



Telecommunications (Jersey) Law 2002

Case T-011: Wholesale broadband access services: price review

Initial Notice of proposed direction to JT (Jersey) Limited

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Contents

1.	Executive summary	1
2.	Background	2
	Statutory background	2
	The licence granted to JT	3
	The price review process	3
3.	Framework for the direction	5
4.	The direction	8
5.	Next steps	10

1. Executive summary

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**), is issuing this Initial Notice of its intention to exercise a specified regulatory function to determine the prices that JT (Jersey) Ltd (**JT**) charges for its wholesale bitstream service¹, which is a wholesale broadband access service. This marks the next stage of the wholesale broadband access services: price review.²
- 1.2 Wholesale broadband access services³ are used by Other Licensed Operators (**OLOs**) to provide broadband to their retail customers over the JT fibre to the premises (**FTTP**) network.
- 1.3 This document summarises the process the Authority has undertaken so far, and sets out the direction that the Authority proposes to issue to JT under the Class III licence issued to JT by the Authority under Article 14(1) of Telecommunications (Jersey) Law 2002 (the **Telecoms Law**). The proposed prices are set out in the direction included in section 4 of this document.
- 1.4 This Initial Notice sets out the intention of the Authority to exercise a specified regulatory function. 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 Telecoms Law.

¹ The definition which the Authority has adopted is set out in paragraph 3.9 of this Initial Notice

² See: <https://www.jcra.je/cases/2020/t-011-wholesale-broadband-access-services-price-review/>

³ This term refers to the set of products used for this purpose, wholesale bitstream is a wholesale broadband access service.

2. Background

2.1 This section is split into three subsections, which cover in turn:

- (a) Statutory background (see paragraphs 2.2 to 2.7);
- (b) The licence granted to JT (see paragraphs 2.8 to 2.11); and
- (c) The price review process (see paragraphs 2.12 to 2.14).

Statutory background

2.2 The Telecoms Law provides that no person may run a telecommunications system without a licence and establishes the regime under which telecoms operators may be licensed by the Authority, the basis of such licensing and the various powers and duties of the Authority and the Minister.

2.3 Article 7 of the Telecoms Law sets out the duties of the Minister and the Authority, and in particular obliges them, in the performance of their functions, to:

- (a) protect and further the interests of telecommunications users within Jersey by, wherever appropriate, promoting competition amongst telecoms operators;⁴
- (b) promote efficiency, economy and effectiveness in commercial activities connected with telecommunications;⁵ and
- (c) further the economic interests of Jersey.⁶

2.4 Article 15(1) of the Telecoms Law states that a licence will be “subject to such conditions as are contained in it” and Article 16 sets out what such conditions may relate to or impose conditions in relation to and various powers of the Authority.

2.5 Article 16 specifically provides that the Authority may include in any licence, conditions that are:

- (a) intended to prevent or reduce anti-competitive behaviour⁷; or
- (b) relate to, or imposing requirements about, competition in relation to telecommunications services, telecommunication systems, apparatus and telecommunication equipment.⁸

2.6 Article 16(2) provides that conditions can, amongst other things, require the licensee:

- (a) *“to refer for determination by the Authority and specified question ... and to act on such a determination”*: and
- (b) *“to comply with any direction given by the Authority in respect of anything to which the licence relates”*.

⁴ Article 7(2)(a)

⁵ Article 7(2)(b)

⁶ Article 7(2)(c)

⁷ Article 16(1)(i)

⁸ Part 5, Article 16 (2) (4) (a)

2.7 Article 16 confers powers on the Authority, amongst other things, to make such determinations, pursuant to Article 16(3)(b), and to issue such directions, pursuant to Article 16(3)(c). Exercising either of those powers is a “specified regulatory function” for the purposes of Article 11, which prescribes the process which the Authority must follow in order to exercising such function.

The licence granted to JT

2.8 On 6 July 2021, the Authority, exercising its powers under Article 18 of the Telecoms Law, issued a Class III licence under Article 14.1 of the Telecoms Law, to JT (the **Licence**⁹), which will take effect on 4 August 2021, and which modifies the terms of JT’s existing licence issued on 30 June 2017.

2.9 The Licence contains, in Part IV, certain provisions only applicable to Class III licences¹⁰, which, pursuant to Condition 28.1 apply:

- (a) “where the [Authority] has decided that a Licensee possesses Significant Market Power¹¹ in a relevant market”; and
- (b) the Authority “determine[s] that the provisions of this Part IV shall apply”

2.10 Where the conditions described in paragraph 2.9 are both satisfied in relation to a relevant market, Part IV provides, amongst other things, measures which, in summary:

- (a) under Condition 37.2, entitling the Authority to determine the maximum charges JT may charge for Telecommunications Services in that market; and
- (b) under Conditions 38, requiring JT to compete fairly and to comply with directions of the Authority in that regard.

2.11 Section 3 of this Initial Notice sets out in more detail the basis on which the Authority is relying on Conditions 37.2 and 38 to issue the direction to JT.

The price review process

2.12 The Authority’s approach to consultations was set out in an Information Note in July 2018.¹² The Information Note outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process.

2.13 Under the process there is first a non-statutory process. The non-statutory process consists of a Call for Information, a Draft Decision and a Final Decision. For this price review, the Draft Decision (JCRA 21/01), having taking into account stakeholders’ input, was issued on 27 January 2021. The conclusion of this consultation process can be found in the non-statutory Final Decision (JCRA 21/22) which has been published alongside this Initial Notice. The Final Decision

⁹ Licence in issue (JT (Jersey) Ltd): <https://www.jcra.je/licences-in-issue/jt-jersey-ltd/>

¹⁰ The only Class III licence in issue is the Licence (ie JT’s licence)

¹¹ 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.

¹² Document CICRA 18/29 “Regulatory Consultation Process”
<https://www.jcra.je/media/597858/g1369gj-regulatory-consultation-process-information-note.pdf>

provides an outline of the responses to the Draft Decision and how the Authority has taken them into account in its decision making.

- 2.14 Following the non-statutory process, the Authority also intends to make a decision as to the maximum charges which JT can apply to the wholesale bitstream service, as referred to in paragraph 1.1 above. As noted at paragraph 2.7 and set out more fully in Section 3, this is a specified regulatory function for the purposes of Article 11 of the Telecoms Law and accordingly the Authority has issued this Initial Notice. Further detail on the statutory process is included in Section 5 (Next steps).

3. Framework for the direction

3.1 Condition 37.2 of the Licence provides that:

“The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunication Services within a relevant market in which the Licensee has been found to be dominant. A determination may:

- (a) provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunication Services or any combination of Telecommunication Services;*
- (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.”*

3.2 Additionally Condition 38.1 of the Licence provides that:

“The Licensee shall:

- (a) not abuse any position of Significant Market Power and/or established position in any telecommunications market;*
- (b) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services; and*
- (c) comply with any direction issued by the JCRA for the purpose of preventing any market abuse or any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of Licensed Telecommunication Systems or the provision of Telecommunication Services.”*

3.3 In 2018 the Authority undertook a review of the broadband market¹³ 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.”

3.4 Given this market definition, the Authority determined:

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

3.5 The Authority further, through the wholesale broadband access services price review process, determined that the affected Telecommunication Services are wholesale bitstream services, as defined in paragraph 3.9.

¹³ Case - T1358GJ, Broadband Market - Market Review:
<https://www.jcra.je/cases/2018/t1358gj-broadbandmarket-market-review/>.

- 3.6 Accordingly, the Authority has the power:
- (a) to determine the maximum level of charges which JT can apply to the wholesale bitstream services, including by category or combination and by reference to time periods; and
 - (b) to issue a direction to JT with the purpose of preventing market abuse or any practice or arrangement as referred to in Condition 38(1)(c) in relation to the wholesale bitstream services.
- 3.7 In order to determine the maximum level of charges as referred to in paragraph 3.6(a), and in accordance with good practice, the Authority carried out a price review and the proposed prices set out in the direction have been set consistent with generally accepted principles and applied proportionately to Jersey.
- 3.8 For the purposes of the price review the Authority has been supported by Frontier Economics¹⁴ and for the purposes of setting prices a Excel-based cost model has been developed. The cost model examines wholesale broadband access services in Jersey and calculates the appropriate price for the relevant services, set on a forward-looking basis, with prices set to both:
- (a) promote more effective competition; and
 - (b) provide JT, the licensed operator with significant market power, the opportunity to recover its efficiently incurred costs plus an appropriate return on investment.
- 3.9 The relevant service within scope of the price review has been determined to be the provision of **wholesale bitstream**, the Authority has determined this is:
- “JT’s 1Gbps bitstream product, introduced on 28 July 2020, which provides a 1Gbps internet access port that enables an OLO to provide internet access at different speeds over Ethernet FTTP technologies to end users in Jersey, and any variation to such service agreed with all the OLOs taking such service at the time of the proposed variation”*
- and further determined that a line rental service is necessary for the OLO to avail itself of the wholesale bitstream service.
- 3.10 The Authority has adopted the definition and determinations set out in paragraph 3.9 for the purposes of exercising its powers pursuant to Condition 37.2 of the Licence, as being the “Telecommunications Services” referred to therein and for the purposes of this Initial Notice.
- 3.11 In relation to paragraph 3.9, the JT product which supports wholesale bitstream service is defined such that the Wholesale Line Rental (**WLR**) element can be sourced *“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.”* This means that an OLO can either procure from JT:
- (a) the wholesale bitstream service and WLR; or

¹⁴ Frontier Economics is a microeconomics consultancy with extensive experience in supporting price reviews and carrying out fixed network modelling across multiple jurisdictions.

- (b) in respect of retail customers who access their landline services via another OLO or as a retail product from JT, the wholesale bitstream element as referred to in paragraph 3.9.

3.12 The Authority therefore has determined that:

- (a) in respect of the wholesale bitstream service and WLR procured together from JT, JT's maximum price is set out in the Direction in Section 4; and
- (b) in respect of wholesale bitstream service only, JT's maximum price will be the Maximum Price minus the price of JT's WLR product.

3.13 Further detail on the considerations taken in setting the prices is included in the Final Decision (JCRA 21/22) which has been published alongside this Initial Notice. Accompanying the Final Decision is a Frontier Economics' report (JCRA 21/23) which provides an overview of the cost model and modelling considerations.

4. The direction

4.1 The Authority intends to issue a direction to JT as follows:

DIRECTION

The Jersey Competition Regulatory Authority (**Authority**) has determined that JT (Jersey) Limited (**JT**) has significant market power in 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.

In accordance with its powers under the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) and the provisions of the licence granted to JT under the Telecoms Law and dated 3 August 2021 (**Licence**), the Authority has determined that the provisions of Part IV of the Licence apply as follows.

The term **wholesale bitstream service** means:

JT's 1Gbps bitstream product, introduced on 28 July 2020, which provides a 1Gbps internet access port that enables an Other Licenced Operator (**OLO**) to provide internet access at different speeds over Ethernet FTTP technologies to end users in Jersey and any variation to such service agreed with all the OLOs taking such service at the time of the proposed variation.

Further: a wholesale line rental (**WLR**) service is necessary to for an OLO to avail itself of the wholesale bitstream service.

An OLO can either procure from JT:

- (a) the wholesale bitstream service and WLR; or
- (b) in respect of retail customers who access their landline services via another OLO or as a retail product from JT, the wholesale bitstream service only.

Pursuant to Conditions 37.1 and 38.1 of the Licence and Articles 16(3)(b) and (c) of the Telecoms Law, the Authority makes the following directions:

1. JT shall provide the wholesale bitstream service to OLOs when requested to do so.
2. JT shall be entitled to charge the following maximum price per port per month for wholesale bitstream and WLR unless otherwise approved by the Authority:

Period	Maximum Price
1 October 2021 – 30 September 2022	£27.94
1 October 2022 – 30 September 2023	£26.95
1 October 2023 – 30 September 2024	£26.06
1 October 2024 – 30 September 2025	£25.25
1 October 2025 – 30 September 2026	£24.51

3. In respect of retail customers who access their landline services via another OLO or as a retail product from JT, JT shall be entitled to charge a maximum price per port per month of the then applicable **Maximum Price** minus the then applicable charge for WLR provided by JT.
4. The directions will come into force on 1 October 2021 and end on 30 September 2026.

5. CP Broadband Interconnect Services will have a safeguard cap applied (i.e. no increase in nominal terms) until the Final Notice for remedies for the Business Connectivity Market Review (Case T-012) has been concluded. The relevant charges are set in the “Wholesale Broadband Agreement, issue 4.5”, Schedule 3 charges.

5. Next steps

- 5.1 This Initial Notice is of an intended exercise by the Authority of a specified regulatory function, that is to determine the prices that JT charges for wholesale broadband access services. Written representation to the exercise of this specified regulatory function may be made by e-mail to info@jcra.je on or before 5pm on 6 August 2021.
- 5.2 If representations are received before the deadline regarding the proposed exercise of such function, the Authority will consider them and will decide:
 - (a) not to exercise such function;
 - (b) to issue a new Initial Notice; or
 - (c) to issue a Final Notice confirming the direction to JT.
- 5.3 If no responses are received before such time, the Final Notice effecting such modification will be made on or about 1 September 2021. The direction will take effect on 1 October 2021.