



Case T-012

Business Connectivity Market Review: Remedies

Non-statutory Final Decision

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1 Executive summary

- 1.1 This document is the Jersey Competition Regulatory Authority (**the Authority**)’s non-statutory Final Decision (**Final Decision**) for remedies in the business connectivity market review (**BCMR**). It follows the non-statutory Draft Decision Consultation on remedies published in February 2022 (**Draft Decision**)¹ and has been issued alongside a statutory Initial Notice (see document JCRA 22/36).
- 1.2 Business connectivity services comprise leased lines that provide dedicated, symmetric transmission capacity between fixed locations either using a wireless technology (e.g. microwave) or a wireline technology (e.g. fibre). They are used by public and private organisations to support private data networks, network monitoring and to support mobile network backhaul.
- 1.3 Remedies are being imposed on JT to address JT’s Significant Market Power (**SMP**) in the business connectivity market. In particular, in the July 2021 Final Decision, the Authority set out the appropriate market definition and concluded that JT had SMP in the wholesale market for leased lines in the whole Bailiwick of Jersey.
- 1.4 The remedies have been tailored to the identified competition problems and their objective is to support competitive outcomes in the wholesale market for on-island leased lines. The approach is consistent with the approach to remedies adopted in the EU, tailored to Jersey market characteristics. The competition problems that have been identified are:
 - **Refusal to supply:** JT could refuse to allow Other Licensed Operators (**OLOs**) access to its network and so foreclose the downstream retail market to competition;
 - **Price and non-price discrimination:** Even if JT were to allow access, it could set price and non-price terms for OLOs that make it hard for those OLOs to compete effectively with JT’s downstream business; and
 - **Excessive pricing:** JT could set a price for wholesale access that is above the competitive level and on which it can earn monopoly rents thereby reducing consumer welfare in the market.
- 1.5 Accompanying this Final Decision and separate Initial Notice document are non-confidential versions of responses to the Draft Decision. In total three responses were received: from Airtel-Vodafone, JT and Sure. An overview of the responses and the Authority analysis undertaken in response to them is provided in this document.
- 1.6 A summary of the key elements of this Final Decision and where further detail on them can be found is set out in Figure 1 overleaf.

¹ The Draft Decision and all other case documents are available at: <https://www.icra.je/cases/2019/t-012-business-connectivity-market-review/>

Figure 1: Overview of the Final Decision

Approach to remedies			
Consistent with the approach adopted in the EU and appropriate to the competition problems likely to arise from the exploitation of SMP and proportionate to the possible impact of that problem.			
Competition issue	Remedies	JT Licence Conditions	Further detail
Refusal to supply	<ul style="list-style-type: none"> • An obligation on JT to provide access to wholesale leased lines. • An obligation on JT of transparency, including a requirement for JT to: <ul style="list-style-type: none"> ○ provide appropriate documentation² for wholesale on-island leased line products; ○ publish a standard Service Level Agreement (SLA), including Key Performance Indicators (KPIs); ○ publish prices and non-price terms and conditions for wholesale leased lines; ○ publish changes to price and non-price terms and conditions for wholesale on-island leased lines one month before they come into effect; ○ notify OLOs and the Authority three months in advance of the launch of a new wholesale product (or removal of an existing product or service); and ○ Implement a refined approach to reference offers for leased lines. 	Licence Conditions 30, 32, 37, 40	Section 4
Price and non-price discrimination	<ul style="list-style-type: none"> • An obligation on JT of non-discrimination, including a migration service. • An obligation to provide relevant accounting information. 	Licence Conditions 32, 33, 35	Section 5
Excessive pricing	<ul style="list-style-type: none"> • An obligation of cost accounting on JT. • A retail minus price control for JT, with the minus component set at 31%. 	Licence Conditions 32, 33, 34, 37	Section 6

1.7 The Authority will maintain dark fibre as a potential future regulatory option, if JT is not effectively meeting its obligations consistent with market requirements and the Authority’s ongoing objectives.

1.8 The Authority’s approach re-enforces and refines the suite of BCMR remedies in the wholesale leased lines market. This package of remedies is intended to facilitate greater competition which in turn should deliver increased choice and lower end user prices, with related benefits for the wider Jersey economy. The approach represents a balanced set of remedies, providing policy consistency and regulatory certainty, and the remedies can be given effect in a timely manner. The approach also ensures JT is able to recover its incurred costs and is incentivised to continue to maintain and invest in its network.

² For example, SLAs, KPIs, technical specifications, commercial and other information pertaining to ordering and provisioning process and pricing; and, other documentation necessary to help ensure effective transparency in the supply of wholesale leased lines.

1.9 While this Final Decision is the final step of the non-statutory process, before carrying out certain regulatory functions, the appropriate Jersey statutory process must be followed. A decision to implement remedies on an undertaking is the exercise of a specified regulatory function pursuant to the Telecommunications (Jersey) Law 2002. Therefore the statutory process, in the form of an Initial Notice, has been issued alongside this Final Decision and this marks the next and final step in the market review.

2 Introduction

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

- Background;
- The market review process; and
- Structure of this document.

Background

2.2 In October 2019 the Authority published a Call for Information for the BCMR. This was followed by its first non-statutory Draft Decision on 26 October 2020 (**October 2020 Draft Decision**). In light of the responses received from the October 2020 Draft Decision, in February 2021, the Authority set out in an Information Note that it would divide the work on the BCMR into two stages:

- Stage 1 would address market definition and SMP; and
- Stage 2 would address remedies to be imposed on any undertaking that has a position of SMP.

2.3 Stage 1 of the process was completed with the issue of the July 2021 Final Decision. This set out the market definition and concluded that JT had SMP in the wholesale market for leased lines in the whole Bailiwick of Jersey.

2.4 With respect to stage 2, in November 2021 the Authority carried out structured engagement with stakeholders on the proposals set out in the October 2020 Draft Decision. In light of the structured engagement and wider considerations, including the Authority's prioritisation principles, the Authority issued refined proposals for remedies in the Draft Decision published in February 2022. The conclusion of this consultation process is presented in this document, the non-statutory Final Decision.

The market review process

2.5 The Authority's approach to consultations was set out in an Information Note in July 2018.³ The Information Note outlines the process to be undertaken before carrying out certain regulatory functions in accordance with the relevant statutory process.

2.6 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. As set out in the Background section, the Authority has carried out the non-statutory process for both Stage 1 and Stage 2 of the BCMR. This document represents the conclusion of this consultation process for remedies, the non-statutory Final Decision.

2.7 Before carrying out certain regulatory functions, following the non-statutory process the appropriate Jersey statutory process is followed. A decision to impose remedies on an undertaking is the exercise of a specified regulatory function pursuant to the

³<https://www.icra.je/media/597858/g1369gj-regulatory-consultation-process-information-note.pdf>

Telecommunications (Jersey) Law 2002. Therefore the statutory process, in the form of an Initial Notice, has to be followed and this has been issued alongside this Final Decision.

- 2.8 As set out in the Initial Notice, written representations to the exercise of this specified regulatory function may be made. If representations are received regarding the proposed exercise of such function, the Authority will consider them and will decide:
- not to exercise such function;
 - to issue a new Initial Notice; or
 - to issue a Final Notice confirming the direction.

Structure of this document

- 2.9 This document broadly follows the structure of the Draft Decision⁴ and is organised as follows:
- Approach to remedies (section 3);
 - Remedies to address refusal to supply (section 4);
 - Remedies to address price and non-price discrimination (section 5);
 - Remedies to address excessive pricing (section 6); and
 - Final Decision (section 7).
- 2.10 Within sections 3 to 6 a consistent approach is adopted to the different sub-sections, where each sub-section refers to an element of the Draft Decision, for example the approach to the recalibrated retail minus price control. The structure is as follows:
- Draft Decision proposals;
 - Draft Decision responses;
 - Authority analysis; and
 - Authority conclusion.

Section 7 then brings together the conclusions of sections 3 to 6 in the form of a Final Decision.

- 2.11 Note, this document does not repeat all the reasoning for proposals set out in the Draft Decision, though a high level summary is provided within each section and cross-reference is made to additional analysis and information where relevant.

⁴ The Draft Decision included a Legal, licensing and process framework annex, this material has been incorporated into the Initial Notice published alongside this document and has not been duplicated in this document.

3 The approach to remedies

- 3.1 This section refers to section 3 of the Draft Decision where the Authority set out the regulatory framework applicable to the BCMR. This stated that the EU's Electronic Communications Code ('EECC')⁵ would be used to help inform, and underpin, the Authority's approach to remedies.

Draft Decision proposals

- 3.2 The Draft Decision (section 3) noted that the Authority considered that the general approach to remedies used in the EU should be adapted for use in Jersey. The Draft Decision also noted that the Authority is not limited in the remedies that it can impose such that it cannot consider other remedies, if those would be effective and proportionate; and, such an approach is in accord with the licence conditions which can be applied to dominant operators in Jersey.
- 3.3 Question 1 of the Draft Decision sought respondents' views on the Authority's approach to remedies.

Draft Decision responses

- 3.4 JT were in agreement with the broad approach to remedies, while Sure and Airtel-Vodafone offered 'qualified' agreement and support of the Authority's approach.
- 3.5 Sure stated that, in applying the framework of the EECC, the Authority had not taken full account of regulatory best practice and the so-called 'ladder of investment'.
- 3.6 Airtel-Vodafone sought to draw the Authority's attention to specific elements of guidelines accompanying the EECC framework, indicating that the Authority's proposals may not follow those of other EU Regulators with respect to fibre backhaul. Also under this question, Airtel-Vodafone provided an assessment of each set of remedies, and these points are addressed under the relevant sections below.

Authority analysis

- 3.7 The Authority notes firstly that there is broad consensus on the proposed approach to remedies.
- 3.8 Sure's comments are made primarily in the context of dark fibre access, which the Authority has thoroughly and extensively analysed in the Draft Decision, in particular in section 5. The Authority has also taken account of best practice and considered alternative options; the proposals set out in the Draft Decision and confirmed in the Final Decision represent a balanced, appropriate and proportionate remedy.
- 3.9 In terms of the ladder of investment concept, the Draft Decision states that the Authority considers that the general approach to remedies used in the EU should be adapted for use in Jersey, reflecting both the legislative, policy and licensing framework on Jersey. When coupled with the recalibrated retail minus price control, the Authority considers there is increased scope and incentive for OLOs to invest in access and services and to compete with JT (and one

⁵ DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code. This amends and replaces Articles 9-13a of Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, 7 March 2002 (as amended) (Access Directive).

another); and, the proposed remedy be given effect in a timely manner, i.e., from September 2022.

- 3.10 Airtel-Vodafone's reference to the EEC guidelines appears related to availability and accessibility (of mobile backhaul). In that regard, the Authority's proposals follow regulatory best practice; the proposals ensure that JT, the SMP operator, has an obligation to supply wholesale leased lines services on non-discriminatory terms and conditions. Moreover, the Authority's additional remedies further support wholesale access and address comments made in the Airtel-Vodafone response with regard to *"potential problems in terms of lack of coverage and refusal of access to bottleneck facilities."*⁶
- 3.11 Airtel-Vodafone's comments in the context of 5G deployment and mobile backhaul also refer to a BEREC strategy report (2021-2025)⁷, Airtel-Vodafone appear to indicate that 5G is wholly dependent upon the availability of fibre (backhaul). However, the Authority notes that the BEREC reference used by Airtel-Vodafone is incomplete, BEREC's reference to fibre availability appears to be framed within the context of conditions for investing in fibre networks and ensuring there is sustainable competition in the market.⁸
- 3.12 Further, while it is clearly a matter for operators to determine their own network deployment and configuration, the Authority assumes that some operators may choose a 'mix' of backhaul solutions depending on a number of different factors, and notes that 5G is not necessarily incompatible with a microwave backhaul solution. This would seem to be borne out by various vendor, trade association, and also, BEREC reports.⁹ For example, the BEREC report indicates that a large proportion of backhaul will still be based on self-supply (including radio/microwave links).
- 3.13 Separate to the BCMR process, the Authority has also restarted the 5G spectrum award process and issued a Consultation to reassess interest and demand which closed on 29 April 2022.¹⁰ This Consultation recognised the potential challenges that operators may face in rolling out a 5G network:

"Recognition of deployment challenges: given that while improvements in the cost of mobile backhaul are anticipated, and that while the planning application process remains open for new mobile infrastructure, the Restarted Process should recognise that the present cost of backhaul and restrictions on new or replacement mobile infrastructure may present challenges for the widespread deployment of 5G."

⁶ Text copied from BEREC strategy report and used in the Airtel-Vodafone response - See footnote 6.

⁷ https://berec.europa.eu/eng/document_register/subject_matter/berec/download/0/9281-berec-strategy-2021-2025_0.pdf

⁸ The report is not definitive on the type of fibre product deployment, e.g., whether active or passive, and given the context is incentives to invest, it might be reasonably assumed reference is being made to active type products.

⁹ See for example: Draft BEREC Report on the regulatory treatment for fixed and mobile backhaul, BoR (21) 129 or GSMA, Mobile backhaul options: Spectrum analysis and recommendations, September 2018

¹⁰ See: <https://www.icra.ie/cases/2022/t-064-5g-spectrum-award-process-2022/t-064-5g-spectrum-award-process-2022-consultation/>

3.14 The Authority is currently considering the responses received to the Consultation and is preparing the revised 5G Spectrum: Statement of Intent, which is due to be issued in Q2 of 2022. The Authority's intention is to ensure potential deployment challenges and other constraints are reflected in the Statement of Intent.

Authority conclusion

3.15 In light of the analysis in the Draft Decision and stakeholder responses, the Authority has decided that the approach to remedies should be consistent with the approach adopted in the EU and appropriate to the competition problems likely to arise from the exploitation of SMP and proportionate to the possible impact of that problem.

4 Remedies to address refusal to supply

4.1 This section refers to section 6 of the Draft Decision where the Authority set out proposals designed to address the problem of JT refusing to supply OLOs with wholesale access such that those OLOs can compete in the downstream retail market. The Authority proposed the following:

- An obligation on JT to provide access to wholesale leased lines;
- An obligation on JT of transparency, including a refined approach to reference offers; and
- To maintain dark fibre as a potential future regulatory option.

Draft Decision proposals

4.2 The relevant Licence Conditions for the Authority's proposals in this area were identified as Licence Conditions 30, 32, 37, 40.

4.3 The Draft Decision set out the Authority's view that JT should continue to be obliged to provide access to on-island wholesale leased lines. Further, in the context of the obligation of transparency, the Authority proposed to require JT to set out a refined reference offer for wholesale leased lines.

4.4 The proposals set out in the Draft Decision described the requirement on JT to publish a (refined) reference offer, illustrated the types of information – and content - to be included in the reference offer, and also how the reference offer should be published.

4.5 On dark fibre, the Authority's Draft Decision proposed that a dark fibre remedy would remain as a potential future regulatory option and could be invoked at a later date, if JT failed effectively to meet its obligations consistent with market requirements and the Authority's ongoing objectives.

4.6 Question 2 of the Draft Decision sought respondents' views on the Authority's proposals for the set of regulations to be imposed on JT to address refusal to supply, and Question 3 of the Draft Decision asked whether respondents agreed with the Authority's proposals for the introduction of a refined approach to reference offers for leased lines.

Draft Decision responses

4.7 In respect of question 2, Airtel-Vodafone partially agreed with the Authority's proposals, stating that the Authority should require JT to supply "*more granular products*"¹¹ and that the BCMR should be reviewed in 1 year; in the context of dark fibre access, and in any event every two years (to reflect the dynamic nature of bandwidth demand and technology cycles).

4.8 Also on question 2, Sure provided broad support for the Authority's proposals in the context of supporting service-based competition, but expressed disappointment with the Authority's proposed approach to dark fibre access. Sure suggested the Authority direct JT (and the OLOs) to conduct a dark fibre trial in the mobile backhaul segment (of the market for wholesale leased lines).

¹¹ The Authority assumes this is a reference to so-called fractional services, that is, an increased range of bandwidths, e.g., 10Mb, 20Mb, 30Mb etc.

- 4.9 With regard to the refined approach to a reference offer, Sure stated that the Authority should establish a clear timescale for implementation (and direct JT accordingly). Airtel-Vodafone and JT also agreed with the Authority's proposals on the set of regulations and the introduction of a refined approach to reference offers.

Authority analysis

- 4.10 The Authority notes Sure's suggestion that JT should be directed to offer and support a dark fibre access trial. The Authority recognises the potential merits of such an approach, not least as a means of information discovery (e.g., technical and commercial viability).
- 4.11 While the Authority welcomes industry initiatives and innovation, the Draft Decision stated that the Authority focussed analysis and policy on developing the current set of remedies toward supporting more competition in a timely manner. Moreover the approach was designed to be aligned with the Authority's prioritisation principles and strategic plan. Therefore, the Authority's Initial Notice and the BCMR remedies are drafted accordingly.
- 4.12 This does not however preclude or prevent industry taking work forward on a dark fibre access trial, whether in the context of mobile backhaul, or more generally. Indeed, the Authority would support industry processes and engagement geared toward greater innovation, competition and growth. Where appropriate (or necessary) such a trial could potentially be initiated through the refined statement of requirements process, which is discussed in more detail below.
- 4.13 In respect of product 'granularity', we note JT's comments in response to the Draft Decision that it is "*happy to receive requests for additional speeds or different configurations*". The Authority encourages Airtel-Vodafone and other OLOs to consider JT's comments and engage appropriately with JT. The Authority's view is the proposed approach to a refined reference offer (and revised statement of requirements process) will help provide a dynamic framework in which OLOs can engage and develop products to meet future market developments.
- 4.14 The refined statement of requirements process will enhance the means by which JT's wholesale customers can request a new wholesale product, or a change to an existing JT wholesale product and/or service. The revised framework will enable OLOs to plan more effectively and manage resource and commercial strategies. Moreover, it will ensure that JT's wholesale customers should have clarity and certainty as to the statement of requirements process, the information requirements, and timescales applicable to any new wholesale product or service request.
- 4.15 In terms of the timescales of any future BCMR review, the Authority notes that, while it does not apply in Jersey, the EECC sets the period for undertaking market reviews at five years. The Authority is therefore minded to review the BCMR in 5 years (consistent with the EECC and Authority's approach to date), unless there are material changes which might necessitate it to conduct an earlier review of the BCMR.
- 4.16 With respect to the timing of implementation of the remedies, these are set out in the Initial Notice, with a phased approach proposed. This will see the 'administrative' remedies coming into effect on 1 September 2022, to be followed by the remedies that require more implementation work on 1 October 2022.¹² This approach has been adopted to ensure effective,

¹² For example the new prices would come into effect on 1 September, while the reference offer would be on 1 October.

timely and transparent implementation of the remedies. Further, this Final Decision and the Initial Notice clearly set out the remedies and approach, providing JT with sufficient advance notice of the precise remedies and the associated timeline.

- 4.17 Finally, for the purposes of clarification, references in the Authority's Draft Decision "*encouraging JT to engage with its wholesale customers on refining – and updating - the reference offer*" relate only to future amendments and/or developments of the reference offer. JT is required to develop the refined reference offer consistent with the timescales specified in the Initial Notice. The expectations for the reference offer were set out in the Draft Decision.
- 4.18 As noted in the Draft Decision the statement of requirements process is a separate but related matter to the BCMR, as it applies to the full suite of wholesale access products. The Authority recognises there is currently a process in place, set out in an Information Notice (CICRA 19/39)¹³, but will consult separately on the required refinements to the process to make the arrangements considerably more robust, transparent and effective on an ongoing basis.
- 4.19 To plan effectively and manage resource and commercial strategies, JT's wholesale customers should have greater clarity and certainty as to the statement of requirements process, the information requirements, and timescales applicable to any new wholesale product or service request. Therefore, the Authority's proposed approach will set out a refined statement of requirements process, applicable to all OLOs, including JT's own retail divisions, in the markets in which they have SMP.
- 4.20 It is envisaged the new statement of requirements process will be in place for 1 December 2022 (where required, to also help support the wider suite of BCMR remedies. A Draft Decision on the statement of requirements proposals will be issued on the Authority website in June 2022.
- 4.21 The Authority's development and refinement of the statement of requirements process does not and should not preclude any existing and/or ongoing wholesale product innovation and development through commercial negotiation or otherwise, whether in respect of non-SMP products and services, or indeed, SMP products and services (noting that JT is in any event subject to specific statement of requirements and obligations where it holds SMP).
- 4.22 Relatedly, we note JT is currently consulting with industry on the development of a mobile backhaul product, with a view to issuing a draft specification in summer 2022. The Authority welcomes this initiative and its eventual inclusion in a future JT refined reference offer.

Authority conclusion

- 4.23 In light of the analysis in the Draft Decision and stakeholder responses, the Authority has decided the remedies to be imposed on JT to address refusal to supply are as follows:
- An obligation on JT of transparency, including a requirement for JT to:
 - provide appropriate documentation for wholesale on-island leased line products;
 - publish a standard Service Level Agreement (SLA), including Key Performance Indicators (KPIs);

¹³ See: <https://www.icra.je/cases/2019/t1476gj-wholesale-access-statement-of-requirements/t1476gj-wholesale-access-statement-of-requirements-information-notice/>

- publish prices and non-price terms and conditions for wholesale leased lines;
- publish changes to price and non-price terms and conditions for wholesale on-island leased lines one month before they come into effect;
- notify OLOs and the Authority three months in advance of the launch of a new wholesale product (or removal of an existing product or service); and
- Implement a refined approach to reference offers for leased lines.

4.24 The Authority will maintain dark fibre as a potential future regulatory option, if JT is not effectively meeting its obligations consistent with market requirements and the Authority's ongoing objectives.

5 Remedies to address price and non-price discrimination

- 5.1 This section refers to section 7 of the Draft Decision where the Authority set out proposals to address price and non-price discrimination such that OLOs can effectively compete in the downstream retail market. The Authority proposed:
- An obligation on JT of non-discrimination, including a migration service; and
 - An obligation to provide relevant accounting information.

Draft Decision proposals

- 5.2 The relevant Licence Conditions for the Authority's proposals in this area were identified as Licence Conditions 32, 33, 35.
- 5.3 The Draft Decision set out proposals that are broadly the same as those imposed in the 2014 review and the October 2020 Draft Decision, albeit with the addition of the migration product.
- 5.4 In respect of the Authority's proposals on non-discrimination, the Draft Decision reiterated the purpose and intent of the obligation on JT, in that it obliges JT to treat all OLOs in an equivalent manner – it cannot discriminate between them; and, secondly, it obliges JT to treat OLOs in the same way as it treats its own downstream (or retail) arm.
- 5.5 Further, that JT should continue to be obliged not to show undue preference to, or exercise unfair discrimination against, any OLO or its own retail operation regarding the provision of wholesale on-island leased lines.
- 5.6 As an extension of this particular provision, and to help ensure effective competition in the retail market, the Authority proposes that JT should be required to provide a wholesale leased line migration service on fair and reasonable terms.
- 5.7 The Authority did not propose any changes to accounting information requirements; the current licence condition continues to be sufficient for the Authority to obtain all relevant accounting information. It is also noted this would be more effective once the upcoming audit of JT's processes and controls was completed.
- 5.8 Question 4 of the Draft Decision sought respondents' views on the Authority's proposals for the set of regulations to be imposed on JT to address price and non-price discrimination. Question 5 asked respondents for views on the Authority's proposals for the introduction of a migration service.

Draft Decision responses

- 5.9 All respondents to the Draft Decision were supportive of the Authority's proposals to address price and non-price discrimination.
- 5.10 Respondents were also broadly supportive of the Authority's proposal for a requirement on JT to introduce a wholesale migration service on fair and reasonable terms. Sure welcomed the proposal subject to the Authority specifying the timescales for delivery (and directing JT accordingly). Airtel-Vodafone agreed with the proposals, albeit suggesting also that JT "*remove all the barriers in terms of one-time connection/disconnection/upgrade/downgrade fees*".
- 5.11 JT accepted the Authority's proposals and commented on the broad principles underlying any related charges and provisioning timescales.

Authority analysis

- 5.12 Firstly, in respect of timescales and delivery, the timescales for implementation of all the BCMR remedies are set out in full in the Initial Notice. The Initial Notice proposes to direct JT to introduce the migration product by 1 October 2022, while the core set of administrative remedies are proposed to come into effect on 1 September 2022. The rationale for this phased approach is set out in paragraph 4.15
- 5.13 Secondly, on the matter of charges, the Draft Decision stated that, where the migration is effectively administrative, e.g., same or similar product and/or service but revised pricing (or other terms), JT should only charge an incremental administrative fee.¹⁴ Where engineering resource is required to support a product migration, JT may seek to raise a cost-based charge; the Authority would expect any such charge to be lower than standard connection-type charges.

Authority conclusion

- 5.14 In light of the analysis in the Draft Decision and stakeholder responses, the Authority has decided the remedies to be imposed on JT to address price and non-price discrimination are as follows:
- An obligation on JT of non-discrimination, including a migration service; and
 - An obligation to provide relevant accounting information.

¹⁴ JT should only seek to charge and recover an amount consistent with the incremental cost of the product or service (which should not include any other costs or any allocation of common costs).

6 Remedies to address excessive pricing

6.1 This section refers to section 8 of the Draft Decision where the Authority set out its views on addressing the problem of JT having the incentive and ability to set excessive prices for leased lines, in which the Authority proposed:

- An obligation of cost accounting on JT; and
- A retail minus price control for JT.

6.2 The obligations proposed represented a refinement on those imposed in the 2014 BCMR review.

Draft Decision proposals

6.3 The relevant Licence Conditions for the Authority's proposals in this area were identified as Licence Conditions 32, 33, 34, 37.

6.4 In the Draft Decision, the Authority set out its view that JT should be obliged to maintain its current cost accounting obligations, with a view to demonstrating its compliance with other obligations.

6.5 The Authority also proposed that a price control continued to be necessary in the wholesale market for on-island leased lines, and that a retail-minus control continued to be appropriate and proportionate.

6.6 The Authority proposed that the control should be set on an ex-ante basis, apply to all wholesale on-island leased lines, and would continue to oblige JT to make a wholesale equivalent of all of its retail offers available.

6.7 The Draft Decision noted a requirement for the Authority to reconsider the structure of the price control on JT, and the Authority's Draft Decision set out a recalibrated and strengthened retail minus price control to give effect to a more vibrant competitive process. The Authority proposed to set the minus component of the retail-minus price control between 27% - 32%.

6.8 The Authority's Draft Decision also considered the timescales relating to implementation of a recalibrated retail minus price control. Given the straightforward administrative requirements arising from the Authority's proposals, the Authority's view was that the new retail minus price control should have effect as soon as possible (after the Final Notice). Subject to a necessary administrative period following the Final Notice.

6.9 Question 6 of the Draft Decision sought respondents' views on the Authority's proposals for the set of regulations to be imposed on JT to address excessive pricing; and, Question 7 sought views on the recalibration of the retail minus control.

Draft Decision responses

6.10 Airtel-Vodafone agreed with the Authority's proposal to maintain a retail minus price control on JT but considered the extent of the proposed remedy inadequate. In the context of (prospective) 5G deployments, comparisons with other jurisdictions and local competitor pricing, Airtel-Vodafone stated that the minus component of the price control should be "at least 60%".

6.11 Sure were also broadly supportive of the Authority's proposed approach on maintaining and recalibrating the retail minus price control, stating that it would likely have a "*positive impact*".

on service-based competition". Sure did not comment on the level of the minus component of the retail minus price control.

- 6.12 JT accepted the continuation and recalibration of the retail minus price control, while commenting that the point within the range [27% - 32%] adopted by the Authority should be justifiable, and representative of the uncertainty associated with differing cost methodologies and other factors.

Authority analysis

- 6.13 The Authority notes respondents' general agreement with a continuation of the current retail minus price control. In terms of the proposed range, the Authority carefully considered all the factors relating to the derivation of the proposed retail minus price control, including but not limited to, the overarching purpose of the price control, JT's underlying costs, market characteristics, and to an extent, potential comparators (in other jurisdictions).
- 6.14 As such, the minus component of the retail minus price control has been calibrated to meet the Authority's objectives in an appropriate and proportionate manner, consistent with the proposed BCMR remedies and JT's ability to recover incurred costs. Within the range the Authority has decided to set the minus at 31%.¹⁵ This is consistent with:
- the data and cost information supplied by JT, including a reasonable and proportionate allocation of all relevant costs;
 - the overarching objectives of the retail minus price control - to prevent excessive wholesale pricing and to help facilitate further competition (toward increased choice, lower prices and end user benefit); and
 - with wholesale charges that enable all OLOs to compete more effectively with JT (and one another), while ensuring JT is able to recover all incurred costs.
- 6.15 Increasing the minus component of the price control above this or the upper end of the proposed range, as suggested by Airtel-Vodafone, would likely be inconsistent with the Authority's objectives. It may encourage inefficient entry and demand, and may result in prices below the competitive level and risk the full recovery of JT's incurred costs.
- 6.16 The Authority also recognises that while benchmarking against other jurisdictions can be a helpful and informative exercise, care must be taken when trying to draw a direct inference on the appropriate prices for Jersey. This is because telecoms markets differ in terms of size, number of operators, labour, demand, types of network and otherwise and this also has an impact on the available economies of scale and scope. For example, BT in the UK reports business connectivity revenues (from SMP markets alone) of > £800m¹⁶, whereas the total 'value' of the leased line market in Jersey is approximately £11m.

¹⁵ A full description of the Authority's approach and the methodology used in deriving the proposed range is set out in the BCMR Remedies Draft Decision, Section 8, paragraphs 8.16 to 8.28.

¹⁶ See: <https://www.bt.com/bt-plc/assets/documents/about-bt/policy-and-regulation/our-governance-and-strategy/regulatory-financial-statements/2021/regulatory-financial-statements-2020-21.pdf>

- 6.17 In respect of JT's ongoing compliance with the retail minus price control, the Authority notes CICRA's previous comments on this matter.¹⁷ The Authority agrees that under the retail minus price control proposal implemented in this Final Decision, discounts schemes, rebates and special offers which apply at the retail level must be properly reflected in the calculation of the wholesale price. The Authority is not, however, proposing to specify and/or determine *ex-ante* a template or approach for compliance, e.g., how a certain retail scheme should be reflected at the wholesale level. It is a matter for JT to manage its products and pricing consistent with its various obligations on non-discrimination, cost accounting and otherwise.
- 6.18 As stated in the Draft Decision, the retail minus price control will apply to all JT's leased lines services, including those currently used to support broadband - and mobile - backhaul. In respect of broadband backhaul, the pricing is linked to the pricing of Fibre Link, which forms part of the leased lines portfolio. Noting this link, the Authority will remove the safeguard cap set as part of the Wholesale Broadband Access Services: Price Review, to allow the price reductions through the updated retail minus to flow through. To the extent future regulated backhaul products are developed, these will also be subject to the Authority's BCMR remedies.

Authority conclusion

- 6.19 In light of the analysis in the Draft Decision and stakeholder responses, the Authority has decided the remedies to be imposed on JT to address excessive pricing are as follows:
- An obligation of cost accounting on JT; and
 - A retail minus price control for JT, with the minus component set at 31%.

¹⁷ See: <https://www.jcra.je/media/2094/t1097gj-final-notice-price-control-for-wholesale-on-island-leased-lines-jersey.pdf>

7 Final Decision

7.1 This section sets out the Authority's Final Decision on each element of the remedies for the business connectivity market that are implemented in the Initial Notice, issued alongside this document.

Approach to remedies

7.2 The approach to remedies should be consistent with the approach adopted in the EU and appropriate to the competition problems likely to arise from the exploitation of SMP and proportionate to the possible impact of that problem.

Remedies to address refusal to supply

7.3 The remedies to be imposed on JT to address refusal to supply are:

- An obligation on JT of transparency, including a requirement for JT to:
 - provide appropriate documentation for wholesale on-island leased line products;
 - publish a standard Service Level Agreement (SLA), including Key Performance Indicators (KPIs);
 - publish prices and non-price terms and conditions for wholesale leased lines;
 - publish changes to price and non-price terms and conditions for wholesale on-island leased lines one month before they come into effect;
 - notify OLOs and the Authority three months in advance of the launch of a new wholesale product (or removal of an existing product or service); and
 - Implement a refined approach to reference offers for leased lines.

Remedies to address price and non-price discrimination

7.4 The remedies to be imposed on JT to address price and non-price discrimination are:

- An obligation on JT of non-discrimination, including a migration service; and
- An obligation to provide relevant accounting information.

Remedies to address excessive pricing

7.5 The remedies to be imposed on JT to address excessive pricing are:

- An obligation of cost accounting on JT; and
- A retail minus price control for JT, with the minus component set at 31%.