February 2019

⁴ Wholesale Broadband Service – 50 and 100 Mbps, Non-Statutory Draft Decision, CICRA 19/25, 29 May 2019

2. STRUCTURE OF THIS DOCUMENT

2.1 This document constitutes a Non-Statutory Final Decision. The document sets out the conclusions which the Authority has reached, having taken full account of information gathered in the Call for Information and subsequent Non-Statutory Draft Decision process with stakeholders.

2.2 The document is structured as follows:

Section 4	Outlines the background and legislative basis for this Decision
Section 5	Sets out responses to the Draft Decision and the Authority's responses to those responses
Section 6	Contains the Non-Statutory Final Decision
Section 7	Sets out the next steps

3. BACKGROUND

Legal and Licensing Background

3.1 Article 16 of the Telecommunications (Jersey) Law (2002), (the '**Telecoms Law**') provides that the Authority may include in licences such conditions necessary to carry out its functions. The Telecom Law specifically provides that licences can include:

- Conditions for the prevention or reduction of anti-competitive behaviour; and
- Conditions allowing the Authority to make determinations.

3.2 In January 2019, following a review of the markets for telecoms services in Jersey, the Authority made the decision with respect to significant market power ('**SMP**') in wholesale broadband markets

3.3 The direction set out in the document is given to JT under Conditions 33, 34.1(c) and 36 of its Telecommunications Licence.

LICENCE CONDITION 33

3.4 Condition 33.2 of the licence to JT 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 Services;*
- (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.”*

FINDING OF SMP

3.5 In May 2018, at the request of Sure and JT, the Authority commenced a market review of the Wholesale Broadband Market in Jersey. A review of Guernsey was undertaken simultaneously. The Authority engaged SPC Network to carry out this review and to advise the Authority. In January 2019, the Authority made the decision with respect to significant market power (**'SMP'**) in wholesale broadband markets.

3.6 The market review found JT to have SMP in the provision of wholesale broadband services in Jersey. The review defined the market as: *'Wholesale access to the Internet at a fixed location using an access network based on fibre or cable or using the 4G and ultimately 5G wireless access network via a fixed device in the whole Bailiwick of Jersey'* and the finding of dominance as: *'JT has Significant Market Power on the market as defined'*.

3.7 The Authority completed its process on this matter by issuing a Final Notice on 9 January 2019⁵ and an Information Notice on 30 January 2019⁶.

3.8 This condition therefore allows the Authority to regulate the prices that JT Wholesale charges for telecommunication services in a way and for a time that it deems appropriate, provided that JT has a dominant position in the relevant market in which those services are supplied.

LICENCE CONDITION 34

3.9 Condition 34.1(c) of JT's licence is designed to protect fair competition in the markets in which JT operates, and provides as follows:

The Licensee shall: ... comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunications Systems or the provision of Telecommunications Services.

⁵ Broadband Market, Market Review, Final Decision, CICRA 19/01, 9 January 2019

⁶ Information Notice, Notice of Final Decision, CICRA 19/03, 30 January 2019

3.10 This condition allows the Authority to give directions to JT, including in relation to the prices that it charges. The Authority considers that Licence Condition 34 establishes an *ex ante* power to take action to prevent conduct which would otherwise restrict competition. The Authority therefore concludes that Licence Condition 34 permits a direction by the Authority to a licensee to reintroduce a wholesale product which has been withdrawn where the Authority considers that competition is likely to be restricted in consequence.

LICENCE CONDITION 36

3.11 Condition 36 of JT's licence is designed to provide for the introduction of new network access products and services, and provides as follows:

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 further 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 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 direction.*

3.12 In considering whether there is a requirement to introduce slower wholesale broadband products the Authority has taken into account the following factors:

- The States of Jersey telecoms policy
- JT Wholesale's uplift of its wholesale broadband services
- JT Wholesale's notification of an increase in price of its 250 Mbps wholesale broadband service
- Operator requests for the re-introduction of the 50 and 100 Mbps services

- Operator requests for the provision of a Bitstream service
- Finding of SMP on JT
- The duties of the Authority

Government of Jersey Telecoms Policy

3.13 A States of Jersey Telecoms Strategy Action Plan, developed by the Digital Policy Unit within the Chief Minister’s Department, (the ‘**Action Plan**’), set a clear action to the Authority: *As appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services*

3.14 The Action Plan is in line with the recommendations made in the Telecommunications Strategy dated 9 January 2018⁷ (the ‘**Telecoms Strategy**’) and was also developed through discussion with the report’s authors (Oxera), the Authority and a number of other Government departments. This was, for the Authority, a significant milestone. This will have been the first time that the Authority has had a clear, published policy on which to base its work plan. The Authority has taken a number of steps to ensure that its strategies and work plan align with the published policy.

3.15 The Telecoms Strategy clearly states in Policy Principle 2 that:

Policy Principle 2

Promote retail competition (not network competition) as the most effective way of delivering the benefits of next generation connectivity to consumers and businesses (section 4.2)

6. 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 on differentiated retail services.
 - a. This FRAND access should also include fibre backhaul for mobile services
7. CICRA should use this regulatory focus on the Gigabit network to review and publish its prioritisation principles and outline additional resources required, if any, to conduct its duties, including implementing telecoms strategy. CICRA should ensure that it uses these principles to determine which cases to pursue and to clearly explain its decisions.

The Duties of the Authority

3.16 The Authority has a number of duties set out in the Telecommunications (Jersey) Law (2002). These include a primary duty to perform its functions under the law in such manner as it considers is best calculated to ensure that (so far as in its view is reasonably practicable) such telecommunications

7

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20A%20telecoms%20strategy%20for%20Jersey%20Oxera%20December%202017%2020180105%20TH.pdf>

are provided both within Jersey, and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising. In addition to its primary duty, the duties of the Authority include the requirement to:

- (i) act in such manner as it considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and perform the, wherever it considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey; and
- (ii) perform its functions in such manner as it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey so as to further the economic interests of Jersey.

3.17 The Telecoms Law also provides for a licensing regime. JT's licence contains a fair competition condition⁸, which requires that JT shall not abuse any position of Significant Market Power; and shall comply with any direction issued by the Authority for the purpose of preventing any market abuse in the provision of telecommunication services.

3.18 The Authority is aware of requests for the 50 and 100 Mbps services, such a request being based on demands for the product from Sure's own customers. As a result of the 50 and 100 Mbps services being uplifted, consumers suffer from less choice, and the potential for the efficiencies and lower prices likely to be brought through competition in the telecommunications sector is lost. The Authority is of the view that this is a significant issue with risks to the wider economy of Jersey that must be taken into consideration when looking at broadband solutions in the Jersey market. The potential reintroduction of a 50 Mbps and 100 Mbps wholesale broadband product could thus provide retail broadband suppliers with the opportunity to provide differentiated services, by speed and price in the short term.

3.19 Taking all of these factors into account the Authority concluded that there could be a potential requirement to introduce slower speeds wholesale broadband services and issued its Call for Information to further inform its considerations on this matter.

⁸ Licence Condition 34

4. JT WITHDRAWAL OF 50 AND 100 MBPS WHOLESAL BROADBAND PRODUCTS

JT's Uplift of wholesale broadband services

4.1 On 24 November 2016 JT published a Revised Information Notice of a Wholesale Broadband Product Change. This notice included the following changes to the wholesale product portfolio:

Standard Fibre Broadband Products: *the standard 50 Mbps down and 1 Mbps up fibre product will increase to 100 Mbps down and 10 Mbps up.*

Superior Fibre Broadband Products: *the superior 50 Mbps down and 1 Mbps up fibre product will increase to 100 Mbps down and 20 Mbps up and the superior 50 Mbps down and 5 Mbps up fibre product will increase to 100 Mbps down and 20 Mbps up.⁹*

4.2 On 16 February 2018 JT published its Wholesale Broadband Roadmap¹⁰ (the 'Roadmap'). The Roadmap included JT's Plan of Record for 2018 which included a 250 Mbps down and 50 Mbps up service (the '250 Mbps service') but did not include the 100 Mbps down and 10 Mbps up service (the '100 Mbps service') that at the time was in the market. JT stated that it would replace the 100 Mbps service with the 250 Mbps service from 28 May 2018.

4.3 The Authority considered the objection raised by Sure under its powers granted under the Telecoms Law and JT's Class III Telecommunications Licence issued under the Telecoms Law. The Authority came to the conclusion that, in principle, it was in agreement with the issues raised by Sure.

4.4 JT Wholesale in its notification stated that it was in effect replacing its 100 Mbps service with 250 Mbps service. The 250 Mbps service was to be offered at the same wholesale price as the 100 Mbps. The Authority therefore concluded that it would not take any further action at that time.

4.5 On 9 November 2018 JT Wholesale published an LC33 notification of an intended wholesale price change. The notification stated that the 250 Mbps service monthly wholesale cost would increase from £17.84 to £19.45 with effect from 28 December 2018. This is a 9%¹¹ price increase.

4.6 The Authority's approach to the review of whether a potential re-introduction of services is required is a short-term priority. Parallel to this consultation process is a separate work stream pursuant to which the Authority is assessing the need to formally introduce wholesale Bitstream services in the medium term. For the purposes of the Call for Information the Authority did not consider such wholesale option further but simply noted that a separate workstream was underway with a longer term solution.

⁹ Revised Information Notice, Wholesale Broadband Product Changes, JT, 24 November 2016

¹⁰ Information Notice, Wholesale Broadband Roadmap 2018 – 2020, JT, 16 February 2018

¹¹ $(£19.45 - £17.84) / £17.84 = 0.0902$

5. DRAFT DECISION AND RESPONSES

- 5.1 This section considers the options for the potential introduction of slower speed services by consideration of the responses received to the draft decision set out by the Authority in its Non-Statutory Draft Decision. Responses were received from three parties – JT, Sure and Home Net.
- 5.2 In its response to the Draft Decision, JT made it clear that they still consider that the points they raised in the Call for Information are still valid, and they are not repeated in JT’s response to the Draft Decision. The Authority has considered in full the response by JT to the Call for Information, and therefore has limited its comments only to the response of JT to the non-statutory Draft Decision.

Demand for differentiation in speed of broadband services

- 5.3 JT criticised the Authority’s reasoning for concluding that consumers were not demanding higher speed products and accused the Authority of being “*misleading, self-serving and factually incorrect*”. JT goes on to state that “*when a minimum guaranteed broadband speed of 250Mbps is ubiquitously provided, it should not be of any surprise that a limited number are seeking increased speeds*”.
- 5.4 The Authority considers, that in itself the statement from JT clearly sets out the fact that the majority of customers, when faced with the choice, have selected the lower available speed (the Authority does accept that a 250Mbps services can be considered to be a superior broadband speed offering and is in advance of the speeds commonly available in many jurisdictions) and that at this point of time, the majority of customers are not seeking broadband services to the home of 1Gbps.
- 5.5 JT considers that the position put forward by Sure in its response is driven by the fact that the higher speeds are not available in Guernsey and states that this “*would result in broadband speeds in Jersey being restricted as a result of those broadband speeds not being available in Guernsey*”.
- 5.6 Sure refutes the suggestion that it and the Authority are fixated on speed as the only differentiating factor. Sure considers that “*other aspects of the service available for differentiation does not diminish the importance of being able to differentiate on speed, nor the importance of having a service portfolio that is tailored to meet customers’ needs, rather than a one size fits all approach that suits the provider not the customer*”.
- 5.7 Sure considers that if any operator is fixated on speed it is JT, with its focus on taking all customers to 1Gbps – whether or not they want or need that speed.
- 5.8 Sure states that JT’s approach seems to be that customers **must** benefit from higher speeds, regardless of whether they want to. Sure believes that a competitive market (or one that is effectively regulated to achieve as close as possible to a competitive outcome) should allow customers to be able to **choose** whether they want higher speeds or whether they would prefer to take slower speeds at lower prices.

The ability for customers to exercise such a choice is, Sure believes, one of the fundamental underlying principles of differentiated retail competition.

5.9 Sure notes that throughout Europe, the availability of a range of different speed broadband services is the norm rather than the exception, including within countries where ultrafast broadband speeds are widely available. Sure refers CICRA to the recently published EC Report “Connectivity Broadband market developments in the EU”¹². This Report clearly shows that a range of broadband speeds are available – including from 12Mbps – 30Mbps and 30Mbps – 100Mbps – in all the countries considered. Even in those countries that are identified as the leaders in terms of access to ultrafast broadband services – namely Malta, the Netherlands and Belgium – customers are still able to choose to have lower broadband speeds should they wish. Similarly, in Latvia, Spain and Sweden, where over 70% of homes subscribe to FTTP services, customers also have access to lower speed services.

5.10 Sure has requested lower speed wholesale broadband services as it wants to provide retail services that customers actually want.

5.11 The Authority considers that it is appropriate for there to be a choice of speeds for consumers and that this requirement is confirmed by Sure and Home Net as both operators have stated that there is a demand for speeds less than the minimum speed currently offered by JT. In addition the Authority considers that the States of Jersey Policy is clear on the requirement for differentiated services.

JT’s investment in fibre to the premises

5.12 The Authority recognises JT’s investment in fibre to the premises as well as recognising the unique position that Jersey finds itself in with JT’s roll out of fibre to all households. The Authority also recognises that consumers should have a choice as to the services they purchase and from which service provider. The recent actions of JT does not give choice to consumers to remain on speeds that they had previously taken, and have made it clear that these speeds will only increase. JT’s competitors have also indicated that they consider that there is consumer demand for speeds lower than the current JT entry speed to the extent that these operators have made reasonable requests to JT under JT’s LC 36.

5.13 In addition the Authority also recognises the benefit of inclusivity of consumers to ensure the most efficient performance of a digital economy. Making sure that all consumers can obtain a range of speeds with a range of affordability will help to ensure that no consumer is excluded from the digital economy because of being unable to obtain affordable broadband access.

5.14 JT in its response describes the actions of the Authority as “*creating history by becoming the first regulator in the world to issue a draft decision to oblige an incumbent operator to provide slower speeds in the market.*”

¹² “Connectivity, Broadband market developments in the EU”, Digital Economy and Society Index Report 2019, European Commission. Sure particularly refer CICRA to slides 7, 8, 9, 30 and 31.

5.15 The Authority however considers that it is responding to the actions of a dominant operator which has:

- Withdrawn (or upgraded) wholesale services without agreement with its wholesale customers;
- followed its own strategy (roadmap) for retail services without allowing competing operators to differentiate on speed and price; and
- Failed to conclude negotiations for requests for wholesale services from its wholesale customers.

5.16 The broadband market has a high barrier to entry and successful competition is reliant on the ability of the wholesale providers and the wholesale customers being able to ensure that there is a fit for purpose set of wholesale services to meet the demands of the end customers.

5.17 In its position as a dominant operator, not only is JT shaping the pathway for its own retail customers, it is also shaping the pathway for its wholesale customers counter to their stated requirements.

5.18 The Authority does not consider that the position it is taking is *“to slow down broadband speeds in Jersey”*, it is to encourage sustainable competition and ensure affordable services so that no one is excluded from the digital economy.

5.19 The Authority does not seek to restrain in any form JT’s ambition to provide its retail customers with a 1Gbps service. However, it does recognise that at this point in time not all customers may wish to have such a service, instead seeking a lower speed service to meet their needs.

States of Jersey Policy

5.20 Sure agrees with the Authority that the States of Jersey Policy is clear in its statement requiring *“that wholesale access seekers get access to wholesale products, which allow access seekers to compete based on differentiated retail services”*. Sure also agrees with the Authority that service differentiation is essential to effective competition.

5.21 Home Net consider that the interpretation of the States of Jersey Policy is a matter for CICRA.

5.22 The Authority has continued to engage with the States of Jersey and specifically in relation to the issue of differentiated broadband speeds. No evidence has been provided by respondents to the Draft Decision to suggest that the Authority is mis-interpreting the States of Jersey policy. On the contrary, the Authority has received confirmation of its approach from officers of the States of Jersey.

5.23 The Authority therefore considers that there is a requirement to ensure the availability of differentiated services in the broadband market for Jersey and speed is considered as a differentiating factor.

Introduction of 50 and 100 Mbps Service

5.24 Sure considers that it continues to invest in its broadband network to enable it to deliver higher speeds to its customers – but only to the level where they know that there is a recognised and reasonable demand for those speeds. It believes that Jersey customers should also be given the choice to have the speeds they actually want, rather than being presented with the choice of “any speed as long as it is 1Gbps”.

5.25 Sure agrees with Authority’s conclusion that there is a requirement for JT to reintroduce the 100Mbps services and highlights the situation that *“with Sure, Home Net, Clear Mobitel and CICRA all aligned in this view, JT has a responsibility to listen to and fulfil the needs of its wholesale customers.”* Sure considers that the same applies to the 50Mbps service. Whilst supportive of Home Net’s plans it agrees with CICRA that the introduction of 50 Mbps and the reintroduction of 100Mbps will be sufficient to fulfil the needs of most customers in the short term and consider that any further differentiation could be better achieved through the introduction of JT’s bitstream service.

5.26 The Authority therefore concludes that it is correct and justified to introduce 50 and 100 Mbps wholesale broadband services in Jersey.

Will the introduction of 50 and 100 Mbps speed be sufficient to support differentiated retail competition

5.27 Sure agrees that the introduction of the 50 and 100Mbps wholesale services will meet its short term needs, subject to the Authority ensuring that a bitstream service is developed as soon as possible, *“rather than leaving it to JT to control the pace and scope of that new product introduction”*.

5.28 The Authority continues to engage with all stakeholders to support the introduction of a bitstream service in Jersey. However, absent of a bitstream service the Authority considers that the introduction of 50 and 100 Mbps wholesale services in Jersey will support differentiated retail competition.

5.29 In considering whether these wholesale products meet the respondent’s requirements to effectively compete in the market with differentiated retail services, Homenet could not adequately respond to this question as it would need to review the full product specifications including the wholesale price and retail margin. Homenet considers that *“either way the margin JT have is wholly inappropriate and we have shown previously that there is cross subsidisation between JT wholesale and retail”*.

5.30 The Authority concludes that the introduction of 50 and 100 Mbps speed will be sufficient to support differentiated retail competition.

Requirements and Timescale to introduce 50 and 100 Mbps services

5.31 Sure commented on the time it has taken CICRA to reach this decision and would request CICRA steps up its work with JT's shareholders to ensure that JT is operating as a reasonable corporate citizen stating that it considers that *"the current situation makes a mockery of the concept that JT is operating in line with the States of Jersey policy"*.

5.32 Sure agrees with the Authority that the introduction of the 50Mbps and reintroduction of the 100Mbps services are very unlikely to result in JT incurring significant development or systems costs and considers that three months should be more than enough time for JT to introduce these services and encourages CICRA not to increase this timeframe. In fact, Sure considers that it should be reduced to two months.

5.33 Home Net agrees that the introduction of 50 and 100Mbps wholesale services does not require any product development and impacts only on systems and that JT should be directed to introduce the services within 3 months of its decision. However, there is no need for delay and this could be done immediately.

5.34 The Authority does note the comments regarding how long this process has taken and the lack of complexity in the introduction, or in fact re-introduction, of the 50 and 100 Mbps product. Considering the time it has taken to get to this decision and the fact that these products are re-introduction of products that have previously been in JT's wholesale product portfolio the Authority is to direct that these products are introduced quicker than the three months consulted on in the Draft Decision. The Authority considers that two (2) months be included in the final direction as the maximum time to introduce the products and would encourage JT to shorten this timeline if possible.

Wholesale prices for 50 and 100 Mbps services

5.35 JT emphasised the point made in its submission that although wholesale broadband prices have risen, which has resulted in an increase of retail prices, consumers are still provided with a value for money service at prices which compare favourably to other jurisdictions. There is no evidence to support CICRA's point that increased speeds might also lead to the increased costs to consumers.

5.36 The Authority considers that evidence to date has shown that as speeds increase the charge to consumers increase. Therefore this results in cases where consumers are paying more than they would wish to receive products with speeds greater than the consumer actually require. Not all consumers will have the consumption demands and requirement for higher speeds. Nor in some cases will consumers have the disposable income to spend on high speed services that they have no real demand or requirement for.

5.37 JT's submission of 8 April 2019 showed that JT's entry level wholesale broadband prices have remained at a comparable level to neighbouring jurisdictions even though consumers have received a

higher speed service. In fact the current price for the entry level 250 Mbps wholesale product is £19.45 and this is the same price as the 50Mbps services was in March 2014. JT has actively kept pricing low to make high speed broadband services affordable to Jersey consumers and the Authority notes that JT has not provided any substantive evidence to support this argument in its response to the Draft Decision.

5.38 JT stated that the proposed prices for the 50Mbps¹³ and 100Mbps¹⁴ wholesale broadband products were only a £3.21 and £1.61 reduction on the current entry level 250Mbps¹⁵ price. JT highlighted that Sure's response indicated that it would not expect the take up to be as high as it had been planning for, and that such a minimal reduction in price is likely to achieve the level of encouragement that customers require to switch products. JT therefore questions the forecasted take up of these proposed services, as supplied by Sure.

5.39 Sure in its response agrees with CICRA's overall conclusion although it suggested that the prices are fixed at the levels in terms of these prices being the **maximum** prices that JT should be allowed to charge for the three years following the launch. Should empirical evidence come to light with this time period that the prices are wrong and overstated, then CICRA should retain the ability to direct JT to reduce them.

5.40 With regards to the price points included in the Draft Decision – Home Net response was that *“obviously – the price is what it was historically however this is still overpriced”*. Home Net agrees that the price should remain fixed for three years.

5.41 The prices included in the relevant Draft Decision were based on the prices for those services at the point in time when they were removed from the market. The Authority does not consider that it would be proportionate to engage in a review of these prices at this point in time. The Authority does not believe that it has been provided with evidence to alter its draft direction on the wholesale prices for the 50 and 100 Mbps service. The Authority notes the comments relating to the price being a maximum and has therefore amended its draft decision to include the maximum price. The Authority does consider that there is a benefit to lower priced broadband services being available in the market, especially for low income households. The Authority has no intention of restricting JT or other operators in providing higher speed services to consumers, but that should be at the choice of the individual consumer.

How long should these products be made available and the future removal of JT's wholesale broadband services

5.42 Sure was pleased to see that the Authority supports enhanced consultation on wholesale product changes. Sure however believes that this conclusion needs to be strengthened. Sure considers that

¹³ £16.23

¹⁴ £17.84

¹⁵ £19.45

as it stands, JT could continue to consult and then ignore any responses that it disagrees with or continually extend the consultation process to deal with anything outside its own proposed product specification. As such, Sure remains of the view that the consultation process should not be under the sole control of JT and that CICRA should actively oversee the process to minimise the risk of disputes and therefore potential disruption to end users' services, which is what Sure states it is currently faced with. Sure would expect that this oversight role be delegated to CICRA officers and not require the Authority's approval for every decision. Sure would expect CICRA to provide operators with a clear, documented process, with associated timeline for decision making.

5.43 Home Net agrees that JT Wholesale should enter into a consultation process to remove the 50, 100 and 250 Mbs services only following the successful introduction of a bitstream service.

5.44 The Authority, following its consideration of the response from Sure, has amended its draft direction to include oversight by the Authority of any consultation process undertaken by JT for the removal of wholesale broadband services.

JT's response to the request from Sure and the performance of Sure's broadband services in Guernsey

5.45 JT, in its response to the Draft Decision, challenges Sure's 'up to 20Mbps' product in Guernsey questioning the number of customers that actually do achieve those speeds and that Sure charges a premium for any broadband speeds higher than the entry speed and JT considers that this is why customers are not taking higher speeds in Guernsey.

5.46 The Authority does recognise the fact that there are different underlying technologies, investments, services and prices when considering Guernsey and Jersey. Whilst the Authority does have a regulatory oversight of the Channel Islands as a whole JT will recognise the fact that Guernsey and Jersey are two separate legal and regulatory entities and as such are regulated separately. This current matter specifically is focussing on the fact that, following a number of requests of its wholesale customers, JT as the dominant network operator in Jersey is refusing to provide the services requested by its wholesale customers rather preferring to favour its own retail division's ambitions to achieve its stated aim of all customers being on a 1Gbps service.

5.47 The Authority will address issues relating to the broadband market in Guernsey as a separate matter and in accordance with its prioritisation principles.

JT's introduction of a bitstream service

5.48 JT states its intention of providing a bitstream service during 2019 and how this might impact on the introduction of the 50 and 100 Mbps wholesale service. The Authority considers that without any defined timescale for the launch of such a service, it cannot rely on this as an alternative solution for the requirements that have been indicated by JT's wholesale customers.

5.49 Following the introduction of a bitstream service the Authority could consider the requirements for the 50 and 100 Mbps service. Any such review would be with full consultation of all stakeholders and would be undertaken in line with the Authority's prioritisation principles.

Other matters raised in response to the draft decision

5.50 Sure *"firmly believe that this Draft Decision is necessary in order to support differentiated competition in the Jersey market – in line with the States of Jersey Policy – as well as enhance consumer protection"*.

5.51 From a consumers perspective, Sure reiterated that the forecasts that it has submitted are feasible to deliver through a combination of new customer acquisition and migration of existing customers. Once available Sure will actively target customers to migrate them to the service that is appropriate for their needs.

5.52 JT in its response stated that it considered that the Authority undertake a Cost Benefit Analysis on the introduction of the 50 and 100 Mbps service. The Authority does not consider that there is a statutory basis for such a claim and instead the Authority is guided by its statutory duties and by its analysis of the requirements set out in Licence Condition 34.

Conclusion

5.53 The Authority has considered the responses received to the non-statutory draft decision, and amended the proposed direction accordingly.

5.54 The Authority, for the avoidance of doubt, wishes to be clear that until an agreed implementation of a bitstream service is completed then it will not consider the further withdrawal of any wholesale broadband service without the agreement of all stakeholders.

6. FINAL DECISION

6.1 Following its consideration of the responses to the Non-Statutory Draft Decision, the Authority proposes to issue a direction to JT under Licence Condition 34.1(c) to re-introduce the two products as withdrawn. These services will be required to be maintained for a period of at least 3 years, with prices increased by no more than Jersey RPI per annum.

6.2 Any other changes to wholesale products and services will be subject to Licence Condition 36 and the CICRA Information Notice – Wholesale Access Statement of Requirements (CICRA 19/39)¹⁶.

¹⁶ <https://www.cicra.gg/cases/2019/t1476gj-wholesale-access-statement-of-requirements/t1476gj-wholesale-access-statement-of-requirements-information-notice/>

7. NEXT STEPS

7.1 The Authority will now progress to its Statutory Initial Notice, following the process outlined in the Law. This will give notice to JT of the regulatory function which the Authority intends to exercise.