



# WHOLESALE ACCESS: BITSTREAM T1452J

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**FINAL DECISION (Non Statutory)**

**Jersey Competition Regulatory Authority**

**Document No: CICRA 19/64**

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# 1. EXECUTIVE SUMMARY

1.1 The Jersey Competition Regulatory Authority (the **Authority**)<sup>1</sup> is issuing this Final Decision closing the non-statutory consultation process on the proposal to issue a Direction to JT (Jersey) Limited (**JT**) to provide certain wholesale access products to Other Licenced Operators (**OLO**) in Jersey.

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 to provide certain network access – Bitstream Access. The Authority will direct the terms, conditions and charges on which the service shall be provided.

# 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 Bitstream Access – Call for Information<sup>2</sup> of 25 February 2019, and non-statutory Bitstream Access – Draft Decision<sup>3</sup> of 2 October 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

# 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 practicable<sup>4</sup>.

3.2 The Law contains a number of duties imposed on the Authority<sup>5</sup>, including the requirement to perform its functions in such a manner as to protect and further the short-term and long-term

<sup>1</sup> 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.

<sup>2</sup> <https://www.cicra.gg/cases/2019/t1452gj-bitstream-access/t1452gj-bitstream-access-call-for-information/>

<sup>3</sup> <https://www.cicra.gg/cases/2019/t1452gj-bitstream-access/t1452gj-bitstream-access-draft-decision/>

<sup>4</sup> Telecommunications (Jersey) Law 2002, Article 7 – ‘Duties of the Minister and Authority’

<sup>5</sup> Telecommunications (Jersey) Law 2002, Article 7(a) – (f)

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 services<sup>6</sup>.

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

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| (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>  |
| (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>   |
| (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> |
| (5) | <i>The Licensee shall comply with any direction the JCRA may make from time to time under this Condition.</i>   |

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<sup>6</sup> Telecommunications (Jersey) Law 2002, Article 7(3).

# Government Telecoms Policy

## JERSEY

3.7 In January 2018, the Government of Jersey published its telecoms strategy<sup>7</sup> 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 Plan<sup>8</sup> 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 *'as appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services'*.

## 4. DRAFT DECISION AND RESPONSES

4.1 The Draft Decision<sup>9</sup> of the Authority issued on 2 October 2019 was:

- (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.

## Responses Received

### SURE

4.2 A response was received from Sure on 21 October (see Annex A) in support of the Authority's stance on this issue, and expressing its belief that bitstream will bring material benefits to Jersey's retail broadband services. The main points in the response are summarised below.

4.3 Sure believes that speed is a key differentiator for broadband customers. Sure and Homenet together represent 40% of the retail broadband market and are best placed to know what their retail customers want. Sure believe that 50Mbps is appropriate as a minimum speed for Jersey consumers. With bitstream, OLOs will be able to provide Jersey broadband customers with the lower speeds that they actually want and need.

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

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

<sup>9</sup> <https://www.cicra.gg/cases/2018/t1407gj-mobile-backhaul-market/backhaul-services-for-wireless-service-providers-draft-decision/>

4.4 Sure state that JT have disengaged from progressing the ‘reasonable request’ submitted by Sure for bitstream access, and excluded Sure from pricing discussions. Sure believes that it is JT’s strategy to delay the development of wholesale services that might impact JT’s own retail revenues.

4.5 Sure is not against the use of the Statement of Requirement process being introduced by the Authority (see CICRA 19/39<sup>10</sup>), however its formal request for bitstream was submitted before the introduction of this process. Sure states that JT’s equipment supports bitstream and it should be for JT to propose how it believes it can best be achieved on its network.

## AIRTEL

4.6 A response was received from Sure on 21 August (see Annex B) in support of the Draft Decision as an important step in bringing parity and true competition in wireless broadband. Airtel has been considering entering this segment, and as a direct consequence of this decision will be working on a suitable business case.

## JT

4.7 A response was received from JT on 18 October (see Annex C), which states that, subject to final confirmation from the JCRA on the technical description of the product and engagement with OLOs on any changes that the JCRA may wish to make, the product could be launched within six months. This commitment being subject to priority and engineering works schedules planned for 2020 and the outcome of the JCRA’s regulatory work on the re-introduction of slower broadband speeds into the market.

4.8 However, JT states that until a decision is made on the re-introduction of lower speed products, it does not see any benefit in working on a bitstream product. In its opinion, it would be wasteful to focus time and resources on developing such a product if OLOs have no intention of purchasing it. However, once a final decision is made on lower speed products, JT will work with the JCRA to assess resources and prioritise bitstream accordingly.

4.9 JT states that it has provided the JCRA with its FTTH (fibre to the home) cost model and is working in good faith on discussions around the inputs and metrics of the model. JT believes that the final price point should be based on actual costs and as stated in the Call for Information should allow the recovery of investment costs, sufficient margin to make a reasonable return, and allow consumers access to an affordable broadband service. JT states that it remains committed to working with the JCRA to agree a position on pricing that meets these criteria.

## Consideration

4.10 The Authority has considered in full the responses to the Draft Decision which have summarised above and attached in full to this Final Decision.

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<sup>10</sup> <https://www.cicra.gg/cases/2019/t1476gj-wholesale-access-statement-of-requirements/t1476gj-wholesale-access-statement-of-requirements-information-notice/>

4.11 The Authority notes JT's comments about the regulatory action to re-instate certain wholesale access products into the Jersey market (see T1453GJ – 50 and 100Mbps Wholesale Access<sup>11</sup>). An Initial Notice has been issued on this case stating the Authority's intention to direct JT. The Direction, as drafted, also includes confirmation that, in the event that JT introduces a bitstream service and if supported by its wholesale customers, JT may apply to the Authority for the Direction to be removed. There is therefore no reason for the introduction of bitstream to be delayed until after this Direction has been made.

4.12 It is surprising that JT states that it would be unable to make the product available for a further six months, given that the product definition has been agreed with JT's wholesale customers. Given the clear demand from OLOs for the service and attempts to engage with JT, no reason has been given by JT not to have already concluded negotiations with OLOs for an agreement in line with Licence Condition 36.

4.13 There has been further correspondence with JT since March 2019 on the appropriate price for bitstream which has continued since the closing date for comments on the Draft Decision. Given its own analysis, the Authority has not accepted the price proposals made by JT and has therefore decided to direct under Licence Condition 36 at an interim price of £27.90. This price will be subject to review in 2020.

## 5. FINAL DECISION

5.1 For the reasons set out in this document, the Authority now intends to issue an Initial Notice of its intention to direct JT under Condition 36 of its Jersey Licence directing it to provide bitstream access, as defined in the technical specification agreed with OLOs at a price of £27.90 per port per month. The Authority is of the opinion that it should be possible for the services to be provided within three months of the issue of the Direction.

## 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 of the regulatory function which the Authority intends to exercise.

## ANNEXES

- Responses to Draft Decision from Airtel, JT and Sure

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<sup>11</sup> <https://www.cicra.gg/cases/2019/t1453gj-50-and-100mbps-broadband-access/>