



Telecommunications (Jersey) Law 2002

Case T-012: Business connectivity market review: remedies

Final Notice of directions 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 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 This document is the final stage of the business connectivity market review (**BCMR**).¹ It sets out the directions of the Authority, having taken full account of representations received to the Initial Notice (JCRA 22/36).² It is structured as follows:

- Matters contained in the Initial Notice (see section 2);
- Representations (see section 3); and
- Final Notice and directions (see section 4).

Note, for brevity, this document does not repeat all the background material set out in the Initial Notice, though a high level summary is provided in section 2.

¹ All case documents are available at: <https://www.jcra.je/cases/2019/t-012-business-connectivity-market-review/>

² See: <https://www.jcra.je/cases/2019/t-012-business-connectivity-market-review/t-012-business-connectivity-market-review-initial-notice-remedies/>

2. Matters contained in the Initial Notice

2.1 Section 2 of the Initial Notice set out the background to the directions, including an overview of:

- Statutory background – the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) and relevant Articles and the duties placed on the Authority in the performance of its functions;
- The licence granted to JT –Part IV contains certain provisions only applicable to Class III licences³, which enable the Authority to issue the directions to JT; and
- The BCMR process – the non-statutory process that the Authority undertook, culminating in the Final Decision on market definition and significant market power (JCRA 21/18 - **Market definition and SMP Final Decision**)⁴ and the Final Decision on remedies (JCRA 22/35 – **Remedies Final Decision**).⁵ The statutory process was also explained.

2.2 Section 3 of the Initial Notice set out the framework for the directions and determinations. It explained that the Authority has found JT to have significant market power in 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**). A table was also provided setting out the 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 confirmed in this document.

2.3 Section 4 of the Initial Notice provided an overview the remedies. It explained that these have been tailored to the identified competition problems and their objective is to support competitive outcomes in the market for on-island leased lines. The competition problems identified were:

- 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.

2.4 Section 5 of the Initial Notice, then set out set out the next steps, including the submission of representations. The proposed directions were presented in the Annex to the Initial Notice.

³ The only Class III licence in issue is JT's Licence.

⁴ See: <https://www.jcra.je/cases/2019/t-012-business-connectivity-market-review/t-012-business-connectivity-market-review-final-decision-market-definition-and-significant-market-power-assessment/>

⁵ See: <https://www.jcra.je/cases/2019/t-012-business-connectivity-market-review/t-012-business-connectivity-market-review-final-decision-remedies/>

3. Representations

- 3.1 The deadline for representations to the Initial Notice was 30 June 2022. One representation, from Airtel-Vodafone was received, which raised representations in four areas (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 in turn, and for the reasons set out in this section, decided to issue this document as the Final Notice, confirming the directions. Note, for brevity, the Authority's response in this section does not repeat all the argumentation set out in the Remedies Final Decision, though a summary is provided and the relevant sections of this document are identified.

Area 1 – Approach to remedies

- 3.4 Airtel-Vodafone considered the Authority had not factored in Airtel-Vodafone's customer base, who consume more data than JT's and Sure's customer base. Further it had not factored into its analysis that microwave links are a poor substitute for fibre backhaul and that there were also additional challenges associated with microwave technology in the context of deployment in the Channel Islands, for example, the weather and planning considerations. Linked to this point Airtel-Vodafone set out its view that the Authority had not analysed the extent of use of fibre backhaul between JT (the incumbent), and other operators.
- 3.5 Airtel-Vodafone also disagreed with elements of the Authority's '5G: Statement of Intent', specifically on the benefits of the review and the development of a mobile backhaul product.
- 3.6 In response to this area, the Authority notes
- In the Remedies Final Decision the Authority stated that it is a matter for operators to determine their network deployment and configuration (and that some operators may choose a 'mix' of backhaul solutions).⁶ Further, the Authority notes in terms of retail product design and network usage, these are also primarily commercial business decisions for each operator to consider and manage.
 - In its considerations for the Remedies Final Decision, the Authority reviewed various vendor, trade association, and also, BEREC reports on the use of microwave backhaul. It was also noted that the restarted Authority 5G process recognises the challenges that operators may face in rolling out a 5G network, including "*restrictions on new or replacement mobile infrastructure*".⁷

⁶ Remedies Final Decision, paragraph 3.12

⁷ Remedies Final Decision, paragraphs 3.12 – 3.13

- Through the extensive BCMR process undertaken since 2019, the Authority reviewed the leased lines market and considered all the factors relevant to the Remedies Final Decision and this Final Notice. In line with the market review framework, the Authority's analysis necessarily focussed on JT's position in the market and developed remedies to address the identified competition issues. This includes a non-discrimination obligation on JT in respect of wholesale leased lines. Further with respect to mobile backhaul, extensive consideration was given to this area of the market in the Market Definition and SMP Final Decision issued in July 2021.⁸
- With respect to the Authority's 5G process, the Authority notes the process is separate to the BCMR and also follows best practice. This includes extensive engagement and consultation, and the Authority encourages Airtel-Vodafone to continue engaging with this process.

Area 2 – Remedies to address refusal to supply

- 3.7 Airtel-Vodafone noted the reference to 'dark fibre access trials' and requested this be mandated and the Authority take further steps to facilitate more flexible options for backhaul for 5G. To support this Airtel-Vodafone called for the Authority to put in place structured monitoring with defined timescales.
- 3.8 With respect to the timescale for the (BCMR) review, Airtel-Vodafone noted the timescale should be reduced from five years to two. To support this, reference is made to the UK and Openreach price changes.
- 3.9 In response to this area, the Authority notes:
- In the Remedies Final Decision the Authority set out its view that the Authority would support industry processes and engagement geared toward greater innovation, competition and growth, for example through a dark fibre access trial.⁹
 - It was further noted, that where appropriate (or necessary), such a trial could potentially be initiated through the refined Statement of Requirements process. The Authority notes this process is currently under review and there is an open consultation on the process and encourages stakeholders to respond.¹⁰
 - With respect to mobile backhaul, the Authority notes that JT has consulted with industry on the development of a mobile backhaul product, with questionnaires sent to market participants. This is with a view to issuing a draft specification later in 2022. The Authority welcomes this initiative and its eventual inclusion in a future JT refined reference offer.
 - With respect to the timescale for the review, the Remedies Final Decision set out that a five year horizon is in line with European recommendations and Authority practice. However, the Authority would consider an earlier review of the BCMR, subject to material market changes.

⁸ Market definition and SMP Final Decision, paragraphs 5.26 – 5.29

⁹ Remedies, Final Decision, paragraphs 4.10 -4.12

¹⁰ See: <https://www.jcra.je/cases/2022/t-068-jt-statement-of-requirements/jt-statement-of-requirements-draft-decision/>

Area 3 – Remedies to address price and non-price discrimination

3.10 Airtel-Vodafone noted the upcoming audit of JT's processes and controls and wanted to understand any interventions that could affect business connectivity as a result of this. For example, with respect to the cost calculation.

3.11 In response to this area, the Authority notes:

- In line with the Authority's 2022 Business Plan, the focus of the audit will be on JT's processes and controls with respect to its accounting and cost allocation practices. Once completed the audit will improve the effectiveness of JT's obligations with respect to price and non-price discrimination on a forward looking basis. Further, if any specific issues are identified, these will be addressed accordingly. Updates on this project will be made available on the Authority's website in due course.

Area 4 – Remedies to address excessive pricing

3.12 Airtel-Vodafone set out its view that further reducing prices for leased lines would help achieve economies of scale, which would alleviate any cost recovery risks to JT. To support this it was noted that Openreach had reduced prices over the last five years, but still increased revenues (through higher volumes).

3.13 Reference was also made to OLO leased line pricing, which is below the proposed prices which would be an outcome of this review. Supporting this, it was noted further consideration should be given to operating profit margin between JT and BT when comparing leased lines. With these factors taken into account, Airtel-Vodafone's view is that further reductions could be made to the retail minus, without posing any risk to JT's cost recovery.

3.14 In response to this area, the Authority notes:

- As part of the Authority's analysis of JT's costs for the estimation of the retail minus price control, the Authority considered different approaches to the price control and cost allocation. The retail minus price control relates to the retail price for leased lines; the operation and purpose of the retail minus price control is explained in the Remedies Final Decision.¹¹ It is not a cost-based wholesale charge control incorporating different assumed demand patterns, nor different potential product marketing approaches. To the extent scale economies were to be realised, this would be reflected in lower retail prices and, therefore, lower wholesale prices.
- The Authority has engaged with all stakeholders during the BCMR, including alternative suppliers of wholesale services. The Authority is aware that some suppliers may be charging lower prices for certain leased line-type services, albeit in specific locations over own infrastructure. However, while informative, these wholesale prices cannot simply be used to determine the wholesale price to be charged by JT. The Authority has given careful consideration to the price control and the underlying (JT) cost data, consistent with the

¹¹ Remedies Final Decision, paragraphs 6.13-6.18

overarching objective of the price control - to prevent excessive wholesale pricing and to help facilitate further competition.

- With respect to the level of the retail minus, as set out in the Remedies Final Decision, it has been calibrated to meet the Authority's objectives in an appropriate and proportionate manner, consistent with the package of BCMR remedies and JT's ability to recover incurred costs.

4. Final Notice and directions

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

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