Jersey Airtel Limited's (JAL) response *via email* to Jersey Competition Regulatory Authority's (JCRA) Consultation 'Case T-083 Telecoms Market Review - Call for Information' published 30/11/2023.

1.0 Executive Summary:

1.1 JAL anticipates that all the foundational concerns and inputs outlined in this 'executive summary' section, along with responses to Questions 1 to 4, will be taken into consideration during the deliberations leading to the improvements in a 'comprehensive and enduring regulatory framework' as part of 'Case T-083 Telecoms Market Review' which aims to empower JCRA to facilitate 'efficient and effective competition' for the long-term sustainability of the telecom sector in Jersey.

1.2 The Jersey market (of c.100k population) is small, crowded with presence of four telcos, fully penetrated and unviable, in which challenger telco like JAL is facing significant increase in investment costs without any returns due to the advent of '*replacement of its existing end-of-life networks with new 3G & 4G*', '*rollout modest 5G*', and '*comply with forthcoming Telecom Security Requirements*'. Contrary to JCRA's portrayal of commitment to foster competition and assert readiness to take essential measures to support effective competition in the telecom sector, the reality experienced by JAL appears to be clear that effective championing of competition has not been demonstrated by JCRA through the appropriate utilisation of economic regulation. Regrettably, this inconsistency hinders the establishment of a 'level playing field', impeding 'effective and efficient competition' in the telecoms sector of Jersey which is explained further via response to Question 2.

1.3 Over the last 10 years, JCRA has underscored the importance of sensitivity towards competition and the necessity of protecting it, especially in a small market with inherent challenges. However, in practice, there is a noticeable lack of creativity and innovation within JCRA's approach. The JCRA has not demonstrated any initiative as a forward-thinking entity willing to explore unconventional strategies or facilitating the exploration of unique solutions. This deficiency has impeded the ability to find innovative solutions that could have assisted a challenger telco like JAL in mitigating wasteful capital expenditure and avoiding negative returns arising from the inherent limitations of a small market. JCRA has missed numerous opportunities to consider unconventional strategies for the long-term sustainability of the telecom sector in Jersey.

1.4 To date, JCRA's interventions have done little to address any of JAL's concerns regarding the cost of doing business or the challenges faced in acquiring more customers. Additionally, JAL has observed that JCRA's efforts and reviews seem more like a perfunctory tick-box exercise or a tokenistic approach. This is evident from the fact that the regulatory reviews have resulted in negligible benefits for a challenger telco like JAL and, consequently, minimal advantages for consumers. Moreover, instead of addressing the barriers to effective competition in Jersey, JCRA appears to have misplaced priorities by excessively focusing on insignificant issues. JAL acknowledges the importance of process improvement but suggests that JCRA needs to allocate more time to resolving issues that hinder effective competition.

1.5 In Jersey, 'telecommunications' is the only utility sector with competition, unlike 'Electricity,' 'Water,' 'Gas,' 'Ports,' 'Postal Services,' etc., which lack competition. JCRA should focus on enabling efficient market structures, striking a balance between preventing monopolistic practices and avoiding wasteful competition, as observed in telecom sector of Jersey from 2006-2023.

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2.0 <u>Response to Question 1</u>

Q 1: Do you agree that a holistic review of the telecoms sector is timely and an appropriate way to frame current and future regulation? If not, please explain why, with supporting information.

2.1 JAL disagrees that the holistic review of the telecoms sector, as outlined in JCRA's document[1] "*Case T-083: Telecoms Market Review*," is timely or an appropriate approach for shaping current and future regulation. The reasoning, supported by relevant information, is detailed below in this section.

2.2 A review[2] of the Jersey regulatory and competition framework was conducted by Oxera in 2015 on behalf of the Government of Jersey, highlighting the following:

<u>Implications for competition and regulatory authorities in small jurisdictions</u>: While the principles followed could be similar across small and large jurisdictions, it is important to recognise that the application of these principles may differ.

In general, small jurisdictions have the following characteristics:

<u>Small domestic markets</u>: this limits competition possibilities and increases issues of market dominance, as there is room in the market for fewer suppliers that can reach minimum efficient scale, especially in goods that are not traded.

Goal-setting: authorities in small jurisdictions should have fewer clear and realisable goals than in larger jurisdictions. However, as in larger jurisdictions, the authority should focus on pursuing economic efficiency and not try to achieve multiple and broader objectives (e.g. social goals, wealth distribution, etc.). This is because these authorities will face a number of constraints, and intervention to pursue social goals may have perverse consequences.

Therefore, relationships between regulation and competition policy need to be carefully considered in smaller jurisdictions. There may be more need for regulation in smaller jurisdictions for a number of reasons: the number of monopolies and dominant firms is likely to be higher, especially in non-tradable goods; the market may not be large enough to accommodate multiple firms; and the market may not be able to self-correct market failures due to scale effects. As such, regulation may be more appropriate than competition enforcement in relatively more cases than in larger economies.

In essence, Oxera's review of JCRA underscores the importance of considering the unique characteristics of smaller jurisdictions like Jersey when formulating regulatory and competition policies. It implies that, due to factors such as the prevalence of monopolies, limited market size, and challenges in self-correction, regulatory measures might be more instrumental in ensuring fair competition and addressing market failures in smaller economies. This suggests that relying on regulations to set specific rules and standards for market participants may be more effective and necessary than solely relying on enforcing competition policies.

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[1] https://www.jcra.je/cases/2023/t-083-telecoms-market-review/telecoms-market-review-call-for-information/

[2] *https://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=1744*

However, the regulatory reality experienced by JAL in Jersey over the last 16 years is entirely contrary, as JCRA did not regulate all types of wholesale access despite repeated requests from JAL. Additionally, JCRA did not introduce any pathbreaking measures to help avoid wasteful capital expenditure or promote efficient competition, crucial for ensuring the long-term sustainability of current challenger telecom companies like JAL in Jersey.

2.3 Moreover, promoting 'Efficient Competition' should be a central objective in regulatory and economic frameworks for a small jurisdiction like Jersey. This goal ensures that competition not only benefits consumers with competitive prices and superior products but also optimally allocates resources in the market, leading to 'Effective Competition.' In an environment where businesses compete to provide goods or services, consumers reap the ultimate benefits.

A key aspect of promoting 'Efficient Competition' is preventing any single telecom company from dominating the market or controlling prices, usually by maintaining a market share within the range of 35-40%. However, the current scenario in Jersey presents a challenge, with JT holding 52% and Sure holding 23% of the customer market share.

Despite efforts, JAL is left with only a 25% market share, and these market shares have remained stagnant over the last 5-7 years. This imbalance is the root cause of JAL's negative return on its entire investment in Jersey since 2006, indicating that competition has been inefficient in a small market like Jersey with approximately 103k population and four telecom players.

2.4 Although JCRA provides a partial overview of telecom service delivery in Jersey in the document "*Case T-083: Telecoms Market Review*" in section regarding '*the telecoms sector*', it is essential to refer to the table below for a comprehensive understanding of telecom infrastructure ownership in Jersey:

Wholesale Access Owndership / Suppliers						
Particulars	**Mobile Network**	**Fibre Broadband**	**On-Island Leased Line**	**Inter-Island Leased Line (Jersey & Guernsey)**	**SP Interconnect**	**IP / Internet Feed (ISP)**
JT	Yes (141 Masts)	Yes	Yes	Yes	Yes	Yes
Sure	Yes (62 Masts)	Partially*	Yes	Yes	Yes	Yes
Newtel (Homenet)	No	Partially*	Yes	Yes	Yes	Yes
JAL (Airtel-Vodafone)	Yes (60 Masts)	**No**	**No**	**No**	**No**	**No**

**Sure and Newtel / Homenet have their own Fibre in St Helier respectively.*
**Also, Netwel / Homenet have their own Fibre in majority of Social Housing pockets of Jersey.*

From the presented table, it is evident, and unlike each of JAL's competitors, the key conclusions are:

2.4.1 JAL is the exclusive challenger OLO (Other Licensed Operator) in Jersey procuring wholesale services such as 'fibre broadband access', 'inter-island leased line connectivity', 'SP interconnect', 'on-island leases lines', and 'ISP (internet feed)' to provide services to its customers in Jersey.

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2.4.2 JAL stands alone as the OLO in Jersey raising concerns with JCRA regarding the 'prohibitive pricing of all types of wholesale access,' which is further elaborated in response to Question 2.

2.4.3 It is noteworthy that JAL has to compete in both mobile and fixed markets against the same competitors, namely JT, Sure, Newtel / Homenet, who are the exclusive suppliers/owners of various types of wholesale access, as detailed in the above table.

2.4.4 It is confirmed that JAL is forced to pay much more than its competitors for all types of wholesale access as those competitors either own fully or partially most of the different types of wholesale access. Plus, JAL is forced to buy more capacities via different wholesale accesses to cope with the rising data consumption of its mobile and fibre customers despite JAL's revenue declining materially year on year over the last 5 years.

2.5 Despite JAL consistently educating and requesting JCRA since 2014-15 about the critical need to regulate the prohibitive pricing of 'ISP / IP Feed / Internet Feed' and 'SP Interconnect' in Jersey, it is surprising that JCRA did not list or include 'ISP / IP Feed / Internet Feed services' and 'SP Interconnect' in their document "*Case T-083: Telecoms Market Review*" in section regarding '*the telecoms sector*'. JCRA appears to intentionally avoid regulating the pricing of 'ISP / IP Feed / Internet Feed services' and 'SP Interconnect' despite being well aware that JAL cannot operate mobile and fibre broadband services without these two crucial elements.

While JCRA correctly notes in the document "*Case T-083: Telecoms Market Review,*" in the section regarding '*the telecoms sector,*' that "*All residents in Jersey now have access to broadband over fibre offering download speeds of up to 1Gbps, with the vast majority of subscribers taking up these fibre services (89% in 2022),*" it implies that a challenger OLO like JAL is compelled to procure additional 'ISP / IP Feed (Internet Feed)' and 'SP interconnect' capacity to maintain the quality of service with the increase in JAL's Fibre broadband customer base.

This is crucial to ensure reliable and seamless access to services such as 'over the top (OTT) streaming, online gaming, video calling, etc., especially with the increasing adoption of high-speed broadband services by the majority of subscribers in Jersey. This is one of the contributing factors for JAL's 'loss making margin' which is explained further in section 3.5.

The reasons for the indispensability of 'ISP / IP Feed (Internet Feed)' for JAL are following:

2.5.1 <u>Internet Connectivity and Content Delivery for End Users</u>: Mobile and fibre broadband services rely on internet connectivity to provide end-users with access to various online services, websites, applications, and content. The 'Internet / IP feed (ISP)' ensures a reliable and high-capacity connection to the broader internet. The 'Internet / IP feed (ISP)' ensures that JAL can deliver services such as streaming, online gaming, and other data-intensive applications seamlessly to their customers.

2.5.2 <u>Data Transmission and Communication along with Global Connectivity</u>: Mobile and fibre broadband networks facilitate the transmission of data between the JAL's infrastructure and end-user devices. The 'Internet / IP feed (ISP)' acts as a gateway for data to flow in and out of the JAL's network, enabling communication with the global internet, allowing users of the mobile and fibre broadband services to access content and services hosted anywhere on the internet.

2.5.3 Support for Business Services: In addition to consumer services, JAL often offer services to businesses which includes dedicated internet access, cloud connectivity, and other business-critical applications that require a robust 'Internet / IP feed (ISP)'.

The reasons for the vitality of 'SP Interconnect' for JAL are following:

2.5.4 Network Connectivity & Interoperability: The SP (Service Provider) interconnect provides the physical and logical connection between JAL's infrastructure and the wholesale fibre network. It enables the flow of data and communication between the two networks. The SP interconnect plays a role in maintaining the quality of service for the telecom operator's customers by ensuring reliable and high-quality services.

2.5.5 Traffic Exchange and Capacity Expansion: Apart from 'SP interconnect' providing a scalable point for capacity expansion, it facilitates the exchange of traffic between JAL's network and the wholesale fibre network. This includes voice, data, and other communication services that need to be transmitted between the operator and the broader network.

In summary, the 'Internet / IP feed (ISP)' and 'SP Interconnect' serve as a foundational element, ensuring reliable, high-capacity, and global connectivity for a mobile and fibre broadband service provider like JAL. This crucial component enables the delivery of a diverse range of services to customers.

The omission of 'ISP / IP Feed / Internet Feed services' from regulatory consideration by JCRA since 2014-15 represents a significant oversight that requires immediate attention and rectification.

2.6 A review (*source is in footnote 1*) of the Jersey regulatory and competition framework was conducted by Oxera in 2015 on behalf of the Government of Jersey, highlighting this:

Another issue identified with the regulatory functions, is the time it can take to pursue regulatory action. Where the consultation and discussions under the provisional notice lead to a change in the proposed action, the reference back to provisional notice stage, combined with the two-stage consultation and the time needed to consider representations, means that the elapsed time between deciding that some regulatory action is needed and it actually coming into force can be lengthy.

The result of this structure is that many regulatory decisions take a long time to implement and the minimum time required to take even small and uncontentious regulatory decisions is longer than is necessary.

The JCRA has undertaken a number of market investigations over the last few years, some of which were initiated a result of requests by Ministers. While a detailed consideration of these decisions is not within the scope of Oxera's review, there is some indication that the substance of the market investigations undertaken may have been misguided or incorrect.

The stakeholders indicated that at least some these investigations did not appear to have actually led to an improvement in outcomes for consumers, and might not have been undertaken using the most appropriate methods or with the appropriate focus.

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8 years have passed since the aforementioned observation, and regrettably, no significant changes have been observed. The proposed holistic 'Telecoms Market Review' is anticipated to take a minimum of 3 years to conclude, considering the historical average time JCRA takes for such exercises. Subsequently, an additional 3-5 years may be required to consult and review the actions identified in this exercise.

Consequently, a challenger OLO like JAL will continue to face challenges in competing efficiently and effectively over an extended 8-10-year period. This extended review timeline will potentially favour the incumbent wholesale service provider, providing them with the opportunity to secure and enhance their market share and revenue share during this protracted process.

2.7 Timely and objective regulatory reviews in the telecommunications sector are crucial for ensuring fair competition, protecting consumer interests, and adapting to changes in the industry. The independent studies and market assessments[3] conducted by JCRA between 2009 and 2014 recommended the establishment of cost-based pricing for all wholesale access types and the implementation of a comprehensive review of the telecoms sector in Jersey. This delay raises concerns about JCRA's accountability in effectively addressing emerging issues, adapting to technological advancements, and ensuring a fair and level playing field for market participants like JAL over the past 8-9 years in Jersey. The concerns regarding 'lack of level playing field' and 'effective and efficient competition' with more supporting information are explained via response to Question 2.

2.8 In conclusion, JAL strongly opposes JCRA's proposed 'Telecoms Market Review' in its current form due to the reasons outlined in sections 2.2 to 2.7, and considers it significantly delayed by 9 years. The exclusion of crucial services such as 'fibre broadband access,' 'inter-island leased line connectivity,' 'SP interconnect,' 'on-island leases lines,' and 'ISP (internet feed)' from the review is a major concern. Industry dynamics, especially the 'data consumption explosion' post-COVID, evolve rapidly, and regulatory delays are counterproductive for a challenger like JAL in the small and dynamic Jersey telecom market with approximately 103k population and the presence of four telecom operators. These delays not only go against market principles but also impede JAL's ability to compete 'effectively and efficiently'.

3.0 <u>Response to Question 2</u>

Q 2: ***Do you agree with the proposed scope of the Review as set out in the call for information? If not, please explain what changes you think should be made, with supporting information.***

3.1 We express our disagreement with the outlined scope of the '*telecom market review*' as presented in the call for information. The three overarching themes framing the '*telecom market review*' appear to contradict the policies and approach consistently adopted by the JCRA over the past 7-8 years. We provide the following reasons for our disagreement, urging the JCRA to revisit to expand the '*telecom market review*' scope to address the concerns consistently highlighted to JCRA since 2015.

[3] https://www.gov.je/News/2009/Pages/JCRAReviewReportPublished.aspx

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

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

Theme 1: Government telecoms policy framework and action plan.

3.2 JCRA quotes in the document "*Case T-083: Telecoms Market Review*" in section regarding '*the government policy*' that the Government of Jersey's (GoJ) '*Delivery Framework for Sustainable Economic Development*[4] *2023-26*' sets out broader framework within which the telecoms sector will operate in future. This document states that:

Maintaining an attractive and competitive business climate with a robust, transparent and supportive regulatory framework, is essential for our economy. Oxera's 2015 review suggests conducting competition policy in a small economy is hard, but the economic benefits can be substantial.

Competitive and well-functioning markets help create the right conditions for entrepreneurial activity and dynamic businesses to grow, which in turn improves productivity in the economy. With a more vibrant economy, this makes our island a more attractive place to live and work.

The role of the Jersey Competition and Regulatory Authority is important, to ensure fair competition and well-functioning markets. Deliver the targeted review of the competition framework in Jersey to ensure it supports business innovation, growth and competition and protects the interests of consumers.

JCRA's Strategic plan[5] states that "*Secure, resilient and good value telecommunications services are vital for Jersey consumers, citizens, businesses and the economy. Our objective is to encourage sustainable competition, which will deliver innovation, value for money and service development for the benefit of consumers ….*"

While JAL recognises the emphasis in the GoJ's proposed framework for the telecom sector on maintaining an attractive and sustainable competitive business environment through robust, transparent, and supportive regulatory policies, taking into account the challenges outlined in Oxera's 2015 review, there is a disparity with the commercial reality consistently overlooked by JCRA.

Despite the goal of creating competitive and well-functioning markets to foster entrepreneurial activity and support dynamic businesses, JAL has faced challenges in growing revenues year on year in Jersey.

This financial limitation hinders JAL's ability to generate sufficient cash to meet its current multi-million-pound capital expenditure needs for the 'end-of-life network replacement with new 3G & 4G' and future multi-million-pound capital expenditure needs for 'modest 5G' and 'TSR obligations.' The Jersey market, with approximately 100k population, is small, crowded with four telecom operators, fully penetrated, and considered unviable.

3.3 A review (*source is in footnote 1*) of the Jersey regulatory and competition framework was conducted by Oxera in 2015 on behalf of the Government of Jersey, highlighting the following:

In small-island economies, such as Jersey, it is just as important that markets work well as it is in larger economies. But in smaller jurisdictions competition policy, and regulation where competition is not possible, faces particular challenges.

[4] https://www.gov.je/government/planningperformance/futureeconomy/pages/deliveryframeworksed.aspx

[5] https://www.jcra.je/media/598402/strategic-plan.pdf

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First, in some markets not exposed to international competition, there is not as much scope as in larger economies for there to be effective competition.

Second, there are economies of scale in regulation and competition policy itself, so their cost per resident is greater than in large economies. This underlines the importance of the institutions that carry out competition and regulatory policy working as effectively as possible.

Two themes are worth stressing:

The first is the importance of principled pragmatism. All competition authorities have a duty to make best use of scarce resources, but in small jurisdictions this is especially important and challenging. Effective prioritisation is the key here, and that should take account of what other authorities (e.g. in the UK or Brussels) are doing anyway. The task is to focus effort on the most important issues that are not otherwise being addressed.

The other point to stress is that competition policy is not just a task for the competition authority. Many institutions—above all, the government in various ways—have major effects on how well markets work in the local economy.

Given the significance of the two themes highlighted in Oxera's review of JCRA in 2015, namely, '*principled pragmatism*' and '*competition policy isn't a task*' within the context of a small-island economy, JAL's experience with JCRA, particularly within the challenging telecom sector in small-island economies like Jersey, does not reflect a pragmatic understanding of the difficulties faced by JAL in establishing 'efficient and effective competition'.

Furthermore, critical concerns such as the 'lack of a level playing field' and the 'unviability of Jersey's Telecom Market' have not been adequately addressed by JCRA over the past 10-15 years.

3.4 The first theme of the proposed '*telecom market review*' is anchored in the Government of Jersey's (GoJ) 'Telecoms Strategy for Jersey[6],' which puts forth the following recommendations in 2018:

- *be a fast adopter of next generation technologies by adopting, as a general principle, proactive policies to encourage investment in next generation technologies that have been tested elsewhere*.
- *adopt policies to incentivise mobile network sharing and rollout of mobile next generation technologies such as 5G across relevant Government departments and CICRA*.

To put the above recommendations into effect, the Government of Jersey's (GOJ) Telecoms Strategy Action Plan[7] was devised in 2018. It was intended to be collaboratively executed by JCRA and GoJ, but both entities failed in doing so.

We elucidate below instances of JCRA's neglect, volte-face, failures, or missed opportunities since 2018, aligned with the specific actions (*italicised below, source is in footnote 3*) in sections 3.5 to 3.11 respectively.

[6] https://www.gov.je/Industry/TelecomsStrategy/Pages/FinalOxeraReportOnTelecomsStrategyForJersey.aspx

[7] https://www.gov.je/Industry/TelecomsStrategy/Pages/JerseyTelecomsStrategyActionPlan.aspx

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3.5 Following action plan goals were finalised regarding 'spectrum & mobile network infrastructure efficiency', '5G', and 'network sharing' to avoid wasteful capital expenditure by local telcos like JAL:

- *Review existing spectrum allocation in Jersey to ensure efficient use of spectrum.*
- *Convene group to identify the planning requirements for 5G network and planning barriers to next-generation network rollout*.
- *Work with telecoms operators to investigate potential 5G trials using common infrastructure*.
- *Review planning process for access to buildings, infrastructure, land to determine whether existing rules are sufficiently transparent, timely, and effective in supporting next-generation network rollout*.
- *Build on this review to set out forward-looking planning guidelines that incentivise innovation and network sharing as the default for new telecoms infrastructure*.
- *Undertake an internal review of the fees paid by telecoms operators for use of public land with a view to ensure that they are charged at market rates and in line with other utilities*.
- *Put in place a policy, which ensures that building, infrastructure and land rental fees for telecoms sites incentivise network sharing and innovation*.

3.5.1 The above-listed action plan goals were initially incorporated in JCRA's first "5G Spectrum – Statement of Intent[8]' published in 2019. However, upon JAL's inquiry regarding the status updates on the above-mentioned action plan goals, they were subsequently omitted from JCRA's second '5G Spectrum – Updated Statement of Intent[9] published in 2022 without offering any explanation.

3.5.2 JCRA disregarded JAL's insistence to link future spectrum allocation to network sharing during the 2019 investigation[10] into JAL's competitors, JT and Sure, for an alleged breach of competition law. This disregard was followed by JCRA's sudden closure of the investigation in 2021, without providing a satisfactory explanation to JAL. Moreover, JCRA's abrupt termination of the 'anti-competition investigation' into JT and Sure did not align with the recommendations outlined in the findings of the 'Review of JCRA Investigation[11]' conducted by Kassie Smith, Q.C. of Monckton Chambers in 2018.

3.5.3 Despite JCRA taking prompt action to prevent harm to challenger OLOs like JAL, the investigation closure remains questionable due to the lack of a satisfactory explanation. Notably, JCRA's key partner, GCRA, rendered a 'guilty' verdict in the same case in Guernsey based on the identical set of evidence.

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[8] *https://www.jcra.je/media/598136/5g-spectrum-statement-of-intent.pdf*

[9] *https://www.jcra.je/cases/2022/t-064-5g-spectrum-award-2022/t-064-5g-spectrum-award-updated-statement-of-intent/*

[10] *https://www.jcra.je/cases/2020/c1471gj-jt-sure-competition-law-investigation/*

[11] *https://www.gov.je/news/2018/pages/JCRAReview.aspx*

Moreover, JCRA's implementation of new license conditions to safeguard against similar issues is viewed as a very basic step that could have been taken without abruptly closing the investigation.

Additionally, JCRA's dismissal of JAL's suggestion, shared during meetings and correspondence on the matter, advocating for the introduction of license conditions mandating future spectrum allocations with mobile radio network infrastructure sharing with examples of other European jurisdictions, reflects a disregard for valuable input. This stance aligns with the typical reluctance of dominant or incumbent mobile operators with over 50% market share, who often oppose the concept of 'network sharing.'

3.6 Following action plan goals were finalised regarding 'wholesale fibre access':

- *As a priority, assess JT's current fibre wholesale offer in light of policy objectives to promote effective retail competition*.
- *As appropriate, direct JT to offer fibre wholesale products to allow for differentiated retail services*.

3.6.1 Despite JCRA noting in the document "*Case T-083: Telecoms Market Review,*" in the section regarding '*the telecoms sector,*' that "*Consumer demand continues to change, for example, 'bundled products', where consumers choose a supplier based on a range of different products and services for a single monthly cost*.," JCRA has consistently disregarded the comprehensive supporting evidence presented by JAL concerning issues such as the 'loss-making margin' resulting from the prohibitive pricing of 'wholesale broadband fibre bitstream access,' 'SP Interconnect,' and 'ISP/Internet Feed.'

3.6.2 Given JCRA's reluctance to acknowledge JAL's 'loss-making margin,' the JCRA attempted to attribute this situation to factors such as 'new entry to market,' 'time required to build up scale,' and 'lack of volume,' which, in reality, is not the case. Quite the contrary, the crucial fact is that acquiring more fixed customers would actually exacerbate the 'loss-making margin' for JAL, a point that JCRA has not been willing to admit. This oversight underscores that the 'loss-making margin' issue is fundamentally linked to the prohibitive pricing of wholesale access services i.e., 'fibre broadband access,' 'SP interconnect,' and 'ISP/Internet Feed.'

3.6.3 Therefore, despite a downward price trend established by JCRA with price certainty for 'fibre bitstream access' for the OLOs until 2026, still JAL will continue to face a 'loss-making margin' until 2026 and beyond.

3.6.4 Despite consistent highlighting by JAL to JCRA, concerns related to Wholesale Line Rental (WLR) have never been addressed. This is grounded in the fact that 'fibre broadband' utilises optical fibres for data transmission and doesn't rely on the traditional copper telephone infrastructure. Consequently, WLR is not necessary for 'fibre broadband' services, which exclusively pertain to the use of copper telephone lines. Given that only 10% of customers use WLR, as evidenced by JAL's experience over the last two years, JCRA has not provided clarification on why WLR revenues for JT have been secured until 2026. This is despite the negligible customer demand for WLR services, compelling customers to pay for a service without any corresponding demand.

3.7 Despite JCRA being informed that JAL had to halt '4G broadband' sale/promotion in 2018-2019 due to prohibitive backhaul costs, JCRA did not address the backhaul (on-island leased line) pricing. Following action plan goals were finalised regarding 'wholesale backhaul access':

- *Ensure fair, reasonable and non-discriminatory access to backhaul for mobile sites for all mobile providers*.

- *Ensure that operational costs for the fibre network are efficient. Use reporting requirements and other regulatory tools to enforce this as necessary*.

3.7.1 JCRA has never considered and responded to any of the following Microwave (MW) backhaul related '*lack of level playing field*' concerns shared by the JAL:

i. JAL raised concerns about MW backhaul with the aim of urging JCRA to create a 'level playing field' for all potential backhaul options in Jersey, mirroring practices in other jurisdictions like the UK. As a result, JCRA was anticipated to reduce the pricing of on-island leased lines to better align with the costs of MW backhaul. However, JCRA did not take this step and did not provide an explanation for its decision.

ii. JAL presented a comparison between MW and leased lines for Jersey (500 Mbps) to JCRA's analysts during the BCMR review. The one-time cost of a 500 Mbps MW link is £3,000, with an operational expenditure of approximately £1,500 per year. In contrast, the annual price of fibre (on-island leased line) backhaul for the same capacity is £7,538. Considering a 5-year lifespan for a MW link, JAL would spend £10,500 (£3,000 + £1,500 x 5) on a 500 Mbps MW backhaul. In contrast, the cost would be 3.6 times higher, amounting to £37,690 (£7,538 x 5) for a 500 Mbps on-island leased line. Therefore, it is financially impractical for JAL to opt for a fixed leased line, given that the cost is nearly 3.6 times that of MW backhaul for the same bandwidth. It's worth noting that this comparison is based on JT's on-island leased line pricing, considering JT as a Significant Market Power (SMP) player in the market.

iii. JAL has consistently communicated with JCRA through responses to BCMR consultations since 2019, as well as presentations at two JCRA-led 5G summits. The focus of these communications has been on the non-resilient Microwave (MW) backhaul limitations experienced by JAL. This includes highlighting JAL's reliance on MW backhaul for 63% of its masts, in contrast to its competitor incumbent, which uses MW backhaul on only 10-15% of its masts. This discrepancy leads to a 'customer experience disparity' in the market.

3.7.2 Despite JAL consistently highlighting to JCRA the issue of disproportionate pricing across various bandwidths in on-island leased lines, JCRA did not address the disproportionate pricing. The disproportionate prices were established by JCRA in their final BCMR pricing decision. For instance, the price of a 100 Mbps leased line (1/10th, i.e., 10% speed of 1 Gbps) at £6,417 represents 69% of the 1 Gbps leased line priced at £9,367. Similarly, the price of a 500 Mbps leased line (half the speed of 1 Gbps, i.e., 50%) at £7,538 is 80% of the 1 Gbps leased line priced at £9,367.

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3.7.3 JAL's data revenue model hinges on resource consumption at each base station, where every Megabyte (MB) consumed generates equivalent revenue, irrespective of the leased line capacity provisioned at each site. Whether it's a base station with a 100 Mbps or 1 Gbps leased line, the data revenue remains consistent. However, as JAL primarily procures <1 Gbps leased lines from incumbent JT based on network traffic, the cost per MB, influenced by BCMR disproportionate pricing for lines below 1 Gbps, becomes exorbitant.

This situation hampers JAL's ability to compete 'effectively and efficiently,' highlighting the prohibitive cost of doing business in Jersey – a concern left unaddressed by the BCMR. JAL asserts that competing becomes unfeasible if compelled to raise prices to recover the disproportionate costs of low-speed bandwidth leased lines from its customers.

3.7.4 JAL understands the fixed costs associated with each bandwidth leased service. However, in the absence of JCRA's validation of the incumbent wholesale service provider, JT's actual costs, JAL questions the rationale behind the substantial fixed costs factored into the pricing of 100 Mbps (10% capacity of 1 Gbps at 69% of the price of 1 Gbps) and 500 Mbps (50% capacity of 1 Gbps at 80% of the price of 1 Gbps). The establishment of high fixed costs for low-speed bandwidth leased lines by JCRA appears flawed for the following reasons:

i. JAL’s understanding is that the primary cost driver for fixed leased line solutions is the infrastructure required to provide the service, which includes laying fibre optic cables, setting up network equipment, and ensuring the reliability of the connection. Additionally, the diameter of fibre optic cable and fibre duct is the same regardless of the speed or capacity of the fibre optic cable.

ii. Furthermore, a higher-speed bandwidth leased line necessitates more extensive and robust infrastructure to support higher speeds and greater data volumes, along with increased monitoring and maintenance for consistent performance. This results in higher fixed costs. Conversely, a lower-speed leased line with lower bandwidth incurs lower fixed costs for the same reasons.

3.7.5 Considering the data usage patterns of the majority of JAL's customers, which can be accommodated by leased lines with less than 500 Mbps bandwidth, and acknowledging that the incumbent's fixed costs are likely similar across different bandwidths of leased lines, imposing disproportionate charges across all products less than 1 Gbps is detrimental to effective and efficient competition. This approach ultimately harms consumers in Jersey.

3.7.6 JCRA has not provided clarification on the extent to which actual product demand for each bandwidth category of fixed leased lines was considered. JAL asserts that the incumbent wholesale service provider, JT, likely has a significant customer base in the low-speed bandwidth leased line category, which includes JAL. Without visibility into any underlying analysis conducted by JCRA, it seems to JAL that JCRA's approach may potentially benefit JT in safeguarding their higher-profit income in the low-speed bandwidth category (i.e., less than 500 Mbps).

3.7.7 In essence, JCRA's last BCMR pricing decision does not provide any incentive for JAL to choose additional leased lines or upgrade existing ones, as it would result in a cost increase of more than threefold for JAL.

3.8 Despite consistent communication to JCRA since 2017-18 regarding the substantial expenses incurred by JAL for off-island links due to prohibitive pricing, JCRA has not taken steps to address the high prices of off-island data links. Following action plan goals were finalised regarding 'wholesale off island links':

- *Introduce proportionate reporting requirements for operators on capacity and usage of off-Island links*.

- *Engage with authorities in Guernsey to find potential areas of cooperation*.

3.8.1 Despite JAL being a Critical National Infrastructure (CNI) and heavily relying on data connectivity between Jersey and Guernsey to operate its network in both islands, including maintaining or enhancing resilience, JAL has consistently requested JCRA since 2017 to address the prohibitive price of inter-island data connectivity. Despite JCRA listing GCRA as their key partner, JAL is disappointed to note that JCRA has not included any strategic aim or objective in any of their Business Plans to date to address this issue.

3.8.2 JCRA has yet to provide clarity on the necessity of conducting a '*telecoms market review*' as a prerequisite for considering cost-based charging for all wholesale regulated/non-regulated products such as off-island links. This question arises, particularly when previous market studies and consultations conducted by the Government of Jersey (GoJ) and JCRA in 2009 and 2012, approximately 11-14 years ago, noted and recommended that: "*JCRA should require JT to provide a 25% discount to OLOs for its off-island leased lines.*" JCRA neither implemented this recommendation nor offered an explanation for its non-implementation.

3.8.3 Please refer to the table below to observe the evolution of JAL's consumption of 'Internet / IP feed (ISP)' and 'inter-island data connectivity link between Jersey and Guernsey' over the past few years.

JAL utilises 'Internet / IP feed (ISP)' to offer continuous high-capacity internet access and relies on the 'inter-island data connectivity link between Jersey & Guernsey' for resilience.

<table>
<tr><td rowspan="2">ISP / IP or Internet Feed for Fixed Fibre Broadband</td><td>2022</td><td>2023</td><td rowspan="2">Increase by 500%</td></tr>
<tr><td>1 Gbps</td><td>6 Gbps</td></tr>
<tr><td rowspan="2">Inter-Island Leased Line between Jersey & Guernsey</td><td>2018</td><td>2023</td><td rowspan="2">Increase by 100%</td></tr>
<tr><td>2 Gbps</td><td>4 Gbps</td></tr>
</table>

The significant increase in data consumption through these services has led to a substantial rise in JAL's operational expenses, primarily attributed to the prohibitive pricing of 'Internet / IP feed (ISP)' and 'inter-island data connectivity link between Jersey and Guernsey,' concerns consistently overlooked by JCRA.

3.9 Following action plan goals were finalised regarding 'regulatory transparency':

- *Increase regulatory transparency by consulting stakeholders ahead of releasing annual work programme*;

3.9.1 A review (*source is in footnote 1*) of the Jersey regulatory and competition framework was conducted by Oxera in 2015 on behalf of the Government of Jersey, highlighting the following:

The JCRA needs to improve communication with stakeholders on its actions and the results it achieves. In particular, it should consult on, and publish, an annual plan in advance of each financial year, and provide a comprehensive report on how it has performed against the previous year's work plan, using key indicators or metrics.

Unfortunately, the JCRA has not implemented the suggested actions from the Oxera's review in 2015 or adhered to the directives outlined in the Government of Jersey's telecom strategy finalised in 2018, and there is a noticeable absence of regulatory transparency.

Stakeholders are not consulted prior to finalising and releasing the annual work program or business plan, as evidenced by JCRA's failure to engage with JAL for the 2023 Business Plan and insufficient consultation for the 2024 Business Plan. Despite later consultations, JAL's feedback was not considered in the finalised 2024 Business Plan, raising concerns about the effectiveness of stakeholder engagement in JCRA's regulatory processes.

3.9.2 JCRA has consistently failed to produce and provide a comprehensive report on how it has performed against the previous year's work plan, utilising key indicators or metrics. Furthermore, owing to a perceived gap in understanding and awareness of the telecommunications sector within local media, civil servants, and the lawmakers, there seems to be a situation where the JCRA operates without sufficient scrutiny and accountability for its approach to addressing the concerns faced by challenger telcos like JAL.

This observed lack of oversight has resulted in 'lack of level playing field' and 'ineffective and inefficient competition' in Jersey which may have implications for consumer welfare, potentially resulting in adverse consequences in the telecom market.

3.9.3 The above-mentioned lack of collaboration and responsiveness suggests that JCRA's actions are symbolic and lack genuine commitment. This pattern of behavior has been observed during BCMR reviews, Broadband Fibre pricing reviews, and consultation regarding the closure of investigations into JT and Sure for alleged breach of competition law.

JCRA's responses to numerous letters[12] by JAL, expressing concerns about the '*lack of a level playing field in Jersey*' and '*inefficient and ineffective competition*,' deliberately lack acknowledgment of the challenges faced by JAL. Also, JCRA's responses often involve a convenient 'shifting of stance' or 'misinterpretation' of certain issues, aiming to sidestep the resolution of concerns shared by JAL.

[12] *JAL has communicated its concerns to JCRA through nine letters in 2023.*

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3.9.4 JCRA's business plan lacks concrete measures to remove barriers to efficient and effective competition. It seems routine and standardised, resembling a job description with stated responsibilities, and fails to align with the ever-evolving data consumption patterns of JAL's mobile and fixed fibre subscribers in Jersey.

3.9.5 To enhance effectiveness and to drive real change in the market, JCRA's business plan should encompass the innovative S-M-A-R-T parameters: 'Specific,' 'Measurable,' 'Achievable,' 'Relevant,' and 'Timebound' actions which can be tailored to address the unique challenges faced, fostering an environment that encourages investment, innovation, and improved service delivery.

3.10 Following action plan goals were finalised regarding 'telecom data / statistics':

- *Continue regular collection, analysis and publication of appropriate telecoms data to inform evidence-based regulation and the development of the sector*.

3.10.1 Despite the GoJ's Telecoms Strategy Action Plan (*source is in footnote 5*) emphasising evidence-based "regulation and development" of the telecom sector in Jersey, JCRA has consistently disregarded all the evidence presented by JAL in support of its concerns about the 'lack of a level playing field' and 'inefficient and ineffective competition,' as elaborated in sections 2.3 to 3.10 respectively.

3.10.2 Despite the annual publication of the "*Telecommunication Statistics and Market Report*" by JCRA, the authority consistently overlooks and fails to acknowledge the evident challenges faced by JAL in competing efficiently and effectively, as highlighted below:

i. Please refer to the table below to understand how JAL's '*mobile customer market share*' and '*mobile revenue market share*' have evolved as per JCRA's '*Telecommunication Statistics and Market Report 2022*[13]' over the last 5 years respectively in Jersey. As evident from the table below, [redacted]

Mobile Base in '000

[redacted]

CMS - Customer Market Share

Mobile Revenue in GBP

[redacted]

RMS - Revenue Market Share

[13] https://www.jcra.je/cases/2022/t-081-telecommunications-statistics-and-market-report-2022/

ii. Please refer to the table below to understand how JAL's 'fixed customer market share' and 'fixed revenue market share' have evolved over the last 2 years respectively in Jersey. *(Source is in footnote 11)*

[redacted]

iii. Please refer to the table below to understand how JAL's mobile data consumption has evolved over the last 3 years. The table below shows that JAL's network, despite being the challenger in Jersey, has the mobile data volume at 117% of incumbent JT's mobile network (*JT has 52% whereas JAL has 25% mobile customer market share respectively*). The table below also shows year on year decline in JAL's data volume as compared to its competitors which confirms that JAL is struggling to compete '*effectively and efficiently*', and JAL's '*4G home broadband*' customer base is declining. *(Source in footnote 11)*

Telecom Statistics for Jersey Mobile Data Volume (Million Gbytes)						
Operator / Year	2020 Data Vol.	JAL's Data Volume ratio	2021 Data Vol.	JAL's Data Vol. ratio	2022 Data Vol.	JAL's Data Vol. ratio
JT	2.58	**166%**	2.64	**153%**	3.34	**117%**
Sure	2.69	**159%**	3.31	**122%**	3.85	**101%**
Airtel (JAL)	4.29	-	4.05	-	3.90	-

3.10.3 In one of the correspondences from 2023, when JAL shared the above three trends with JCRA based on the "*Telecommunication Statistics and Market Report*" to highlight the challenges faced regarding inefficient and ineffective competition, JCRA responded, stating, "*The Telecoms Statistics report is a statement of market figures and conditions; it does not confirm or seek to convey a preference for any particular telecoms service, product, or a form of product bundling.*"

In response, JAL pointed out a contradiction within JCRA's own statements made in the media[14] that the "2022 Telecom Statistics" show a preference for 'bundled products.' This raises questions about the rationale behind publishing comprehensive data on the telecom industry of Jersey if the JCRA does not aim to use the information objectively for the formulation of new regulations, policies, or the reform of existing ones. This was particularly critical in adapting to the evolving post-COVID landscape where fast-speed data connectivity became a fundamental necessity rather than a luxury.

The irony intensifies when JCRA notes in the document "*Case T-083: Telecoms Market Review,*" in the section regarding '*the telecoms sector*,' that "*The use of traditional fixed line and mobile voice services continues to decline, though 2020 saw an increase against the trend, potentially driven by user behaviour during the COVID-19 pandemic; and The use of mobile data is continuing to increase, likely driven by the consumption of 'Over the Top' (OTT) services such as social media, video streaming and communications.*"

[14] https://www.jcra.je/media/598759/telecoms-sector-remained-steady-and-healthy-in-2022.pdf

Yet, JCRA never historically acted upon JAL's consistent escalation to address prohibitive pricing of various wholesale access such as 'on-island leased line,' 'SP interconnect,' 'bitstream fibre,' 'inter-island data connectivity,' and 'ISP / IP Feed (Internet Feed)'.

JCRA's disregard for JAL's concerns about the prohibitive pricing of all types of wholesale access, along with the evidence presented from JCRA's "*Telecommunication Statistics and Market Report*" to support these challenges, has detrimentally impacted competition, ultimately harming both existing and potential customers of JAL.

3.11 Following action plan goals were finalised regarding 'telecom data / statistics':

- *Update the licencing regime and current licencing obligations for operators to support the goals of the telecoms strategy*.

3.11.1 The evidence and explanations presented by JAL in sections 2.3 to 3.11 respectively reveal that JCRA has consistently fallen short in achieving the objectives outlined in the Government of Jersey's Telecom Strategy.

Consequently, both the licensing regime and the existing licensing obligations for operators have remained unaltered. Updating these regulatory aspects could have prevented unnecessary capital and operational expenditures incurred by operators, potentially enhancing the viability of Jersey's telecom sector. This, in turn, would have facilitated more effective and efficient competition for challengers like JAL.

Theme 2: Regulatory and economic policy.

3.12 JCRA quotes in the document "*Case T-083: Telecoms Market Review*" in section regarding '*the regulatory and economic policy*' which states that:

The second of the themes encompasses several recurring policy issues and other matters likely requiring consideration. These range from a review of other telecoms regulatory frameworks in the United Kingdom, European Union and possibly elsewhere. For example, how regulatory frameworks in different – and comparable – jurisdictions might have changed and how this might relate to the regulatory framework in Jersey.

The Oxera's review of JCRA in 2015 noted that:

JCRA should explore the possibility of entering into broader and more formal arrangements with competition/regulatory authorities in another jurisdiction, such as the UK Office of Communications (Ofcom) and the Competition and Markets Authority (CMA), with the aim of getting access to the expertise needed for specific projects, and the development of some expertise relating to the situation in Jersey within those authorities.

JAL is not aware of any formal arrangement between JCRA and Ofcom or CMA to provide guidance on specific project or reviews related to local telecom matters, however, JAL perceives a double standard, wherein JCRA conveniently references the review approaches of regulatory authorities in the UK or other European markets showcasing alignment with other jurisdictional regulatory authorities, but it fails to make bold decisions on pricing for various types of wholesale access, as seen in those countries. These groundbreaking decisions are essential for cultivating increased efficient competition, and innovation in the Jersey market, ultimately resulting in benefits for consumers.

For instance, despite multiple requests from JAL urging JCRA to consider the UK as a benchmark, where leased line prices underwent five reviews leading to a substantial 200% reduction since 2013 (*Openreach 2022*), , JCRA has consistently overlooked this example.

This has led JAL to perceive a convenient selectivity on the part of JCRA, as it fails to acknowledge the successful 'Ofcom-BT/Openreach' case. Despite quoting the Ofcom example in JCRA's press release on June 4, 2013, mentioning that "*Ofcom's recent review of the business connectivity market in the UK led to significant price reductions being imposed on BT Openreach for many of these services. We will be looking closely at the pricing strategies of local operators to ensure that the prices they charge business customers are fair and proportionate*," JCRA seems to favour generalised European recommendations over specific proven instances.

3.13 Whilst JCRA mentions in '*the regulatory and economic policy*' section that "*other matters would likely include consideration of a cost-based charging regime for all wholesale regulated products and services*," and "…*the Review will seek to affirm the Authority's understanding of respective markets, and to consider and review current SMP designations..*."

3.13.1 Notwithstanding independent studies[15] and market research[16] commissioned by the JCRA from 2009 to 2012 including JAL's responses to JCRA consultations between 2012 and 2023, which consistently advocated for the implementation of cost-based pricing across all categories of wholesale access, the JCRA has regrettably refrained from taking any corresponding actions in this regard between 2009 and 2023 to prevent any of the following concerns:

i. If JCRA is mandated by (JT's) License and Telecoms Law to ensure JT recovers all efficiently incurred costs, why has JCRA not adopted a cost-based pricing approach, as suggested in its 2012 review of 'JT's wholesale (carrier services) business'? The persistent use of the 'current retail minus' approach over 12 years has hindered a 'level playing field' and failed to reduce the 'cost of doing business' in Jersey, impacting JAL's ability to 'compete effectively and efficiently.'

ii. In 2013-2014 'BCMR T1097GJ[17]', the JCRA expressed the view that, *in principle, relating prices to underlying costs would be reasonable and fair, both to operators and to customers. However, the JCRA's prime concern with cost orientation as a remedy was that it would be likely to be a resource-intensive remedy for both operators and the regulator, one which would take some time to implement.*

[15] *https://www.gov.je/News/2009/Pages/JCRAReviewReportPublished.aspx*

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

[16] *https://www.jcra.je/media/3446/t859j-report-review-of-jt-wholesale-frontier-economics.pdf*

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

Despite this, after a 10-year delay, JCRA is now proposing a '*telecom market review*' to assess the feasibility of adopting a 'cost-based pricing approach' for all types of wholesale access.

iii. JCRA has never validated that any kind of 'SMP'/Non-SMP' is free of any unfair advantages due to ownership of various wholesale accesses in Jersey.

Further, if the incumbent telecommunication service provider has any shared infrastructure between 'wholesale accesses' and 'retail accesses', including any infrastructure sharing between the products too such as '*bitstream fibre access*' or '*on-island leased lines access*' or '*SP interconnect access*' or '*any access to connect to IP feed/ISP*', therefore, such complex shared infrastructure can create opportunities for cross-subsidisation, for example: costs incurred for wholesale services may be inappropriately allocated to retail services, or from on-island leased line product to broadband product to justify higher wholesale prices which may not always be detected or prevented.

iv. In a shared infrastructure scenario, there is a risk of resulting in regulated prices being higher than they should be. This will harm competition by limiting consumer choices as JAL has already shared enough analysis and examples with JCRA in this regard, for example: JAL's '*negative margin*' or '*declining 4G broadband*' base.

3.13.2 The historical application of one-size-fits-all Significant Market Power (SMP) measures by JCRA has proven to be a barrier to efficiency and sustainability of competition in Jersey, thus, the application of SMP measures, especially to a crucial wholesale access element such as 'ISP / IP Feed (Internet Feed),' requires a thorough understanding of the unique challenges and specific requirements inherent to the telecom sector in Jersey.

Such considerations are vital for formulating effective and tailored regulatory measures that promote fair and sustainable competition while accommodating the distinct characteristics of the telecom market in a small economies like Jersey.

Given the limited scope for effective competition, it is essential for JCRA to adopt a nuanced and context-specific regulatory approach to market analysis that considers the unique limitations of a small economy like Jersey. JAL urges JCRA to recognise the distinct dynamics of a small market and tailor competition measures accordingly to address the specific challenges faced by operators like JAL.

3.14 While JCRA acknowledges the increasing concern for sustainability in the telecom sector in the document "*Case T-083: Telecoms Market Review*" in section 2.9 regarding '*the telecoms sector*' which states that:

Alongside financial aspects, sustainability is an increasing area of concern for the telecoms sector, and providers are facing increasing pressure to fully consider long-term impacts."

JAL is profoundly surprised by JCRA's omission of the viability of the telecom sector in Jersey from its considerations in the '*regulatory and economic policy*' theme.

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Despite the regular submission of yearly financials, JCRA appears to overlook the fact that JAL's 82% investment has gone into operational losses since 2006, raising questions about the regulator's commitment to promoting market structures that encourage efficient and sustainable competition. JCRA seems to have neglected the delicate balance between preventing monopolistic practices and avoiding excessive competition, a scenario that has unfolded in Jersey from 2006 to 2023.

JCRA is well aware of the significant challenges faced by JAL, particularly in raising the multi-million-pound capital required for the replacement of its existing end-of-life networks with new 3G & 4G, launch of modest 5G, and compliance with forthcoming TSRs.

Despite the prospect of no return on historical or future investment and the challenge of remaining competitive, JCRA has not presented any regulatory solutions to address the pressing issue of whether a financially strained competitor like JAL can adequately service its existing customer base or acquire more customers in the future.

3.15 JCRA places emphasis on sensitivity towards competition and the importance of protecting it, particularly in a small market with inherent challenges. However, there is a noticeable deficiency in creativity, and innovation within their '*regulatory and economic policy*' approach.

Despite JAL's persistent efforts, which include requesting and sharing white papers and studies on 'network sharing' from other markets since 2017-18, JCRA has not shown initiative as a forward-thinking agency willing to explore unconventional strategies pushing for collaborative approach between all the telecom operators to agree to network sharing or link 4G/5G spectrum allocation with network sharing.

The absence of such creativity has hindered the exploration of unique solutions that could have assisted a challenger telco like JAL in mitigating wasteful capital expenditure and avoiding negative returns stemming from the inherent limitations of a small market.

3.16 JCRA's recent sustainability[18] report underscores the global importance of businesses incorporating sustainable practices, especially in small island economies like Jersey. The report acknowledges the challenges and opportunities presented by climate change, emphasising the need for businesses to integrate sustainability into their operations. However, despite the commitment to sustainability and net zero outlined in the report, the current state of Jersey's telecom sector reveals a stark contrast. With JT operating 141 mobile masts, Sure with 62, and JAL with 60, the total count of 263 mobile masts for a population of 100k exemplifies wasteful duplication / triplication of mobile infrastructure.

JAL has consistently advocated for passive network sharing since 2014, suggesting that no more than 100-120 masts are required with collaborative efforts among all three operators. The failure to adopt such measures showcases JCRA's inconsistency, as they express commitment to sustainability on one hand but refrain from implementing innovative solutions like linking spectrum allocation to active/passive mobile infrastructure sharing, a practice embraced in other European jurisdictions.

In summary, the discrepancy between JCRA's stated commitment to sustainability including well-being of Jersey's telecom sector and its reluctance to adopt progressive measures highlights a lack of alignment between rhetoric and regulatory decisions in Jersey's telecom sector.

[18] *https://www.jcra.je/media/598891/sustainability-in-the-regulated-sectors-in-jersey-short-form-report.pdf*

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Theme 3: Consumer policy.

3.17 JCRA's proposed approach outlined in the document '*Case T-083: Telecoms Market Review,*' particularly in the '*Consumer Policy*' section emphasises that: *Given increasing reliance on the availability of internet-based services, for the majority of consumers, the associated cost of telecoms services is unavoidable. The 2021/22 Household Spending Survey showed the average Jersey household spends £14 a week on communication services (2% of total household spend). Reflecting this, in 2022, total revenues from Jersey subscribers and visitors to the island, were reported as £105 million.*

Interestingly, a comparison with the UK[19] reveals that the weekly communication services spend in Jersey of £14, with approximately 100k population, is 31.4% lower than that in the UK (£18.40) with a population of 67 million. Examining the past decade, the household weekly spend on communication services in Jersey has increased by only £1.80 (a 15% rise, as it was £12.2 in 2012-13), while telecom market revenues have witnessed a significant drop of £35 million (a 25% decrease as it dropped from £140 million in 2012-13 to £105 million in 2022). This data underscores the challenges faced by operator like JAL in experiencing negative returns on investment.

3.18 As telecoms is recognised as a scale game, efficient investment is crucial for enhancing connectivity across all sectors. The analysis of average household spend and telecom revenues, combined with JAL's actual observations between 2006 and 2023, underscores the delicate balance between providing low prices to consumers and ensuring sustainable returns for operators. This delicate balance is crucial for motivating operators to invest in modernising network infrastructure and deploying next-generation technologies, especially in a post-COVID landscape where connectivity plays a pivotal role.

3.19 As explained in section 3.3, Oxera's 2015 review of JCRA highlighted the significance of '*principled pragmatism*' and '*competition policy isn't a task*' within the unique context of small-island economies. Therefore, JAL recommends that JCRA adopts a more balanced approach in regulatory governance, policies, frameworks, market studies, and interventions within the telecom industry. This approach highlights the importance of considering three crucial elements in equilibrium:

3.19.1 Consumer Protection: Ensuring consumers are protected against unfair practices and have access to transparent information.

3.19.2 Viability of the Telecom Industry: Promoting the financial health and sustainability of telecom operators, enabling them to invest in infrastructure and innovation with positive returns.

3.19.3 Quality of Service: Focusing on delivering reliable, efficient, and high-quality telecommunication services that meet or exceed industry standards.

3.20 The section 3.19 emphasises the interconnected nature of these elements, and regulatory decisions should be approached with a holistic and balanced perspective. Imbalances favouring one element over the others, as experienced by JAL in Jersey between 2006-23, can lead to negative consequences. The goal should be to achieve a balanced approach that simultaneously benefits consumers, supports the viability of industry, and maintains high service standards while drawing on lessons learned from past imbalances to inform future regulatory decisions to create and sustain a healthy telecom ecosystem.

[19] *https://www.statista.com/statistics/272395/monthly-household-spend-on-telecom-services-in-the-united-kingdom-uk/*

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4.0 Response to Question 3

Q 3: Do you think the phased approach, and indicative timeline for the Review, is appropriate? If not, please explain what changes you think should be made, with supporting information.

4.1 JCRA is contemplating a phased organisation of the proposed '*telecom market review*', addressing specific elements like fixed telecoms, mobile telecoms, and consumer policy. This approach may aim to systematically examine various sectors while recognising potential interdependencies. However, JAL expresses serious concerns about the need for such an extensive review, citing past delays and the extended time frame observed in previous JCRA reviews, which may be deemed excessive for a small economy like Jersey. JAL questions the necessity of a prolonged review when JCRA is already presented with concerns and supporting evidence regarding ineffective, inefficient, and unsustainable competition. We suggest following cost and time effective interventions:

4.1.1 Instead of carrying out another long-drawn review which may take couple of years to conclude, why not JCRA presents a short time-table to implement a cost-based charging across all wholesale access types without the possibility of cross-subsidisation basis the forthcoming publication of JCRA's '*T-080: Regulatory Financial Reporting*[20]'.

4.1.2 JCRA should expeditiously review its prior assessments of 'wholesale on-island leased line access' and 'wholesale fibre bitstream access.' This focused reevaluation should aim to eliminate barriers to fair competition, fostering a telecom environment characterised by transparency, fairness, and consumer benefits, thereby addressing concerns raised by JAL.

4.1.3 Additionally, the above reassessment will be crucial for rectifying discrepancies noted in past 'price control reviews of wholesale access,' aligning pricing structures with the evolving data consumption patterns of mobile and fibre subscribers in Jersey, an aspect inadequately addressed in previous JCRA interventions.

4.1.4 JCRA should contemplate a strategy to introduce either 'dark fibre' or a 'telecom sector-specific backhaul solution at the same cost as being incurred by the wholesale provider' as a 'key proposed remedy'. This suggestion arises from the considerable concerns about the 'lack of a level playing field' faced by JAL, as elucidated in this letter and previous correspondence.

4.1.5 Can JCRA help with help with bespoke industrial electricity tariff for telecom sector as huge consumption of data by customers is resulting in higher consumption of electricity at each mobile mast leading to significant increase in operational costs.

4.2 JCRA has yet to provide clarity on the rationale behind conducting a new 'telecoms market review' before considering cost-based charging for all wholesale regulated/non-regulated products. Notably, extensive market studies and consultations[21] were conducted by the Government of Jersey (GoJ) and JCRA as early as 2009 and 2012, spanning a period of 11-14 years.

[20] *https://www.jcra.je/cases/2023/t-080-regulatory-financial-reporting/*

[21] *https://www.gov.je/News/2009/Pages/JCRAReviewReportPublished.aspx*

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These initiatives acknowledged and recommended the following measures:

4.2.1 *"the JCRA should further review the merits of moving to a cost based pricing approach (rather than the current retail minus approach)"*; *"JCRA should require JT to provide a 25% discount to OLOs for its off-island leased lines"*.

4.2.2 *"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"*.

5.0 Response to Question 4

Q 4: Do you have any other comments in response to this call for information? If so, please provide your views with supporting evidence.

5.1 JAL observes that, on certain occasions, JCRA may face challenges in fully grasping the complexities of delivering telecom services, particularly in understanding the diverse wholesale accesses and associated costs for challengers like JAL providing mobile and fibre services. For instance, between 2017-2022, JCRA consistently dismissed JAL's concerns regarding 'inter-island leased line connectivity between Jersey and Guernsey' and 'ISP (IP/internet feed),' citing reasons such as non-regulation or absence of SMP without understanding the vital role played by these telecom elements in delivering seamless data connectivity to its mobile and fibre customers.

Moreover, JAL suggests that JCRA might benefit from enhanced knowledge and expertise in scrutinising the financials of the incumbent wholesale service provider, aiding in the establishment of more effective cost-based pricing for various wholesale access types. Simultaneously, JAL recognises the challenges JCRA faces in fully understanding the financial constraints of a challenger telco like JAL.

5.2 In light of the challenges outlined in sections 1.0, 2.0, 3.0, and 4.0 respectively, there is an imperative need for a regulatory framework that strikes a balance between fostering fair competition and ensuring the viability of operators, particularly challengers like JAL. Therefore, JCRA has to play a crucial role in creating conditions that empowers challenger operator like JAL to thrive, contributing to the development of a robust and sustainable telecom market in Jersey. Expressing our optimism for a meaningful outcome from this proposed holistic review, we anticipate a departure from the pattern observed in past JCRA reviews, which at times seemed to be mere perfunctory tick-box exercises.

Jersey Airtel Limited.
2 February 2024

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

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