



WHOLESALE ACCESS: BITSTREAM T1452J

FINAL NOTICE OF A DIRECTION TO JT (JERSEY) LIMITED

Jersey Competition Regulatory Authority

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CONTENTS

| | |
|---|---|
| 1. Executive Summary | 3 |
| 2. Structure of this document..... | 3 |
| 3. Legislative and Licensing Background..... | 3 |
| States of Jersey Policy..... | 4 |
| 4. Bitstream | 5 |
| 5. Responses to the Initial Notice | 5 |
| Responses | 5 |
| Airtel | 5 |
| Newtel..... | 6 |
| Sure..... | 6 |
| CICRA Consideration | 7 |
| 6. JT Wholesale Product Announcement – 6 January 2020 | 7 |
| 7. Final Notice and Direction | 8 |

1. EXECUTIVE SUMMARY

1.1 The Jersey Competition Regulatory Authority (the **Authority**)¹ is issuing this Final Notice 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. This Final Notice sets out the direction of the Authority.

2. STRUCTURE OF THIS DOCUMENT

2.1 This document sets out the Direction of the Authority, having taken full account of information gathered for Bitstream Access – Call for Information² of 25 February 2019, non-statutory Bitstream Access – Draft Decision³ of 2 October 2019, Initial Notice of 19 November 2019⁴, and the responses to those documents.

2.2 The document is structured as follows:

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| 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 |

3. LEGISLATIVE AND LICENSING BACKGROUND

3.1 Telecommunication services are regulated in Jersey by way of the Telecommunications (Jersey) Law 2002 (the **Law**). This provides that the primary duty of the Authority 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 practicable⁵.

3.2 The Law contains a number of other duties imposed on the Authority⁶, 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 services.

¹ 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.

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

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

⁴ <https://www.cicra.gg/cases/2019/t1452gj-bitstream-access/t1452gj-bitstream-access-initial-notice/>

⁵ Telecommunications (Jersey) Law 2002, Article 7(1)

⁶ Telecommunications (Jersey) Law 2002, Article 7 – ‘Duties of the Minister and Authority’

3.3 Articles 16(2) and (3) of the Law provide that the Authority has the power to give a direction in respect of anything to which the licence relates, and the licensee may be required to comply with any such direction. 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 (JT) holds a Class III telecommunications licence in Jersey. The latest version of this licence was issued on 30 June 2017⁷.

3.5 Licence Condition 36 refers to ‘Network Access’, and 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

3.6 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 basis, and that wholesale access seekers get access to wholesale products, which allow competition based on differentiated retail services.

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

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

3.7 This is supported by an Action Plan⁹ which identifies specific actions for CICRA, including 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 network access.

4.2 From the information provided by JT and its wholesale customers, it appears that an agreement was reached on the technical specification for a bitstream service in Jersey in early 2019. This technical specification was provided to CICRA as Appendix B to the Call for Information, and dated 6 March 2019 (**Version 1.01**). However, commercial negotiations did not conclude an appropriate price for this service. Discussions between the Authority and JT to support these negotiations on an appropriate price for this service were also unsuccessful. Having reviewed information provided by JT, the Authority has decided that the wholesale price for the service should be £27.90. This price to be reviewed as part of a full review of wholesale broadband pricing programmed for 2020.

4.3 As discussions between JT and Other Licensed Operators in Jersey had not been successful, on 19 November 2019, the Authority issued an Initial Notice of 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. RESPONSES TO THE INITIAL NOTICE

5.1 A deadline for responses to the proposed direction was given as 23 December 2019. Three representations were received which have been considered by the Authority before giving this Final Notice.

Responses

AIRTEL

5.2 Airtel provided a late response on 24 December 2019, which welcomed the Initial Notice, and further stating:

One observation we have at this stage is the price set for such a service £27.90 per port per month is very high input cost. The initial business case being working on by Airtel becomes profitable at a

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

price under £20.00. We note that CICRA are planning to work on this in 2020 which is a welcome move. The price will be for all services on the line/port.

NEWTEL

5.3 Newtel responded to the Initial Notice by email on 5 December 2019, stating:

Just to confirm we are happy with your recommendation which is all inclusive and for the avoidance of doubt includes connection to the customers premise so no need for separate line rental.

SURE

5.4 Sure provided a response on 23 December 2019. This is attached in full at Annex A. In summary, Sure state:

It is evident that there has been some confusion (outside of Sure) in relation to the technical specification of the Bitstream service that Sure scoped and JT agreed to in March 2019. This scope was set as a result of our formal Network Access request to JT. However, because of the misunderstanding on JT's part, along with JT allowing itself to be influenced by another ISP, to the exclusion of Sure, there has been a clear deviation on JT's part from the scope that Sure defined and which JT had agreed to work to. We only became aware of this significant variation in November 2019 (some 8 months later), at a similar time to us finding out that JT had assured the JCRA that it had not deviated from the scope, resulting in the JCRA seemingly (but understandably) assuming that it was Sure that had chosen to change its scope. For the absolute avoidance of doubt, Sure has made no changes to the specification it agreed with JT in March 2019.

This deviation has resulted in a situation where the JCRA acted in good faith and believed that it has aligned itself with the agreed specification from March 2019, in the full belief that this is what JT has adhered to within its November 2019 proposal. It is therefore important for us to reassert exactly what the agreed scope was, how JT has now deviated from it, and the resulting implications, were Sure to find any potential for accepting JT's preferred outcome.

5.5 Sure go on to explain its request and how it believes the scope has changed. In its request for bitstream, Sure claim that they requested only

- Bitstream: core network specific changes to allow an OLO to control its customers' broadband speeds and contention ratios. Bitstream usually includes QoS/CoS control, but JT assures us that it prioritises voice traffic (above that of data), so direct control by an OLO should not be necessary at this stage).

5.6 The following two elements were deemed to be 'out of scope' as already provided by Wholesale Line Rental (**WLR**):

- Access Connectivity: the physical means of connectivity over which broadband services (including Bitstream) and calls can be delivered
- Calls: the ability to make and receive calls, using a fixed line number

5.7 Sure claim that a proposal made by JT in November 2019 included both the 'Bitstream' and 'Access Connectivity' elements, which would mean that Bitstream could not operate in conjunction with WLR. By default, it would also exclude any facility to make or receive calls. JT advised Sure that calls could be made available as an option, but has not yet proposed a price.

5.8 Sure propose two alternative solutions:

(1) JT provide a proposed wholesale price for the currently excluded 'calls' facility, which should then be considered by the JCRA, resulting in a commercially viable total price (for all three Sure defined elements). This would be deemed to be an update of Sure's original network access request.

(2) JT provide a price for a 'Bitstream only' service, excluding Access Connectivity and Calls which would be provided through WLR. The JCRA should then assess that proposal.

CICRA Consideration

5.9 These responses have been taken into consideration by the Authority, along with subsequent action taken by JT which is described further below.

6. JT WHOLESALE PRODUCT ANNOUNCEMENT – 6 JANUARY 2020

6.1 Whilst the Authority was considering the responses to the Initial Notice, JT announced the launch of a 1 Gbps Bitstream Product, to be introduced on 23 March 2020. JT subsequently confirmed to the Authority that the technical specification has not changed from Version 1.01. The timing and technical specification are therefore in line with the Direction proposed by the Authority in the Initial Notice.

6.2 The notification of a new product from JT clarifies the issue of whether wholesale line rental is required in addition to the bitstream product, addressing the issues raised in the responses from Sure and Newtel above.

6.3 The price for this product will be £24.50 per port per month. A line rental service is required in addition to the wholesale bitstream service, currently priced at £11.10, giving a total price of £35.60. This is higher than the price of £27.90 proposed in the Initial Notice.

6.4 Given the responses to the Initial Notice from Airtel, Newtel and Sure, and its own cost analysis, the Authority does not agree to this higher price and is therefore directing JT to introduce the new product at £27.90 (to include the line rental requirement). This price to be reviewed as part of a full review of wholesale broadband pricing programmed for 2020.

6.5 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 two months should be achievable.

7. FINAL NOTICE AND DIRECTION

7.1 The Authority has considered responses to its Initial Notice, and makes the following Direction to JT:

DIRECTION

1. At the earliest reasonably practical date after this issue of this Direction, and in any event no later than two 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. This maximum price to include any line rental service requirement.