



# Telecommunications (Jersey) Law 2002

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

### Final Notice of proposed direction to JT (Jersey) Limited

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## 1. Executive summary

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**), is issuing this Final Notice to exercise a specified regulatory function, to determine the prices that JT (Jersey) Ltd (**JT**) charges for its wholesale bitstream service<sup>1</sup>, which is a wholesale broadband access service. These services are used by Other Licensed Operators (**OLOs**) to provide broadband to their retail customers over the JT fibre to the premises (**FTTP**) network.
- 1.2 This document is the final stage of the wholesale broadband access services: price review.<sup>2</sup> It sets out the Direction of the Authority, having taken full account of representations received to the Initial Notice (JCRA 21/24).<sup>3</sup> It is structured as follows:
  - (a) Matter contained in the Initial Notice (see section 2);
  - (b) Representations (see section 3); and
  - (c) Final Notice and Direction (see section 4).
- 1.3 Note, in the interest of brevity, this document does not repeat all the background material set out in the Initial Notice, though a high level summary is provided within the “Matters contained in the Initial Notice” section.

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<sup>1</sup> The definition which the Authority has adopted is set out in the Direction of this Final Notice

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

<sup>3</sup> See: <https://www.jcra.je/media/598355/t-011-wholesale-broadband-access-services-price-review-initial-notice.pdf>

## 2. Matters contained in the Initial Notice

- 2.1 Section 2 of the Initial Notice set out the background to the Direction, including an overview of:
- (a) Statutory background – the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) and key relevant Articles and the duties placed on the Authority in the performance of its functions;
  - (b) The licence granted to JT – this contains in Part IV certain provisions only applicable to Class III licences<sup>4</sup>, which enable the Authority to issue the direction to JT, in particular Conditions 37.2 and 38; and
  - (c) The price review process – the non-statutory process that the Authority undertook, culminating in the issuing of the Final Decision (JCRA 21/22)<sup>5</sup> and the accompanying Frontier Economics’ report (JCRA 21/23).<sup>6</sup> The statutory process was also explained.
- 2.2 Section 3 of the Initial Notice set out the framework for the decision. It explained that in 2019 the Authority found JT to have Significant Market Power in the broadband market as defined. Further through the wholesale broadband access services price review process, the Authority determined that the affected Telecommunication Services are wholesale bitstream services. The Initial Notice also explained the role of Wholesale Line Rental (**WLR**) which is required to use wholesale bitstream.
- 2.3 Accordingly, Conditions 37.2 and 38 of the Licence granted to JT, mean that for wholesale bitstream service, the Authority has the power to both determine the level of maximum charges and to issue a direction to JT with the purpose of preventing market abuse or any anticompetitive practice or arrangement.
- 2.4 The Initial Notice, then set out the proposed Direction (Section 4) and set out the next steps, including the submission of representations (Section 5).

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<sup>4</sup> The only Class III licence in issue is JT’s Licence.

<sup>5</sup> See: <https://www.jcra.je/media/598347/t-011-wholesale-broadband-access-services-price-review-final-decision.pdf>

<sup>6</sup> See: <https://www.jcra.je/media/598354/final-decision-frontier-economics-report.pdf>

### 3. Representations

- 3.1 The deadline for representations to the Initial Notice was 6 August 2021. One representation, from Airtel Jersey Limited (**Airtel-Vodafone**) was received, which raised three areas of concern (set out and addressed below).
- 3.2 Article 11(4) of the Telecoms Law requires that the Authority consider any representations to an Initial Notice within the given period and then decide:
- (a) Not to exercise such function;
  - (b) To issue a new Initial Notice; or
  - (c) To issue a Final Notice confirming the Direction.
- 3.3 The Authority has considered each area of concern raised in turn, and for the reasons set out in this section, decided to issue this document as the Final Notice, confirming the Direction.

#### Area of concern 1

- 3.4 Airtel-Vodafone noted that the price for the wholesale bitstream service had increased materially from the price indicated at the non-statutory Draft Decision stage. Airtel-Vodafone submitted that this had a detrimental effect on its business case for entering the fixed broadband market and that the price should be reduced to what Airtel Vodafone would consider to be a more equitable figure.
- 3.5 In response to this area of concern, the Authority notes:
- (a) The focus of the Draft Decision was the methodology used to calculate charges and the proposed prices were not included in the public consultation. Indicative prices were presented to key stakeholders, on a confidential basis, to help inform their Draft Decision responses. Recognising the provisional nature of these estimates, these were clearly communicated as “Indicative prices only / subject to change”.
  - (b) This approach recognised that setting the appropriate price for the relevant services was an iterative process, consistent with the non-statutory and statutory framework the Authority works within. This approach is designed to ensure the Authority can address stakeholder responses appropriately and thoroughly before beginning the statutory process.
  - (c) Therefore, the prices included in the Initial Notice and reconfirmed in this Final Notice, represent the Authority’s view of the price level required to provide JT, the licensed operator with SMP, the opportunity to recover its efficiently incurred costs plus an appropriate return on investment. This is consistent with the adopted cost orientated approach to setting regulated prices.

#### Area of concern 2

- 3.6 Airtel-Vodafone noted that after the Draft Decision, JT had submitted additional figures showing an increase in JT's cost of production. Airtel-Vodafone requested the Authority carry out a thorough audit of JT’s submission to ensure that the proposed prices were justified, and a timeline be provided for the audit. If this audit was to take place after the prices proposed in

the Initial Notice had come into effect and demonstrated that those prices should be reduced, then price reductions should be implemented with retrospective effect.

3.7 In response to this area of concern, the Authority notes:

(a) In response to the Draft Decision JT submitted additional information regarding costs, in particular outlining additional operating cost categories which were not included in the proposed prices calculated for the Draft Decision. This was not an increase in the cost of production per se, but predominantly a cost allocation and reporting issue. In particular, costs which should have been supplied to the Authority ahead of the Draft Decision, had not been supplied.

(b) As set out in the Final Decision:

*“5.23 ... the Authority has engaged extensively with JT to understand the appropriate allocation of operating costs for the purposes of this price review. This represents a continuation of the Authority’s robust approach to ensuring the costs included in the model are appropriate, having undertaken an initial stage of this exercise before proposing the prices in the Draft Decision. It would clearly be inappropriate to take the costs submitted by JT at face value and so the Authority has, supported by Frontier Economics, challenged each element of JT’s submission.”*

This highlights the extensive and thorough process carried out by the Authority ahead of making its Final Decision. Without this work to understand the level and scope of wholesale broadband costs, the Final Decision would not have been made.

(c) That said, this extra process should not have been required and the Authority should have been supplied with all relevant costs as part of the Authority’s initial data requests. Therefore the Final Decision noted:

*“5.27 ... Further follow up work to avoid this scenario happening again will take place after the completion of this price review. The intention is for this to form part of the Authority’s 2022 Business Plan.”*

It is important to clarify that this will not be an audit of wholesale broadband costs, as these costs were extensively audited as part of the process set out above. Instead the focus of the audit will be on JT’s processes and controls with respect to its accounting and cost allocation practices. Given this scope, the Authority is not anticipating any requirement to reopen the price review.

### Area of concern 3

3.8 Airtel-Vodafone asked the Authority to look again at the possibility of separating WLR from wholesale bitstream. Airtel-Vodafone submitted that this would support consumer choice and enable providers to offer services more economically. The representation noted evidence of growing demand for such services, as shown in social media comments submitted to the Authority. It also argued that introducing a standalone wholesale bitstream product (without WLR) would lower costs, as evidenced by the standalone products offered by other operators on Jersey and elsewhere.

3.9 In response to this area of concern, the Authority notes:

- (a) The Final Decision included an extensive discussion of the role of WLR and, consistent with the current product in the market, set out the position that it would be required to use the wholesale bitstream service. That said, the Final Decision acknowledged:

*“5.89 Notwithstanding the response set out above, the Authority notes the concerns raised about WLR and may consider this in more detail in future Business Plans.”*

Separating this issue out from the Price Review will enable it to be looked at across the full range of Telecommunication Services and customer types. For example this includes the impact on voice only customers and legacy products. A further update on this work area will be provided in due course.

- (b) With respect to current services on Jersey offered without WLR, the Authority notes these services are not delivered over JT’s FTTP network and therefore it is not possible to read across the potential cost impact from them. The Authority also notes the points raised on the potential lower costs that could be unlocked from unbundling WLR from wholesale bitstream, though no evidence was supplied to support the assertion of lower prices being offered internationally with unbundling. Nevertheless, future consideration of the role of WLR will take into account international experience and best practice.

## 4. Final Notice and Direction

4.1 The Authority has considered representations to its Initial Notice, and makes the following Direction to JT.

### 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 locations 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 4 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 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 the wholesale bitstream service 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 direction 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.