



# WHOLESALE ACCESS: BITSTREAM T1452J

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

**Jersey Competition Regulatory Authority**

**Document No: CICRA 19/65**

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# 1. EXECUTIVE SUMMARY

1.1 The Jersey Competition Regulatory Authority (the **Authority**)<sup>1</sup> is issuing this Initial Notice of its intention to exercise a specified regulatory function to direct JT (Jersey) Limited (**JT**) to provide certain network access – Bitstream Access, in line with Licence Condition 36.

1.2 This Initial Notice sets out the direction of the Authority. In due course, the Authority may issue a Final Notice or a fresh Initial Notice if responses are received, following the process outlined in Article 11 of the *Telecommunications (Jersey) Law 2002* (the **Law**).

# 2. STRUCTURE OF THIS DOCUMENT

2.1 This document sets out the Direction which the Authority intends to make, having taken full account of information gathered for 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. The conclusion of this consultation process can be found in the non-statutory Final Decision (CICRA 19/64).

2.2 The document is structured as follows:

Section 3	Outlines the background and legislative basis for this Decision
Section 4	Contains the reasons for the decision to issue a Direction.
Section 5	Sets out the Statutory Notice of a Decision
Section 6	Sets out the next steps

# 3. LEGISLATIVE AND LICENSING BACKGROUND

3.1 Telecommunication services are regulated in Jersey by way of the Telecommunications (Jersey) Law 2002 (the **Law**). The primary duty of the Authority with such regulation is to ensure that telecommunications services are provided both within Jersey and between Jersey and the rest of 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 interests of users within Jersey and perform them by promoting competition among those engaged in commercial activities connected with telecommunications in Jersey.

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

<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)

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

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

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| 36.1 | <i>The Licensee shall, to the extent requested by another OLO, negotiate with that OLO with a view to concluding an agreement (or an amendment to an existing agreement) for Network Access.</i>  |
| 36.2 | <i>Where an OLO reasonably requests in writing Network Access, the Licensee shall provide that Network Access. The Licensee shall also provide such Network Access as the JCRA may from time to time direct.</i>  |
| 36.3 | <i>The provision of Network Access shall occur as soon as reasonably practicable and shall be provided on fair and reasonable terms, conditions and charges and on such terms, conditions and charges as the JCRA may from time to time direct.</i>   |
| 36.4 | <i>Where the Licensee acquires information from another OLO before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Licensee shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party for whom such information could provide a competitive advantage. This does not apply to the passing of information to the JCRA where the JCRA requires that information in order to carry out its functions.</i> |
| 36.5 | <i>The Licensee shall comply with any direction the JCRA may make from time to time under this Condition.</i>   |

## States of Jersey Policy

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

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

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

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. BITSTREAM

4.1 Under the terms of Licence Condition 36, JT is required to negotiate with an OLO with a view to concluding an agreement for such network access.

4.2 From the information provided by JT and its wholesale customers, it appears that an agreement has been reached on the technical specification for a bitstream service in Jersey. This technical specification was provided to CICRA as Appendix B to the Call for Information, and dated 6 March 2019 (See Confidential Annex A). However, commercial negotiations have not concluded an appropriate price for this service. Discussions between the Authority and JT to support these negotiations on an appropriate price for this service have also been unsuccessful.

4.3 The Authority has therefore decided that the wholesale price for the service should be £27.90 pending a full review of wholesale broadband pricing. This review is programmed for 2020.

4.4 Given the technical specification has been agreed and further discussions with JT, the Authority is of the view that the six months originally suggested in response to the Call for information should no longer be required, and a timescale of no later than three months should be achievable.

## 5. INITIAL NOTICE

5.1 The Authority is of the view that, as commercial negotiations between JT and Other Licensed Operators in Jersey have not been successful, it should issue a Direction to JT under Licence Condition 36 to provide bitstream to its wholesale customers. Such a Direction would also be in line with government policy that JT should offer fibre wholesale products to allow for differentiated retail services.

5.2 Before exercising a regulatory function, the Authority is required to give ‘Initial Notice’. This Initial Notice gives notice that the Authority intends to make the following Direction to JT in relation to the provision of bitstream.

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

5.3 The Authority intends to make the following Direction on or about 6 January 2020.

#### **DIRECTION**

1. At the earliest reasonably practical date after this issue of this Direction, and in any event no later than three months from the date of the Direction, JT shall provide bitstream services to Other Licensed Operators.
2. This shall be provided in accordance with the technical specification agreed with the Other Licensed Operators (as provided to the Authority in response to its Call for Information and dated 6 March 2019), unless otherwise agreed with Other Licensed Operators.
3. JT shall be entitled to charge a maximum price of **£27.90** per port per month for such service, unless otherwise approved by the Authority.

5.4 Written representations in respect of this exercise of regulatory function may be made by 12:00 23 December 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 are received before 23 December 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 6 January. At such time as any statutory final decision takes effect, it becomes binding on all parties.

## ANNEXES

- Confidential Annex: Technical Specification, March 2019