



WHOLESALE BROADBAND SERVICES – 50 AND 100 MBPS

T1453J

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

Jersey Competition Regulatory Authority

Document No: CICRA 19/50

Date: 4 October 2019

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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 re-introduce certain wholesale broadband products.

1.2 The Authority is proposing to make this Direction in order to re-introduce those products that have resulted in a restriction in a market for the provision of telecommunication services in Jersey, in line with Licence Condition 34.1(c).

1.3 This Initial Notice sets out the Direction the Authority intends to make. 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 conclusions which the Authority has reached, having taken full account of information gathered for consultations:

- CICRA 19/08 – Wholesale Broadband Service – 50 and 100 Mbps (25 February 2019)²
- CICRA 19/25 – Wholesale Broadband Service – 50 and 100 Mbps (29 May 2019)³, and
- CICRA 19/49 – Wholesale Broadband Services – 50 and 100 Mbps (4 October 2019).

2.2 The document is structured as follows:

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| Section 3 | Outlines the background and legislative basis for the Direction |
| Section 4 | Wholesale Broadband Services – 50 and 100 Mbps |
| Section 5 | Sets out the Initial Notice |
| Section 6 | Sets out the next steps |

¹ The Jersey Competition Regulatory Authority (JCRA) and Guernsey Competition and Regulatory Authority (GCRA) coordinate 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/2019/t1453gj-50-and-100mbps-broadband-access/t1453gj-50-and-100mbps-broadband-access-call-for-information/>

³ <https://www.cicra.gg/cases/2019/t1453gj-50-and-100mbps-broadband-access/50-and-100-mbps-broadband-access-draft-decision/>

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 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. 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.

3.3 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.

3.4 JT (Jersey) Limited holds a Class III telecommunications licence in Jersey. The latest version of this licence was issued on 30 June 2017⁷.

3.5 Licence Condition 34 (**LC34**) refers to ‘Fair Competition’ and states:

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| 34.1 | <i>The Licensee shall:</i> <i>(a) Not abuse any position of Significant Market Power and/or established position in any telecommunications market</i> <i>(b) Not engage in any practice that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and</i> |
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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).

⁷ <https://www.cicra.gg/licences-in-issue/jt-jersey-ltd/>

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| | <p><i>maintenance of Licensed Telecommunication Systems or the provision of Telecommunications Services; and</i></p> <p><i>(c) 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 Telecommunication Systems or the provision of Telecommunication Services.</i></p> |
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3.6 Licence Condition 33 (LC33) refers to ‘Price Regulated Services’, which states:

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| 33.2 | <p><i>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:</i></p> <p><i>(a) Provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunication Services</i></p> <p><i>(b) ...</i></p> |
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Government Policy

3.7 In January 2018, the Government of Jersey published its telecoms strategy⁸ 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 Plan⁹ 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 include:

- As a priority, assess JT’s current fibre wholesale offer in light of policy objectives to promote effective retail competitions; and
- As appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services.

⁸ <https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=3377>

⁹ <https://www.gov.je/Industry/TelecomsStrategy/Pages/JerseyTelecomsStrategyActionPlan.aspx>

3.9 The Authority considers that the proposed Direction supports the published policy of the Government of Jersey and the supporting action items.

4. WHOLESALE BROADBAND SERVICES – 50 AND 100 MBPS

Background

4.1 On 24 November 2016, JT published its intention to upgrade its entry level broadband service to 100 Mbps Down / 10 Mbps Up (the '**100 Mbps service**'). On 16 February 2018, JT issued its Wholesale Broadband Roadmap, which included a plan to replace the 100 Mbps / 10 Mbps product (the '**250 Mbps service**') with a 250 Mbps / 50 Mbps product in 2018. JT went on to confirm that this would take place in May 2018, but that the wholesale price for the entry level product would remain unchanged.

4.2 On 9 November 2018, JT published an LC33 notification of an intended wholesale price change, increasing the price of the 250 Mbps service with effect from 28 December 2018 from £17.84 to £19.45, an increase of 9%.

4.3 On 25 February 2019, the Authority issued a Call for Information on the reintroduction of the 50 and 100 Mbps services (CICRA 19/08). This was followed by a non-statutory Draft Decision on 29 May 2019 (CICRA 19/25) and non-statutory Final Decision on CICRA 19/49.

Fair Competition

JERSEY WHOLESALE BROADBAND MARKET

4.4 In January 2019, the Authority found that the appropriate wholesale market definition in Jersey is: *'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'*.¹⁰

¹⁰ CICRA 19/01 – Market Review and SMP Finding

4.5 Based on this market definition, the Authority found that JT has a market share of 88% of subscriber lines. This market share is well above the 50% at which a position of SMP is presumed. The Authority therefore concluded that JT has SMP on the market.

JT WHOLESALE ROADMAP

4.6 JT's products have continued to change during its fibre rollout project, with an uplift in minimum speeds in 2017 and another in 2018, and further changes programmed over the next few years. It is not apparent that JT provided any economic rationale for the decision to withdraw the lower speed products, rather this is a business strategy over time to move Jersey consumers onto higher speeds, with wholesale prices continuing to rise.

4.7 The decision to withdraw lower specification products has been taken despite demands from JT's wholesale customers that these products remain in place. In particular, one of JT's wholesale customers, Sure, were seeking to offer a range of products from 50 Mbps to 1 Gbps, and to be able to define its own speed, contention and quality of service to prioritise voice calls. Longer term, JT's wholesale customers have expressed a clear demand for bitstream, which is also under consideration by the Authority.

BROADBAND RETAIL MARKET

4.8 For the retail broadband market, JT have a market share by number of subscriptions of 59.5%, with Sure having 32.5% and Homenet 8.3%¹¹ of the relevant market.

4.9 Both wholesale customers are seeking differentiated retail products based on speed and support the availability of higher speeds. They are seeking the ability to continue to compete based on speeds for which they believe there is demand from Jersey consumers, such as 50 and 100 Mbps, which complement the higher speeds for customers who consider this to be more important.

4.10 Wholesale customers believe that they are now being forced to provide broadband speeds in excess of what its customers actually use and/or require. JT has indicated that it believes that services should be differentiated on the basis of add-ons. However its customers do not agree, arguing that competition is based on price, and that price differentiation is driven by speed.

¹¹ CICRA 2018 Statistics

EFFECT ON COMPETITION

- 4.11 The Authority maintains that the withdrawal of the 50 and 100 Mbps products when combined with the increase in wholesale price by JT in 2018 has resulted in an adverse effect on competition in the Jersey broadband market in Jersey. These actions, the Authority considers, have limited the ability of other operators to compete with JT through the provision of differentiated retail products.
- 4.12 Taking the submissions to the Call for Information into account, and following its own further investigation, the Authority remains of the view that, in the absence of the introduction of Bitstream Services, the ability of other operators to compete in the broadband market in Jersey has been compromised by the withdrawal of the lower specification services by JT. This in turn has impacted on the differentiated retail products available to consumers in Jersey, reducing the choice available on the basis of speed and price.
- 4.13 Accordingly, the Authority intends to issue JT with a Direction under Licence Condition 34.1 to reintroduce the lower specification, entry level products as described below.

Price Control

- 4.14 On 30 January 2019, the Authority issued a Notice of Final Decision on 'Broadband Market – Market Review (CICRA 19/03). This confirmed the findings set out in its Final Decision – Broadband Market – Market Review and SMP Finding (CICRA 19/01). This assessment found that JT has Significant Market Power on the market defined as: *Wholesale access to the Internet at a fixed location using an access network based on fibre or cable using the 4G and ultimately 5G wireless access network via a fixed device in the whole Bailiwick of Jersey.* The Authority can therefore determine maximum charges that JT may charge for services within this market.
- 4.15 JT's wholesale customers maintain that an appropriate wholesale pricing is vital. If the difference between slowest and fastest speeds is minimal, other operators are unable to compete by providing cheaper, lower speed products.

Direction

- 4.16 For the reasons set out above, the Authority has decided to direct JT that the wholesale prices to be charged for the 50 Mbps and 100 Mbps services will be £16.23 and £17.84 respectively, which were

the prices at the time the products were withdrawn. These prices may be increased on an annual basis by Jersey RPI only. This price control will remain in place for three years from the date of the Direction.

4.17 In the event that JT introduce a bitstream service, and if supported by its wholesale customers, JT may apply to the Authority for this Direction to be removed.

5. INITIAL NOTICE

5.1 The reason for this Direction is that the Authority is of the view that the withdrawal of lower specification broadband services has had an adverse effect on competition in the broadband market in Jersey and should be re-introduced on the following terms, conditions and charges.

5.2 The reason for this Direction is that the Authority remains of the view that, in line with its duties under the Law, these services are required to promote competition and to ensure that services are accessible to and affordable by Jersey consumers.

5.3 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.

5.4 The Authority intends to make the following Direction on 5 November 2019.

DIRECTION

1. Within 2 months of this Direction, the Authority requires JT to re-introduce the 50 and 100 Mbps services.
2. The technical specification of these services should be the same as at provided before they were withdrawn in 2018.
3. The price for these services to £16.23 and £17.84 respectively, which were the prices at the time the products were withdrawn.
4. These services shall remain in place for a period no less than 3 years.

5.5 Written representations in respect of this exercise of regulatory function may be made by 4 November 2019. 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 4 November 2019 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 5 November 2019. At such time as any statutory final decision takes effect, it becomes binding on all parties.