



Case T-011

Wholesale broadband access services: price review

Non-statutory Draft Decision (Consultation)

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1 Overview

- 1.1 Wholesale broadband access services are used by Other Licensed Operators (**OLOs**) to provide broadband to their retail customers over the JT fibre to the home (**FTTH**) network. In this price review the Jersey Competition Regulatory Authority (**the Authority**), supported by Frontier Economics¹, examines wholesale broadband access services in Jersey and proposes a price control on JT, set on a forward-looking basis.
- 1.2 This Consultation provides an overview of the services in scope of the price review, the approach taken, proposed prices and a discussion of the impact of the proposals. For pricing, two different approaches have been considered and under both approaches the proposed prices are lower than the current price. A reduction that is forecast to further reduce over time.
- 1.3 The Authority welcomes views on the analysis and proposals set out in this Consultation and the accompanying Frontier Economics' report "*Wholesale broadband access services in Jersey: Price review proposals*" (**Frontier report**). The Frontier report sets out the detail behind the proposals contained in this price review and is cross referenced within this Consultation.

¹ Frontier Economics is a microeconomics consultancy with extensive experience in supporting price reviews and carrying out fixed network modelling across multiple jurisdictions.

2 Introduction

2.1 In 2018 the Authority undertook a review of the broadband market² and found the appropriate market definition in Jersey is:

“Wholesale access to the Internet at 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.”

2.2 Given this market definition, the Authority determined:

“JT has Significant Market Power on the market as defined.”

2.3 A price control is a remedy to address this Significant Market Power (**SMP**)³ and the proposed price control set out in this Consultation and Frontier report is consistent with generally accepted principles and applied proportionately to Jersey. It has been set to both:

- promote more effective competition; and
- provide JT, the licensed operator with SMP, the opportunity to recover its efficiently incurred costs plus an appropriate return on investment.

2.4 This Consultation sets out:

- Background (see section 3);
- The appropriate set of wholesale broadband access services (see section 4);
- The appropriate regulatory pricing approach (see section 5);
- The appropriate price for the relevant services (see section 6);
- Impact of the proposals (see section 7); and
- How to respond and next steps (see section 8).

2.5 It includes an Annex which provides an overview of the legal and licensing framework (see Annex 1).

² Case - T1358GJ, Broadband Market - Market Review:

<https://www.jcra.je/cases/2018/t1358gj-broadbandmarket-market-review/>.

³ SMP is generally held to be equivalent to the concept of dominance under the Competition (Jersey) Law 2005.

3 Background

3.1 In undertaking this price review the Authority is following a five-stage process.⁴ This document is a non-statutory Draft Decision. It will be followed by a non-statutory Final Decision and statutory Initial and Final Notices.

3.2 At the start of the review, in July 2020, the Authority held briefing sessions with licensed operators active in the provision of broadband services in Jersey. It also issued a set of data requests to JT to inform the modelling carried out by Frontier Economics, and to OLOs to understand future demand. Subsequently, in October 2020, the Authority issued an Information Note⁵, providing more detail on the approach to this price review.

3.3 Key points of background to note are:

- OLOs currently have access to two sets of wholesale broadband access services both provided using the same network elements:
 - **Wholesale access products.** Wholesale access products have defined speed and quality of service characteristics and see JT manage the broadband service, from the 'last mile' connectivity to the end customer through to the OLO's point of presence. There are currently two standard and two superior wholesale access products available, which deliver download speeds of 500 Mbps and 1 Gbps.
 - **Wholesale bitstream service.** Bitstream is a form of virtual access, whereby OLOs can rent the access link and manage the broadband service, from the 'last mile' connectivity to the end customer through to the OLO's point of presence. It enables OLOs to self-manage their customers' needs in relation to speed, contention and quality of service.
- The Authority has previously undertaken a review of the broadband market and found JT to have SMP.⁶ After this finding, in 2019 the Authority supported the introduction of bitstream access and its pricing; with the price review set out in this Consultation being initiated as an outcome of this Case.⁷ The Authority has also reviewed the withdrawal of 50 and 100 Mbps wholesale access products.⁸

⁴ Channel Islands Competition and Regulatory Authorities (2018), Regulatory Consultation Process: <https://www.jcra.je/media/597815/g1369gj-consultation-regulatory-consultation-process.pdf>

⁵ Information Note - Wholesale Broadband Access Services: Price Review: <https://www.jcra.je/cases/2020/t-011-wholesale-broadband-access-services-price-review/information-note-wholesale-broadband-access-services-price-review/>

⁶ See footnote 2

⁷ Case - T1452GJ, Bitstream Access: <https://www.jcra.je/cases/2019/t1452gj-bitstream-access/>

⁸ Case - T1453GJ, 50 and 100Mbps Broadband Access: <https://www.jcra.je/cases/2019/t1453gj-50-and-100mbps-broadband-access/>.

- The Government’s Telecoms Strategy action plan for Jersey⁹, seeks to promote competition between licensed operators at the retail, rather than network, level and also wishes to encourage competing licensed operators to produce differentiated retail services. Consistent with this, the plan requires the Authority to:

“As appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services.”

3.4 Within this context, this price review covers three key areas which are addressed in turn within this Consultation:

- The appropriate set of wholesale broadband access services;
- The appropriate regulatory pricing approach; and
- The appropriate price for the relevant services.

Further information:

Frontier report, section 1 (Introduction and context)

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

4 The appropriate set of wholesale broadband access services

- 4.1 The proposed scope of the price review is the wholesale bitstream service. This is currently in the market and being used by OLOs.¹⁰ Figure 8 of the Frontier report provides a diagrammatic representation of the network elements associated with the provision of bitstream and no changes to the technical definition of this product are proposed.
- 4.2 Wholesale access products are not included in the scope of the price review as:
- OLO demand is focused on wholesale bitstream services;
 - Bitstream offers greater flexibility to OLOs than wholesale access products; and
 - The flexibility within bitstream better supports the Government objective of encouraging differentiated retail services.
- 4.3 This proposed approach means that the Authority will not set regulated prices for the existing wholesale access products with 500Mb/s and 1 Gb/s download speed. Further, to support the potential for retail differentiation, the Authority is consulting on two different approaches to charging for the bitstream product, a “fixed fee” and “two-part tariff”, see paragraphs 6.5-6.7 and 6.8-6.14 respectively.

Further information:

Frontier report, section 2 (The appropriate set of wholesale broadband products in Jersey)

Consultation questions:

Question 1: Do you agree with the proposed approach to only include the wholesale bitstream service in scope of the price review and to exclude wholesale access products? If you do not agree you should provide all of your analysis and assessment.

¹⁰ The current product is a 1Gbit/s bitstream product which came into effect on 28 July 2020. The Licence Condition 33 notice, dated 15 June 2020 issued before this product launched, notes “*JT will introduce a 1Gbps internet access port that enables the OLO to provide internet access over Ethernet FTTP technologies to end users in Jersey. A line rental service is necessary to avail of the wholesale Bitstream service. The line rental service can be a Wholesale Line Rental (WLR) service from the service provider procuring the Bitstream service or an alternative service provider as long as a landline service is in place in the end-user premises that wishes to procure the Bitstream service.*”

5 The appropriate regulatory pricing approach

5.1 This section is split into two subsections, which cover in turn:

- Cost orientation v ex-ante margin squeeze test (see paragraphs 5.2-5.4); and
- Approach to modelling cost orientated prices (see paragraphs 5.5-5.7).

Cost orientation v ex-ante margin squeeze test

5.2 In principle, there are two approaches to regulating the price of wholesale access service products:

- **Cost orientation.** Under this approach, wholesale prices are set on the basis of the cost of providing the service. It ensures an SMP operator can cover costs that are efficiently incurred and receive an appropriate return on their invested capital.
- **Ex-ante margin squeeze test.** Under this approach, the wholesale price is not regulated directly. However, there is an assessment whether OLOs, as access seekers, can profitably replicate the retail broadband offers of the SMP operator, given the level of wholesale prices charged by the SMP operator. In other words, this approach tests whether the margin between the wholesale and retail price is sufficient for access seekers to compete.

5.3 The proposed approach is to adopt cost oriented wholesale pricing as it is best suited to the Jersey market, which has:

- A fully deployed FTTH network with predictable costs and demand;
- Government policy that does not seek to encourage network competition; and
- A lack of external price constraints, for example an alternative high-speed broadband network.

5.4 While ex-ante margin squeeze test is not needed going forward, the Authority will continue to have the power under Competition Law to investigate whether JT engages in margin squeeze on an ex-post basis. This will help ensure compliance and provides the Authority with the ability to investigate potential margin squeeze behaviours without a formal ex-ante test.

Further information:

Frontier report, section 3.1 (Cost orientation vs. Margin squeeze test)

Consultation questions:

Question 2: Do you agree with the proposed approach to adopt cost orientated wholesale prices for the price review, rather than use an ex-ante margin squeeze test? If you do not agree you should provide all of your analysis and assessment.

Approach to modelling cost orientated prices

5.5 There are two high level approaches that can be used to develop a cost model:

- **Top-down approach.** This models the existing network of the SMP operator. Under this approach the cost-based price would reflect the actual costs incurred by the SMP operator in building and maintaining that network.
- **Bottom-up approach.** This models the network of a hypothetical operator. This involves forecasting the efficient level of demand, and identifying the specific network assets that would need to be deployed by an operator to service that demand. The objective of this approach is to proxy the “competitive level” of prices in order to send the appropriate “build-or-buy” signals to operators.

5.6 The proposed approach is to adopt a top-down approach to modelling cost oriented prices. In coming to the proposal, the Authority has considered EC recommendations on regulated access to Next Generation Access (NGA) networks (2010) and approaches adopted by other National Regulatory Authorities. These considerations suggest a top-down approach is best suited to the Jersey market, which has:

- Government policy that does not seek to encourage network competition;
- A fully deployed FTTH network with predictable costs and demand; and
- A relatively small size which means a top-down model is more proportionate.

5.7 Within the top-down approach, adjustments are proposed to ensure JT recovers an efficient level of costs, this includes adjustments for efficiency and to capture changes in asset valuation through time. These and other proposed assumptions are set out in more detail under the specification of the cost model below.

Further information:

Frontier report, section 3.2 (Implementing cost orientation)

Consultation questions:

Question 3: Do you agree with the proposed approach to modelling cost orientated prices using a top-down approach? If you do not agree you should provide all of your analysis and assessment.

6 The appropriate price for the relevant services

6.1 This section is split into four subsections, which cover in turn:

- Specification of the cost model (see paragraphs 6.2-6.4);
- Proposed pricing under a fixed fee approach (see paragraphs 6.5-6.7);
- Proposed pricing under a two-part tariff approach (see paragraphs 6.8-6.14); and
- Proposed approach to other charges (see paragraphs 6.15-6.17).

Specification of the cost model

6.2 The purpose of the cost model is to estimate cost-based monthly rental prices for JT’s bitstream service for the years 2021 to 2025, under both the fixed fee and two-part tariff pricing approaches, as set out below.

6.3 The proposed approach takes into account international best practice in the development of cost models, including the recommended costing approach outlined in the EC’s 2013 Costing Recommendation. While drawing on this precedent, the approach has been tailored to the specific market situation in Jersey and applied proportionately. The table below outlines the key proposed model scope and model methodological choices and further detail on this is provided in the Frontier report.

Table 1: Overview of proposed model scope and approach to model methodological choices

Area	Element	Proposed approach
Model scope	Service scope	Wholesale broadband (bitstream), and all other JT services provided using the same network / cost elements (fixed voice, leased lines, retail and mobile services)
	Network scope	The existing JT network as of June 2020 (does not reflect the additional cost of serving new-build premises, or demand from these premises)
	Costs considered	Network capital costs (e.g. FTTH access network, buildings), network operating costs (e.g. repair and maintenance, service platform costs) and wholesaling costs (e.g. JT wholesaling team). Does not include potential cost of replacing assets from High Risk Vendors (HRVs)
	Time period	2021-2025 - consistent with the EC recommendations and provides longer-term regulatory certainty, to support both investment in the fibre network and competition in the retail market
Model methodological choices	Price base	Nominal (cost trends are inclusive of expected inflation)
	Model type and cost standard	Top-down, Fully Allocated Costs (FAC)
	Asset valuation method	Current Cost Accounting (CCA)

Capital cost annualisation approach	Non-replicable assets (e.g. ducts): Regulatory asset base-type (RAB) approach, with holding gain adjustment Replicable assets (e.g. fibre cables): tilted annuity reflecting asset price and demand trends
Efficiency adjustments	Opex trends reflect inflation and efficiency gains

6.4 The Authority has also reviewed JT’s cost of capital (**WACC**) for this review. The cost of capital is the return JT, as the SMP operator, is allowed to make in order to adequately compensate its investors, but without including monopoly profits. The use of WACC in the context of JT is consistent with previous precedent and the proposed WACC for this review has been set at 8.7%.

Further information:

Frontier report, section 4.2.1 (Specification of the cost model), Annex A (Costing model overview), Annex B (High-level assessment of JT’s cost of capital)

Consultation questions:

Question 4: Do you agree with the proposed specification of the cost model, including in particular:

- model scope;
- model methodological choices; and
- approach to JT’s WACC

If not, what alternative would you propose and why?

Proposed pricing under a fixed fee approach

6.5 Under the fixed fee pricing structure, the bitstream rental price is a single monthly charge per broadband subscriber in each year over 2021-2025 that does not vary by bandwidth.

6.6 Currently, bitstream is a product that is combined with a Wholesale Line Rental (**WLR**) product. It is not proposed to change this structure as part of this review, either under a fixed fee or two-part tariff approach. Consistent with this, the proposed bitstream price remains an additional charge on top of the WLR charge, set in such a way that the combined WLR and bitstream charges reflect the unit cost of providing wholesale broadband services.

6.7 The proposed unit cost for the bitstream service is set out in Table 2 below. It is lower than the current price and further reduces over time, reflecting two overarching trends:

- A reduction in annual costs for wholesale broadband services, driven by a reduction in annual capital costs for replicable assets over time, as well as a forecast reduction in operating costs; and

- An expected increase in the number of broadband subscribers, which means costs are recovered over a larger base of customers.

Table 2: Estimated wholesale rental cost for JT’s bitstream service under a fixed fee: 2021-2025

Element	Unit	2021	2022	2023	2024	2025
WLR	£ per subscriber per month	11.10	11.10	11.10	11.10	11.10
Bitstream	£ per subscriber per month	∞	∞	∞	∞	∞
Total charge	£ per subscriber per month	∞	∞	∞	∞	∞

Further information:

Frontier report, section 4.2.2 (Proposed prices under the “Fixed fee” structure), Annex A (Costing model overview)

Consultation questions:

Question 5: Do you agree with the proposed fixed fee approach set out in this Consultation and Frontier report? If not, what alternative would you propose and why?

Proposed pricing under a two-part tariff approach

6.8 In order to incentivise greater differentiation in retail services, an alternative two-part tariff approach has been developed for consultation. Under this approach the bitstream price consists of two charges:

- **A fixed fee.** This is uniform across all customers and does not vary by speed or by data usage; and
- **A variable fee.** This is based on data usage during busy hours.¹¹

6.9 Under this pricing approach, lower speeds would imply lower data usage during the busy hour period and would result in a lower charge overall. Therefore OLOs would pay a lower wholesale charge if they offer lower speed retail products and a higher charge if they offer higher speed products. This supports the potential for retail differentiation.

6.10 However, this approach has disadvantages, in particular:

- It is more complex to implement, both in the cost modelling and ongoing operation. For example, assumptions have to be made on future customer demand to estimate the costs. OLOs would further need to consider how to ‘translate’ the wholesale

¹¹ Busy hour usage is when the network is most heavily used. It is proposed to use busy hour usage rather than data usage overall because busy hour usage is the key driver of JT’s network costs and because it varies by speed.

charging structure (which is based on busy hour usage) into retail prices for different speed products; and

- The risk of under- or over-recovery of JT’s costs is greater than under a fixed fee approach, which is in part driven by uncertainty over customer demand, in particular the profile across different speeds. Albeit, this can be mitigated by considering evidence from both OLOs and other jurisdictions which have adopted a similar approach.

6.11 In contrast, the fixed fee approach discussed above is consistent with the current approach and therefore straightforward to implement. As the wholesale charge does not vary by customer, it minimises the risks of over- or under-recovery of JT’s costs and it is simpler for OLOs to “translate” the wholesale charge into a retail price.

6.12 The Authority welcomes views on the relative merits of both approaches and whether the additional complexity and risks arising from a two-part tariff approach are proportionate to its potential benefits.

6.13 The proposed charges for the bitstream service under a two-part tariff approach are set out in Table 3 below. In 2021 the estimated fixed fee is £3</subscriber/month, with a busy hour usage charge of £3</busy hour Mbps. As noted above, these are not fixed wholesale prices, but ones that will differ by bandwidth. OLOs will face lower wholesale charges if they offer lower speed retail products and a higher charge if they offer higher speed products. This will be driven by the busy hour usage charge.

Table 3: Estimated wholesale rental cost for JT’s bitstream service under a two-part tariff: 2021-2025

Element	Unit	2021	2022	2023	2024	2025
WLR	£ per subscriber per month	11.10	11.10	11.10	11.10	11.10
Additional Bitstream charge - fixed fee	£ per subscriber per month	3<	3<	3<	3<	3<
Total fixed fee (inclusive of WLR)	£ per subscriber per month	3<	3<	3<	3<	3<
Bitstream charge - busy hour usage charge	£/BH Mbps in the month	3<	3<	3<	3<	3<

6.14 The estimated prices are lower than the current price and this further reduces over time. The decline in both fees reflects the same trends driving the reduction in the bitstream

price under the fixed fee pricing approach and the reductions in the busy hour usage charge are driven by the expected growth in busy hour usage for each subscriber over time.

Further information:

Frontier report, section 4.1 (Potential pricing structures), section 4.2.3 (Proposed prices under the “two-part tariff” structure), Annex A (Costing model overview)

Consultation questions:

Question 6: What are your views on the relative merits of a two-part tariff approach over a fixed fee approach? If your view is that a two-part tariff approach is appropriate, do you agree with the proposed approach set out in this Consultation and Frontier report? If not, what alternative would you propose and why?

Proposed approach to other charges

6.15 In addition to the monthly rental price for the bitstream product, OLOs also face a range of other charges, which can be split into:

- **One-off charges** - these include connection charges, customer migration charges and change of speed charges; and
- **CP Broadband Interconnection charges** - these are a type of leased line, which connect JT’s network to OLOs Point of Presence.

6.16 It is not proposed to change the approach or level of one-off charges in this price review. The Authority has reviewed some of these charges as part of its casework in the past¹² and in respect of bitstream, some of these charges, such as the charges for a change in speed, no longer apply (as the speed is under the control of the OLO).

6.17 CP Broadband interconnection charges are set in line with prices of JT’s wholesale leased line products. Leased lines are currently subject to the Business Connectivity Market Review (BCMR) being carried out by the Authority.¹³ The remedies proposed in the BCMR aim to increase the level of competition in the provision of leased lines and are expected to result in lower prices for leased lines. The Authority recognises the full suite of remedies within the BCMR may take time to fully implement. Therefore as safeguard to protect OLOs from potential price increases in the transition period, it is proposed to set safeguard caps for these charges, with the caps set at the current level of prices.

¹² For example customer migration charges were considered under Case - T589/10 - JT ADSL Margin Squeeze 2010:

<https://www.jcra.ie/cases/2010/t58910-jt-adsl-margin-squeeze-2010/>

¹³ Case - T-012 – Business Connectivity Market Review:

<https://www.jcra.ie/cases/2019/t-012-business-connectivity-market-review/>

Further information:

Frontier report, section 5 (Other charges)

Consultation questions:

Question 7: Do you agree with the proposed approach to other charges? If you do not agree you should provide all of your analysis and assessment.

7 Impact of the proposals

- 7.1 The benefits of high quality broadband access are well established and several econometric studies have identified positive correlation between fibre broadband availability and GDP growth, with wider positive externalities such as employment and company creation.¹⁴
- 7.2 Access to higher speed fibre services increases these positive effects and future demand for broadband services will be driven by the growing requirements of applications provided over the Internet, for example increased home working, video-communication and streaming of media and entertainment.
- 7.3 Consistent with the Government's Telecoms Strategy action plan for Jersey, the Authority's aim is to establish a wholesale environment which enables OLOs to offer differentiated retail products. This will support a vibrant retail market, which itself will help enable high broadband uptake. This will help boost the social and economic benefits of broadband and help realise the economic potential arising from the digitalisation of the economy and society.
- 7.4 The analysis set out in this Consultation and Frontier report, suggest the current wholesale price is too high. This will have a negative impact on retail prices and subsequently broadband take up.
- 7.5 If the proposed reductions in the price that JT can charge OLOs for wholesale broadband services in this Consultation are confirmed, households and businesses across Jersey should receive better value broadband services by the end of this review. This is because the Authority expects these price cuts to generate more competition between licensed operators and lead to cheaper retail prices which will benefit consumers and will also help reduce local inflation. The changes may also lead to both better quality and a greater range of services, for example a wide range of speeds being offered.
- 7.6 The control has been calibrated in order to incentivise JT to continue to maintain and upgrade the FTTH network where it is efficient to do so, as JT will be able to recover its efficiently incurred costs plus an appropriate return on investment. This said, with the proposed price reductions there will be a reduction in revenue and this may have a wider impact on JT and its business.
- 7.7 For OLOs, the Authority expects the review to incentivise efficient investment, in both their infrastructure and product range to enable them to make best use of wholesale broadband access services.

¹⁴ For example, Briglauer & Gugler (2019) estimate the incremental economic benefits of ultra-fast fibre technologies and basic broadband in a panel dataset of EU27 member states for the period 2003-2015. They identify a small but significant effect of FTTH broadband adoption over and above the effects of basic broadband on GDP.

Consultation questions:

Question 7: What are your views on the impact of the proposals set out in this Consultation? Are there any other impacts the Authority should take into account? You should provide all of your analysis and assessment.

8 How to respond and next steps

- 8.1 The Authority invites written views and comments on the issues and questions raised in this document, which are listed together at the end of each section and all together in the box below. All responses must be received by 5pm on 24 March 2021 and should be clearly marked: “Wholesale broadband access services: price review”. The Authority’s practice is to publish responses to consultations on its website and it should be clearly marked if any part of a response is held to be commercially confidential.
- 8.2 Responses can be submitted by email to info@jcra.je or alternatively in writing to:
- Jersey Competition and Regulatory Authority
2nd Floor Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF
- 8.3 Once this Consultation has closed, the Authority will review all the responses. It will then consider which of the pricing approach proposals, either the fixed fee or two-part tariff approach, should be introduced. Within this it will also consider the scope of any modelling changes required to take into account stakeholder feedback.
- 8.4 The final form of the proposals will be formally published in due course in the form of an Initial Notice. This will be issued alongside a Final Decision, which will provide an outline of the responses to the Consultation and how the Authority has taken them into account in its’ decision making.

Consultation questions

Question 1: Do you agree with the proposed approach to only include the wholesale bitstream service in scope of the price review and to exclude wholesale access products? If you do not agree you should provide all of your analysis and assessment.

Question 2: Do you agree with the proposed approach to adopt cost orientated wholesale prices for the price review, rather than use an ex-ante margin squeeze test? If you do not agree you should provide all of your analysis and assessment.

Question 3: Do you agree with the proposed approach to modelling cost orientated prices using a top down approach? If you do not agree you should provide all of your analysis and assessment.

Question 4: Do you agree with the proposed specification of the cost model, including in particular:

- model scope;
- model methodological choices; and
- approach to JT’s WACC

If not, what alternative would you propose and why?

Question 5: Do you agree with the proposed fixed fee approach set out in this Consultation and Frontier report? If not, what alternative would you propose and why?

Question 6: What are your views on the relative merits of a two-part tariff approach over a fixed fee approach? If your view is that a two-part tariff approach is appropriate, do you agree with the proposed approach set out in this Consultation and Frontier report? If not, what alternative would you propose and why?

Question 7: Do you agree with the proposed approach to other charges? If you do not agree you should provide all of your analysis and assessment.

Question 8: What are your views on the impact of the proposals set out in this Consultation? Are there any other impacts the Authority should take into account? You should provide all of your analysis and assessment.

Annex 1: Legal and licensing framework

A4.1 This annex sets out the legal background and provides an overview of the licensing framework that relates to wholesale broadband access services.

Legal background

A4.2 The Telecommunications (Jersey) Law 2002¹⁵ (the Telecoms Law) provides that the Authority may include in telecommunications licences such conditions as it considers necessary or desirable for reasons including but not limited to those set out in article 16 of the Telecoms Law.

A4.3 Part 3 of the Telecoms Law sets out the duties of the Minister and the Authority, and obliges them to protect and further the interests of telecommunications users within Jersey by, wherever appropriate, promoting competition.¹⁶ Part 3 also sets out general objectives the Authority should take into account, including the need to promote efficiency, economy and effectiveness, and to further the economic interests of Jersey.

A4.4 The Telecoms Law¹⁷ specifically provides that the Authority may include in any licence, conditions that are:

- Intended to prevent or reduce anti-competitive behaviour¹⁸;
- Relate to, or imposing requirements about, competition in relation to telecommunications services, telecommunication systems, apparatus and telecommunication equipment.¹⁹

Licensing framework

A4.5 Part 2 of the Telecoms Law establishes the requirement for a telecoms operator to hold a licence, and Part 5 sets out the powers which the Authority has to grant a licence. There are four classes of telecommunications licence in Jersey. A Class III licence is specifically for applicants which have Significant Market Power (SMP). The Class III licence includes a Part which addresses conditions applicable to dominant operators.²⁰

A4.6 The provisions which are applicable to dominant operators include (but are not limited to) measures addressing the availability and associated terms of OLO access to

¹⁵ Telecommunications (Jersey) Law 2002, revised edition 06.288, 1 January 2013

¹⁶ Part 3, Article 7 (2) (a)

¹⁷ The definition of a position of SMP / dominance and the abuse of a position of SMP / dominance is not explicit in the Telecoms Law. However, the Competition (Jersey) Law 2005 sets out the States' approach to defining abuse of a dominant position and anti-competitive practice.

¹⁸ Part 5, Article 16 (1) (i)

¹⁹ Part 5, Article 16 (2) (4) (a)

²⁰ Part IV of the Class III licence

networks and services²¹; the requirement not to show undue preference or to exercise unfair discrimination²²; the requirement not to unfairly cross subsidise²³, supported by accounting processes to demonstrate compliance; regulation of prices, and transparency around pricing and wholesale product offerings, including the publication of appropriate Reference Offers.²⁴

- A4.7 The Class III licence also includes a Part which directly obliges the licensee not to engage in any practice which has the object or likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of telecommunications networks and services.²⁵

²¹ Condition 25, Class III licence

²² Condition 31, Class III licence

²³ Condition 30, Class III licence

²⁴ Condition 33, Class III licence

²⁵ Condition 34, Class III licence