



Telecommunications (Jersey) Law 2002

Case T-012: Business Connectivity Market Review: Remedies

Initial Notice of proposed directions to JT (Jersey) Limited

Document No: JCRA 22/36

Date: 30 May 2022

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street
St Helier
Jersey JE2 3RF
Tel 01534 514990
Web: www.jcra.je

Contents

1. Executive summary	1
2. Background	3
Statutory background	3
The licence granted to JT	3
The BCMR	4
3. Framework for the directions and determinations	6
4. Overview of remedies	8
5. Next steps	10
Annex: Proposed directions	11

1. Executive summary

1.1 The Jersey Competition Regulatory Authority (the **Authority**), is issuing this statutory Initial Notice (**Initial Notice**) of its intention to exercise specified regulatory functions in relation to JT (Jersey) Limited (**JT**):

- to require JT to provide access to wholesale leased circuits to Other Licensed Operators (**OLOs**);
- to determine the information, including as to pricing, that JT must make public in relation to the terms on which such leased circuits shall be supplied and any changes to such terms;
- to issue directions as to JT's compliance with its fair competition obligations; and
- to determine the maximum level of charges JT can apply to the supply of wholesale leased line circuits.

1.2 Wholesale leased lines services form part of the business connectivity market. Leased lines 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 For the business connectivity market, the Authority has undertaken a business connectivity market review (**BCMR**).¹ The findings of the BCMR are set out in two separate non-statutory Final Decisions:

- Business connectivity market review: market definition and significant market power assessment (**SMP**²) Final Decision (**Market definition and SMP Final Decision**), issued in July 2021. This set out that JT had SMP in the wholesale market for leased lines in the entire Bailiwick of Jersey; and
- Business connectivity market review: remedies Final Decision (**Remedies Final Decision**) issued on the same date of this Initial Notice. This sets out the remedies to be imposed on JT in the wholesale market for leased lines in the entire Bailiwick of Jersey.

1.4 This document sets out the directions and determinations the Authority proposes to issue to JT to implement the Remedies Final Decision, in accordance with the Class III licence issued to JT by the Authority under Article 14(1) of the Telecommunications (Jersey) Law 2002 (**Telecoms Law**).

1.5 The directions and determinations in this Initial Notice will replace the provisions of:

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

² 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.

- Business connectivity market review: Jersey Final Notice issued by the Authority (as part of the Channel Islands Competition and Regulatory Authority) in October 2014³;
- the Final Notice and Response to Consultation and Initial Notice issued by the Authority in May 2015⁴; and
- Direction 5 of the Final Notice for wholesale broadband access services: price review issued by the Authority in August 2021.⁵

1.6 This Initial Notice sets out the intention of the Authority to exercise specified regulatory functions. 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.

³ See: <https://www.jcra.je/cases/2013/t994gj-business-connectivity-market-review/t994gj-final-notice-business-connectivity-market-review/>

⁴ See: <https://www.jcra.je/cases/2014/t1097gj-business-connectivity-market-review/t1097gj-final-notice-price-control-for-wholesale-on-island-leased-lines-jersey/>

⁵ See: <https://www.jcra.je/cases/2020/t-011-wholesale-broadband-access-services-price-review/t-011-wholesale-broadband-access-services-price-review-final-notice/>

2. Background

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

- Statutory background (see paragraphs 2.2 to 2.6);
- The licence granted to JT (see paragraphs 2.7 to 2.10); and
- The business connectivity market review (see paragraphs 2.11 to 2.17).

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.

2.3 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.

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

‘(a) ...

‘(b) to refer for determination by the Authority any specified question ... and to act on such a determination; and

‘(c) to comply with any direction given by the Authority in respect of anything to which the licence relates.’

2.5 Article 16(3) gives the Authority the power to make the determinations and give the directions referred to in Article 16(2). Exercising either power is a ‘specified regulatory function’ for the purposes of Article 11, which sets out the process the Authority must follow in order to do so.

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

(a) intended to prevent or reduce anti-competitive behaviour⁶; or

(b) relate to, or imposing requirements about, competition in relation to telecommunications services, telecommunication systems, apparatus and telecommunication equipment.⁷

The licence granted to JT

2.7 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**)⁸, which took effect on 4 August 2021, and which modified the terms of JT’s existing licence issued on 30 June 2017.

⁶ Article 16(1)(i)

⁷ Article 16(4)(a)

⁸ See: <https://www.icra.ie/media/598369/2021-08-04-jt-modified-class-iii-licence-redacted-signed.pdf>

- 2.8 The Licence contains, in Part IV, certain provisions only applicable to Class III licences⁹, which, pursuant to Condition 28.1 apply:
- (a) *‘where the [Authority] has decided that [JT] possesses Significant Market Power in a relevant market’; and*
 - (b) the Authority *“determine[s] that the provisions of this Part IV shall apply”*.
- 2.9 Where the conditions described in paragraph 2.8 are both satisfied in relation to a relevant market, Part IV provides, amongst other things, measures which, in summary:
- (a) under Condition 30, require JT to publish the terms and pricing of interconnecting with its network and entitle the Authority to direct that changes be made to such terms;
 - (b) under Condition 32, require JT to provide leased line circuits and to do so on publicly advertised and non-discriminatory terms and at prices not exceeding those determined by the Authority;
 - (c) under Condition 33, entitle the Authority to direct JT to maintain separately identifiable accounting records in relation to a specified activity;
 - (d) under Condition 35, require JT not to show undue preference or discrimination in the provision of services such as to put an OLO at an unfair disadvantage;
 - (e) under Condition 37.2, entitle the Authority to determine the maximum charges JT may charge for services in that market;
 - (f) under Condition 38, require JT to compete fairly and to comply with directions of the Authority in that regard; and
 - (g) under Condition 40, require JT to provide network access on fair and reasonable terms and charges and entitle the Authority to direct JT as to such terms and charges.
- 2.10 Section 3 of this Initial Notice sets out in more detail the basis on which the Authority is relying on the Conditions referred to in paragraph 2.9 to make the relevant determinations and issue the relevant directions to JT.

The BCMR

- 2.11 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.

⁹ The only Class III licence in issue is the Licence (ie JT’s licence)

- 2.12 Stage 1 of the process was completed with the issue of the Market Definition and SMP 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.
- 2.13 With respect to stage 2, in November 2021 the Authority carried out a 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 the Remedies Final Decision published alongside this Initial Notice.

3. Framework for the directions and determinations

- 3.1 Under the July 2021 Final Decision, the Authority determined that JT had SMP in relation to the wholesale market for leased lines in the whole Bailiwick of Jersey (**SMP Market**) and accordingly to the service of supplying leased lines on a wholesale basis (**SMP Services**). Pursuant to Condition 28.1 of the Licence, the Authority further determines that Part IV of the Licence applies.
- 3.2 Set out below are details of relevant Conditions in Part IV of the Licence which, individually or collectively, give the Authority powers to make determinations or give directions which are relevant to the remedies it intends to impose.

No.	Text	Relevance
30(a)	<i>'[JT] shall ... make publicly available a template Reference Interconnect Offer (RIO) which shall contain the terms, schedules of Interconnection and pricing of Interconnection between [JT]'s network and any Other Licensed Operator whose licence terms enables them to Interconnect with another Licensed System.'</i>	JT must publish its terms for providing the SMP Service
30(b)	<i>'[JT] shall provide details of the template RIO to the [Authority] [which] may, from time to time, direct changes to be made to the terms and/or schedules.'</i>	Authority may direct JT to make changes to such terms
32.1	<i>'[JT] shall offer to lease out circuits or partial circuits for any lawful purpose:'</i>	Such activity is the SMP Service
32.1(a)	<i>'on publicly advertised conditions and on non-discriminatory terms...</i>	As for 30(a), with addition of non-discriminatory requirement
32.1(b)	<i>'at prices that do not exceed levels determined from time to time by the [Authority].'</i>	Authority may determine maximum level of prices for the SMP Service
32.2	<i>[JT must provide leased circuits on terms:] '...no less favourable than those on which [JT] makes equivalent leased circuits available to ...its own business divisions'</i>	As for 32.1(a) in relation to non-discrimination in relation to JT's own business divisions
33.1	<i>[JT to maintain accounting records in a form:] 'that enables the activities specified in any direction given by the [Authority] to be separately identifiable and ... sufficient to show and explain the transactions of each of those activities'</i>	Authority may direct what 'activities' these enhanced accounting requirements apply to
35	<i>[Prohibition from showing undue preference etc:] 'so as to place [a competing OLO] at an unfair disadvantage in relation to any licensed activity.'</i>	As for 32.2

No.	Text	Relevance
37.2	<i>'The [Authority] may determine the maximum level of charges [JT] may apply for Telecommunication Services within a relevant market in which [JT] has been found to be dominant. A determination may:</i>	Authority may determine maximum charges The 'relevant market' is the SMP Market; the 'Telecommunications Services' are the SMP Services
37.2(a)	<i>'provide for the overall limit to apply to [the SMP Services];</i>	
37.2(b)	<i>'restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or</i>	
37.2(c)	<i>provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.'</i>	
38.1	'[JT] shall:	
38.1(a)	<i>not abuse any position of [SMP] and/or established position in any telecommunications market;</i>	The 'telecommunications market' is the SMP Market
38.1(b)	<i>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 ... provision of [SMP Services]; and</i>	
38.1(c)	<i>'comply with any direction issued by the [Authority] 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 ... the provision of [SMP Services].'</i>	Authority may direct JT in order to prevent market abuse etc
40	[In providing Network Access to an OLO, JT must do so on:]	The SMP Services constitute Network Access
40.3	<i>'fair and reasonable terms, conditions and charges'</i> and <i>'such terms, conditions and charges as the [Authority] may from time to time direct.'</i>	Authority may direct JT as to such terms to ensure they are fair and reasonable etc
40.5	<i>'[JT] shall comply with any direction the [Authority] may make from time to time under this Condition.'</i>	Authority may direct JT as to the terms of the SMP Services

4. Overview of remedies

4.1 The proposed 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 proposed 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 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.

4.2 As set out in the Remedies Final Decision, and consistent with the 2015 Final Notice, the Authority proposes to impose remedies on JT to address the competition issues set out in paragraph 4.1 as follows:

Competition issue	Remedies	JT Licence Conditions
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 documentation¹⁰ 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 ¹¹
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

¹⁰ 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.

¹¹ The form of a 'Statement of Requirements' for services from JT is set out in the CICRA document on Case T1476GJ [Wholesale Access Statement of Requirements](#). The Authority will separately consult on updates to the current framework in June 2022.

Competition issue	Remedies	JT Licence Conditions
Excessive pricing	<ul style="list-style-type: none"> • An obligation of cost accounting on JT. • A retail minus price control for JT. This has been refined from the current approach, which was set in the 2014 Review, and is set at retail minus 31%. 	Licence Conditions 32, 33, 34, 37

4.3 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.

4.4 The proposed remedies entail either the giving of directions or the making of determinations by the Authority under various Conditions in the Licence. Their relationship to the powers of the Authority under Part IV of the Licence, are set out in Section 3. As the remedies are specified regulatory functions for the purposes of Article 11 of the Telecoms Law and accordingly the Authority has issued this Initial Notice and the proposed Directions to implement the remedies are set out in the Annex. Further detail on the statutory process is included in Section 5 (Next steps).

5. Next steps

- 5.1 This Initial Notice is of an intended exercise by the Authority of specified regulatory functions, that is to make determinations and give directions pursuant to Conditions 30, 32, 33, 35, 37, 38 and 40 of the Licence. Written representation to the exercise of this specified regulatory function may be made by e-mail to info@jcra.ie on or before 5pm on 30 June 2022.
- 5.2 If representations are received before the deadline regarding the proposed exercise of such functions, the Authority will consider them and will decide:
 - (a) not to exercise such functions or some of them;
 - (b) to issue a new Initial Notice; or
 - (c) to issue a Final Notice confirming the directions and determinations to JT.
- 5.3 If no responses are received before such time or if the directions and determinations are confirmed, the Final Notice will be made in July 2022. The directions and determinations will take a phased effect on 1 September 2022 and 1 October 2022 as set out in the Direction.

Annex: Proposed directions

DIRECTIONS

The Jersey Competition Regulatory Authority (**Authority**) has determined that JT (Jersey) Limited (**JT**) has significant market power in the wholesale market for leased lines in the whole Bailiwick of Jersey (**SMP Market**). The supply by JT of leased lines on a wholesale basis on-island is referred to in this Direction as the **SMP Services**, which includes each and every JT product or service which comprises the provision of the SMP Services at any time (**Product**).

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.

DIRECTION 1: Obligation of transparency

JT shall provide the SMP Services to Other Licensed Operators (**OLOs**) in an open and transparent manner and making public all necessary technical, commercial and pricing documentation relating to the SMP Services.

JT shall have published no later than 1 October 2022, its terms and conditions and prices for each Product, comprising a Reference Interconnect Offer which shall comply with this Direction and Directions 2 and 3 and which sets out, as a minimum:

Aspect	Expected content
Product specific terms and conditions	Product description and technical specifications
Operational and related matters	Order processes, provisioning timescales, migration arrangements, escalation and dispute resolution measures.
Quality of Service	Service Levels and Key Performance Indicators (for ordering, provisioning and in-service), maintenance and repair arrangements, Service Level Guarantees.
Network Access requests	Procedures and timescales applying to requests for Products and procedures, processes (and charges) for amendments, ancillary products or services.
General terms and conditions	Contract duration, glossary, process for contract commencement and termination.
Product Pricing	A charges schedule (including processes and timescales applying to any changes in pricing).

In relation to changes in pricing (and without prejudice to Directions 2 and 3) and changes in any of the other aspects of the Reference Interconnect Offer, JT shall publish details at least one month before the changes are due to come into effect.

In relation to the introduction of any Product or the cessation of provision of any then current Product, JT shall notify each OLO and the Authority at least three months in advance of such introduction or cessation.

JT shall seek to innovate and develop the SMP Services and shall engage with OLOs constructively in this process.

DIRECTION 2: Non-discrimination and Pricing

JT shall comply with the provisions of its Licence relating to non-discrimination in relation to its charges and other terms of provision of Products.

Specifically, JT shall not discriminate against OLOs which wish to:

- migrate from an existing product or service within the SMP Market to a Product; or
- migrate from one Product to another

so as to ensure that such that such OLO is not unreasonably at a disadvantage as against an OLO seeking to obtain such Product without migration. JT shall offer a migration service as a Product. This product will be available no later than 1 October 2022.

For the purposes of Condition 33.1 of the Licence, 'activities' refers to each Product.

DIRECTION 3: Pricing

In relation to its obligations under Condition 33.1 in relation to each Product, in complying with such obligations JT shall accurately record its costs in relation to the provision of such Product.

In relation to each retail leased line product offering there shall be an equivalent Product and, for the purposes of Condition 37.2, the Product shall be priced at no more than the retail charge minus 31 per cent.

The safeguard cap applied to CP Broadband Interconnect Services, Direction 5 in the Final Notice for Case T-011: Wholesale broadband access services: price review (JCRA 21/35), will no longer apply.

These Directions shall come in to effect on 1 September 2022.

BY ORDER OF THE AUTHORITY