



Sure's response to the JCRA's Initial Notice of a Proposed Direction to JT (Jersey) Limited re Wholesale Access: Bitstream

Sure (Jersey) Limited ('Sure') is submitting this response to the JCRA's document: 'Wholesale Access: Bitstream' (Document No: 19/65), which was published by the JCRA on the 19th November 2019. We are happy for this response to be made publicly available.

Summary

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. The scope was set as a result of our formal Network Access request to JT¹. 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 had agreed with JT in March 2019.**

This deviation by JT 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.

The scope

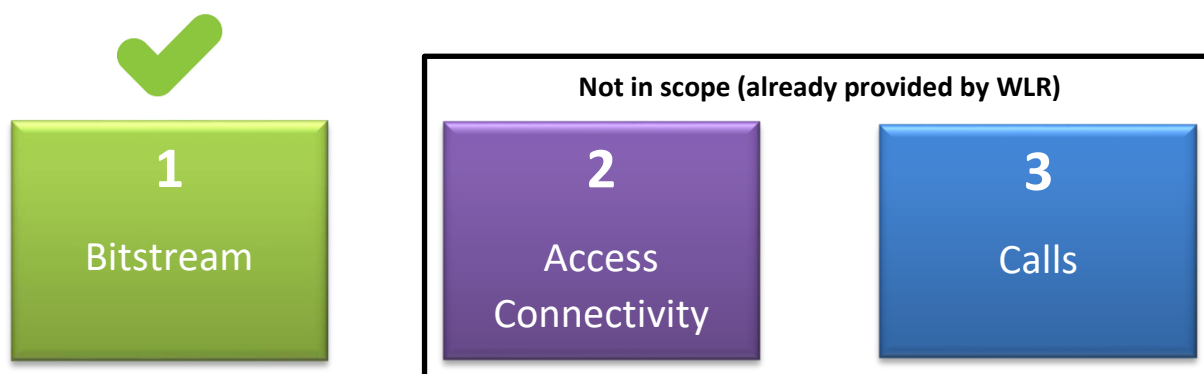
Three elements come into play in aiding the understanding of Sure's formal Network Access request for Bitstream and what JT has instead sought to provide. These are set out below:



¹ The regulatory framework for which is set out in Condition 36 of JT's Telecommunications Licence (<https://www.cicra.gg/media/597629/jt-licence-class-iii-july-2017-public.pdf>).

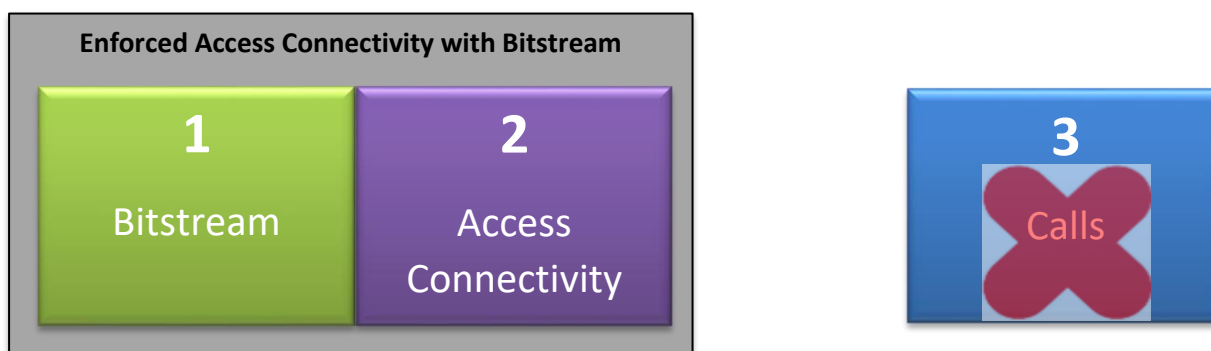
² Bitstream usually includes QoS/Cos control, but JT assures us that it prioritises voice traffic (above that of data), so direct control by an OLO should not be necessary at this stage.

Agreed March 2019 specification:



The above shows that the March 2019 agreed scope is specific to Bitstream. There is no relevance to WLR, nor its elements of access connectivity (e.g. a fixed line) or associated calls. These have always been outside of the scope.

JT's November 2019 proposal:



JT's clear deviation from the agreed specification (as can be seen from the graphics above), proposes an enforced Access Connectivity element to be taken with Bitstream, which also means that Bitstream could not operate in conjunction with WLR. By default, it also excludes any facility to make or receive calls. JT has stated that calls could be made available as an option, but it has not provided a proposed price for this key facility on a customer's fixed line service.

Sure's considerations of the JCRA's Initial Notice

The JCRA refers to Condition 36 of JT's Licence. Clause 1 of that Condition states that it 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'.

Sure's formal request for Bitstream very much falls under the classification of Network Access and JT is therefore required to negotiate with us, as we are the requestor of that service. Unfortunately, JT has excluded Sure from negotiations, with two examples of evidence of this being that:

- a) In a call between Sure and JT on 28th November 2019, **JT acknowledged that it had deviated from the March 2019 scope** and said that its reason for doing so was that it had been influenced by

another OLO. Sure always welcomes industry discussion in relation to the development of new wholesale services, but not to our exclusion (especially when we were the originator of the Network Access request) and not when the extent of the resulting specification change is so material as to completely change the scope of our request (as can be seen above).

- b) JT chose not to engage in any form of negotiation with Sure in relation to the proposed wholesale charge for the service. Instead, it negotiated solely with the JCRA, with Sure only becoming aware of the JT's proposed outcome in a presentation provided to us by JT on 8th November 2019 – some eight months after the March 2019 scope was agreed, and fifteen months after our Network Access request for Bitstream had been submitted to JT³.

It is important to highlight that JT's proposed price relates to its November 2019 proposal. As per the graphics above, this is not aligned with the agreed March 2019 Bitstream specification. We are hopeful that JT acted in good faith during the intervening period and that its November 2019 proposal is simply the outcome of a material misunderstanding on its part. If it had believed that its proposal was in line with the agreed March specification then this would explain why, when questioned by the JCRA, JT would have asserted that its proposal was compliant with that specification. The JCRA would naturally take JT's stated confirmation of compliance as its starting point for its regulatory considerations, leading to the JCRA's intended price (for what it understandably believed to be the specification agreed between JT and Sure) being set at its stated £27.90. Whilst this is lower than JT's commercially proposed (confidential) price, both are based on the combination of Bitstream and Access Connectivity. JT confirmed to us during our 28th November call that its price excluded any calls facility. This further confirms that JT had misunderstood the scope, as the exclusion of calls is only relevant and readily achievable in jurisdictions where Fixed Number Portability exists (which it does not in Jersey – although Sure remains an advocate for its introduction). It is not known whether the JCRA's £27.90 price is intended to include or exclude the required calling facility, but again, any confusion on the JCRA's part is entirely understandable, given JT's misinterpretation – whether intentional or not – of the agreed March 2019 specification.

The potential way forward

Sure is keen to focus on the positives of the progress that has been made to date. We are hopeful that the graphics set out in this document appropriately eradicate any confusion that had developed, outside of Sure. We believe that the option of one of two meaningful outcomes is still entirely achievable from today's position and we set these out below:

1. The JCRA's Initial Notice (CICRA 19/65) refers to Bitstream being '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**' [emphasis added].

Whilst JT's November 2019 proposal differs considerably from the agreed March 2019 specification, we are amenable to considering whether it might provide a workable solution, if:

- JT provides a proposed wholesale price for the currently excluded 'Calls' facility;
- The JCRA considers the price in the context of its own currently proposed total service price (which it may or may not consider was already meant to include calls)
- That total price (of Bitstream, Access Connectivity and Calls) is considered commercially viable (for OLOs and in the case of JT Retail, for the avoidance of margin squeeze).

Were that to provide a workable solution, the current mismatch in scope could be resolved simply by JT and Sure agreeing an amended specification (as is allowed for, based on the bolded text

³ 20/08/18 and reasserted in our follow-up submission of 03/12/18.

above), such that this would then be deemed to be an update of Sure's formal Network Access request.

Alternatively,

2. JT should propose a price for a Bitstream only service (i.e. as per the March 2019 specification – thereby excluding Access Connectivity and Calls – these continuing to be provided as part of WLR). The JCRA should then assess that proposal and see how the single Bitstream element compares in the context of the JCRA's proposed £27.90 price, covering Bitstream and Access Connectivity (and possibly calls – the JCRA to confirm).

To aid progress along the path to an agreed outcome, JT agreed (during our call on 28th November) to consider its proposed pricing for the two options, i.e. a price for adding calls (to JT's November 2019 proposal) and a price for Bitstream only (in line with the March 2019 specification). They intended to complete this by 6th December, but have since responded⁴ that their Board is reviewing its position. We had been hopeful that we could have included such pricing proposals in this submission and have offered our initial views as a result, but we are happy to prioritise our consideration of that pricing as soon as it becomes available.

There is one other pricing aspect that we would like to comment on. We very much support the JCRA's proposal that the maximum price of £27.90 (per month) would apply unless otherwise approved by it. This pricing certainty is important, especially considering JT's track record of applying price increases for its wholesale broadband services (of which Bitstream would form a subset).

Conclusion

There should be a clear sense that the development of Bitstream is now nearing completion. The work required to realign the technical scope should not need to present material delays to this process. We look forward to working constructively with all relevant stakeholders to best achieve that completion in a timely manner, with a commercial launch hopefully occurring no later than three months after that⁵.

Sure (Jersey) Limited

23rd December 2019

⁴ Via email to Sure on 12th December 2019.

⁵ In line with the JCRA's proposed Direction.