

Jersey Airtel Limited's (JAL) response via email 15/09/2023 to Jersey Competition Regulatory Authority's (JCRA) Consultation T-080: 'Regulatory Financial Reporting – Draft Decision' (T-080) published 18/07/2023.

1.0 Executive Summary

- 1.1 Driven by the negative impact of prohibitive costs of 3rd party telecommunication services such as 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc., JAL has been lobbying with JCRA for several years to regulate prices all these services and not just few, therefore, JAL is pleased to provide its response to JCRA's consultation 'T-080'.
- 1.2 JAL buys various types of wholesale access such as 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc., in Jersey to compete in mobile and fixed market against its three competitors i.e., JT, Sure and Newtel / Homenet who unlike JAL, own 'fibre, on-island & inter-island leased line connectivity, SP interconnect, internet feed i.e., ISP' etc.
- 1.3 The Jersey market (of c.100k population) is small, crowded with four telcos, fully penetrated and unviable, in which challenger telcos like JAL face significant increase in investment costs without any returns due to the advent of modernisation of existing 'end of life' networks, 5G and Telecom Security Requirements.
- 1.4 Despite JAL being present in Jersey for 16 years and achieving 25% mobile and 1% fixed share respectively, [REDACTED], as Government owned JT is the incumbent in Jersey is enjoying 52% mobile and 61% fixed market share respectively.
- 1.5 JCRA's 2022 Telecom Statistics confirmed the growing preference for bundled 'fibre + mobile' deals, and as per JCRA's press release¹ of 27 June 2023 Claire Kybett (Finance and Case Officer at the JCRA) says *"There is some interesting data in the Report," continues Claire Kybett. "For example, the preference for 'bundled products' among consumers, where they choose a supplier based on a range of different products and services for a single monthly cost. This is an area we are exploring in more detail to understand how these deals are structured and to identify how they contribute to competition in the marketplace."* Therefore, JCRA's exercise regarding 'JT's Regulatory Financial Reporting' will help JCRA to understand the structure of bundled deals which will assist JCRA [REDACTED] being faced by challengers like JAL to 'compete effectively'.
- 1.6 JT is currently under no requirement to obtain prior approval from the JCRA for any pricing proposals beyond a notification requirement. Instead, the JCRA relies on a predominantly ex-post-competition law approach to regulation, which primarily depends on competitors or customers bringing complaints to its attention. The JCRA seems to demand a high level of proof from complainants before any investigative action is initiated but without being able to offer proof of potential misallocation of costs or cross-subsidy, it is difficult for competitors to bring complaints to the JCRA about potentially anti-competitive pricing or other behaviour.
- 1.7 JAL noticed that many years before JCRA learning about 'small nation best practice', various market studies and consultations³ were carried out in Jersey since 2009 recommending that JT's separated accounts be published to increase the transparency of JT's activities to the market which are not referenced in 'T-080'.

¹ <https://www.jcra.je/media/598759/telecoms-sector-remained-steady-and-healthy-in-2022.pdf>

² Refer to emails and letters with evidence sent by JAL to JCRA [REDACTED]

³ <https://www.gov.je/News/2009/Pages/JCRAReviewReportPublished.aspx>

<https://www.jcra.je/media/1607/t542-10-report-regulaid-review-of-jersey-telecom-separated-accounts-and-wholesale-access-provisions.pdf>

<https://www.jcra.je/media/3446/t859j-report-review-of-jt-wholesale-frontier-economics.pdf>

1.8 JAL would expect that all the underlying issues, inputs mentioned in this response to questions 1 to 3 along with this executive summary will be factored in as part of the deliberations leading up to the final decision which will assist JCRA to deliver 'effective competition'.

2.0 Response to Question 1

Q 1: Do you agree with the proposed template and approach to regulatory financial reporting?

2.1 While JAL agrees with the separate reporting for currently regulated markets where JT has SMP, JAL would like to have segregation of financials for wholesale products which are not regulated currently, as follows:

2.1.1 Inter-Island Connectivity: Example is connectivity between Jersey and Guernsey.

2.1.2 Off-Island Connectivity: Example is connectivity between Jersey and UK or Jersey and France.

2.1.3 ISP i.e., 'connectivity for internet feed' which JAL has to buy to enable internet access for its mobile and fixed customers.

2.1.4 SP Interconnect i.e., connectivity which JAL buys to connect its data center with wholesale fibre broadband service provider.

2.2 JAL is surprised to note that despite Frontier Economics Ltd's review⁴ of 'Jersey Telecom's wholesale (carrier services) business' carried out on behalf of JCRA in June 2012 mentions 'Pricing Recommendation' in section 5.2.4 which states that "*the JCRA should further review the merits of moving to a cost based pricing approach (rather than the current retail minus approach)*", 11 years later JCRA's methodology is still unchanged i.e., using 'current retail minus' approach which will neither help creating 'level playing field' and nor 'easing cost of doing business' for JAL to 'compete effectively'.

2.3 JAL has long advocated the above-mentioned products to be regulated as it has a significant negative impact on JAL's ability to 'compete effectively', as JAL is dependent on JT and other telcos to provide these services. For example, [REDACTED]:

[REDACTED]

2.4 Despite Regulaid BV's review⁵ of 'Jersey Telecom Ltd's regulatory accounts and access provisions' published on 29th June 2009 on behalf of JCRA in which section 1.2, bullet point 5.2.3 recommending that "*JCRA should require JT to provide a 25% discount to OLOs for its off-island leased lines*", yet no progress was made by JCRA to regulate price of off-island leased lines including leased lines between Jersey and Guernsey.

2.5 JAL noted on page 3 in the report (referred to in point 2.4 and footnote 5 below) in 'executive summary' that "*We regard the problems in Jersey's telecommunications sector as severe because there is no firm foundation for effective competition. We therefore think that JCRA should require JT to introduce new wholesale products, to reduce its wholesale prices, and to become more efficient*".

⁴ <https://www.jcra.je/media/3446/t859j-report-review-of-jt-wholesale-frontier-economics.pdf>

⁵ <https://www.jcra.je/media/1607/t542-10-report-regulaid-review-of-jersey-telecom-separated-accounts-and-wholesale-access-provisions.pdf>

- 2.6 JAL cannot 'compete effectively' unless JCRA regulates prices and enables financial transparency for all the above-mentioned products (2.1.1 to 2.1.4). Adding all these products into just one segment i.e., 'wholesale residual unregulated' will not be transparent as it will be against 'enabling effective competition' as data consumption is increasing year on year in Jersey whilst the revenues are stagnant which is resulting in cost increase for JAL without any incremental revenue increase.
- 2.7 SMP should not be the qualifying parameter for regulating markets as it is favourable to JT. JCRA should regulate all the markets / services with the objective of enabling 'transparency', 'effective competition' and 'level playing field'.
- 2.8 Apart from the above-mentioned products to be separately reported, the JCRA should also require JT to publish the cost efficiency measures it has put in place to reduce cost in each of the areas which will have an impact directly / indirectly on the wholesale cost.
- 2.9 In summary for the reasons explained above, JAL disagrees with JCRA's proposed 'market grouping' i.e., products such as inter-island connectivity, off-island connectivity, ISP and SP interconnect should not be part of non-regulated 'wholesale residual' group. Rather all these mentioned services should be regulated and JCRA needs to ensure 100% costs transparency related to it to avoid any cost misallocation or cross subsidisation.

3.0 Response to Question 2

Q 2: Do you agree with the proposed approach to implementation for regulatory financial reporting?

- 3.1 JAL agrees with the proposed approach defined in templates i.e., detailed and transparent sharing of each and every cost detail including the proposed timelines and cost efficiencies, however, JAL requests JCRA to consider following:
- 3.1.1 All the points made by JAL from 2.1 to 2.9 in response to question 1 in section 2. These points will help JCRA to implement transparent and effective financial reporting by JT including any cost efficiencies achieved and without any cost misallocation or cross subsidisation.
- 3.1.2 JCRA should refer to their own market studies and reviews carried out in 2009 and 2012 respectively (referred to in point 2.2 & 2.4 and footnote 4 & 5) which clearly calls for publishing related costs / financials transparency and regulation of price of products such as off-island connectivity, ISP and SP interconnect which JCRA is not regulating despite JAL's requests since 2017.

4.0 Response to Question 3

Q 3: What are your views on the level of information from the template that should be published?

- 4.1 JAL strongly recommends that since JT's financial statements are a public document, therefore, we would like this template to be published without any modification or redaction for the purpose of 100% transparency as JAL still agrees with the concern noted in 2.5 stating "*the problems in Jersey's telecommunications sector are severe because there is no firm foundation for effective competition*".