

JT's response to JCRA's Telecoms
Market Review – Call for information
request of 30th November 2023

2nd February 2024

1. Introduction

JT (Jersey) Limited (“JT”) welcomes the opportunity to respond to the JCRA’s Telecoms Market Review – Call for information request dated 30th November 2023 (the “CFI”). It is important that regulation remains up to date with the dynamic nature of the telecommunications markets and reviews should be carried out on forward looking basis, at least every five years. We support this review by the JCRA which will allow it to focus its efforts on markets where competition appears to be not yet effective. This approach provides regulatory predictability and legal certainty to market players.

2. JT’s response to the CFI

Question 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.

We do not agree with a holistic review of the telecoms sector. This is because the JCRA has recently assessed the following markets, determining that JT has SMP as the wholesale provider of the essential inputs and remedies have been put in place to address the competition problems identified:-

- The Business Connectivity Market Review (BCMR), finding JT to have SMP in the on-island wholesale market and issued remedies¹ including a wholesale price control in July 2022.
- The Wholesale Broadband Access market (WBA), finding JT to have SMP in the wholesale broadband market and issued remedies including a price control effective from October 2021². This price control runs to 30th September 2026.

The JCRA’s proposal³ is to carry out a market definition and analysis stage after receiving responses to the CFI. Based on the fact that the BCMR and WBA market definitions and assessments have been carried out fairly recently, it is unlikely that these markets have changed significantly since the last reviews. We believe that the JCRA should focus its efforts on markets that have not been recently assessed.

¹ [business-connectivity-market-review-final-decision-remedies.pdf \(jcra.ie\)](#)

² [t-011-wholesale-broadband-access-services-price-review-final-notice.pdf \(jcra.ie\)](#)

³ [telecoms-market-review-call-for-information.pdf \(jcra.ie\)](#) - 3.7 page 7

Question 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.

JT supports the JCRA following the European Commission's (EC's)⁴ widely adopted process used to identify and define the relevant product and services markets. Market definition is a prerequisite before assessing whether a particular market is characterised by effective competition or should be subject to ex ante regulation. The market definition sets the boundaries within which competitive dynamics are systematically analysed and identifies the direct and indirect competition constraints faced by firms present in the market. Having firstly defined the relevant retail markets, it is then appropriate to identify the corresponding wholesale markets, taking into account demand-side and supply-side substitutability.

If the market assessed meets the three criteria test when considering current and future market developments, the market may be susceptible to ex ante regulation. The next step is the assessment of whether an operator has significant market power (SMP). Finally, remedies can be considered to appropriately address the competition problems identified.

The JCRA's proposal⁵ is to carry out a market definition and analysis stage after receiving responses to the CFI. We believe that the JCRA should focus its efforts on markets that have not been recently assessed. In particular, there is merit in carrying out a market definition and assessment of the "access to voice" and "voice services" markets. These markets have not been assessed since 2014/2015 and, in that time, there has been both technological and consumer behavioural changes.

Wholesale line rental (WLR) was introduced mid-2015 and the recent WBA review set a wholesale price remedy for the fibre port used to deliver both wholesale broadband and WLR. Therefore, a wholesale price control has been indirectly set for WLR. In previous reviews, the JCRA has considered mobile as a complementary product and not as a substitute to fixed networks⁶. However, with the increased take up of bundled mobile minutes and data, the use of over the top services (OTTP), such as WhatsApp, and the growing use of mobile voice calling over WiFi networks, we consider that the consumer voice market has changed significantly in recent years.

⁴ [Commission updated the Recommendation on Relevant Markets | Shaping Europe's digital future \(europa.eu\)](#)

⁵ [telecoms-market-review-call-for-information.pdf \(jcra.ie\)](#) - 3.7 page 7

⁶ [Title of report/proposal \(jcra.ie\)](#) – page 11

In the enterprise segment, behaviours and the use of other communication tools changed due to the Covid pandemic and the move to flexible working. Microsoft Teams and other more interactive communication methods have been widely adopted alongside the increased use of mobiles for business calls. The data collected as part of the second stage of the market review will be vital in assessing the usage patterns and forecasting the changes that will be seen over the next five-year period.

Question 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.

As previously stated, we support following the three-step process of identifying and defining the relevant markets, assessing whether an operator has significant market power (SMP) and finally assessing the need for remedies to address the competition problems identified.

The proposal to review fixed telecoms in the first phase and mobile telecoms in the second phase may not be the best use of resources and it may be more efficient to review the voice termination markets together. The review of markets should be independent of the network or infrastructure being used to provide services and should focus on demand and supply substitutability.

The JCRA has previously defined two termination markets, one for fixed networks and one for mobile networks. This is in line with the European Union (EU) approach of determining that calls to geographic numbers are part of the fixed termination market, while calls to mobile numbers are part of the mobile termination market. In 2017, the JCRA carried out a desk-based review of fixed termination rates (FTRs) and found that the rates applied in Jersey were in line with rates charged by incumbent operators in the European Economic Area (EEA). Consequently, the JCRA closed the review on the basis that the cost of proceeding with the review was likely to outweigh the benefits.⁷

The EC has set EU-wide termination rates on a downward glide path. Ofcom's⁸ recent market review has led to the deregulation of landline call origination and Ofcom has set caps on the charges for terminating landline and mobile calls made within the UK. For calls originating from abroad, Ofcom has allowed UK providers to charge no more than the equivalent rates charged by their international

⁷ [t1221gj-information-notice-fixed-termination-rates.pdf \(jcra.je\)](#)

⁸ [Statement: Wholesale Voice Markets Review 2021-26 \(ofcom.org.uk\)](#)

counterparties where those rates are higher than the UK regulated cap, up to the level of the reciprocal termination rate charged.

We consider that, due to the fact that the mobile market has previously been found to be fully competitive, with dominance found only in relation to the access to call termination on the operators network on which the call is terminated, this outcome will continue even if the Sure/Airtel Merger were to be approved.

We note that the JCRA has obtained mobile market information as part of the assessment of the Sure/Airtel merger application. As that information has already been gathered it would be a useful input into the mobile market review however we question if this information can be used by the JCRA for another purpose.

The timeline of the review being carried out in 2024 and completing in 2025 appears to be reasonable. However, the JCRA should consider the impact on the telecoms operators and clearly lay out the time frames within which it will require data to be provided and consultations to be responded to. As both the JCRA and the operators have small teams with finite resources, the review should be appropriate to the size and scope of the Jersey market and the timelines set should be both realistic and achievable. The review should also consider the impact of any other consultations/data collections that the JCRA plans to run during the 2024-25 period to ensure that the timetables can be achieved. Additionally, as the review covers several themes, which are reliant on other parties and Government policy, any delays will impact the timescales set for this review.

At this stage it is unclear to JT what consumer protection issues the JCRA is minded to investigate and further information on this at an early stage would be helpful (and may allow the industry to address concerns without costly regulatory intervention). Whatever they may be, it is important that such issues are considered separately to the market review and assessment process discussed above. This is because any issues identified would need to be addressed in the market as a whole and any interventions would not just apply to the operator assessed as having SMP. Consumer protection concerns often arise, not because of concerns about the abuse of market power (which the SMP process is intended to capture), but other failures in the market, such as lack of appropriate information for well-informed consumers or switching costs. Consumer protection often requires quite different remedies to those applied under the SMP regime. It is important that the JCRA distinguishes clearly between the different types of concern and this will best be done by ensuring that the analysis is undertaken separately.

We would therefore expect that consumer protection issues would be evidenced and assessed as a discrete part of the market review process, with the appropriateness of any proposed measures being consulted upon as to their practical implementation. We note that the JCRA intends to address consumer protection issues as part of the third phase of the review, after supply side issues arising from the potential exercise of SMP have been considered. This appears to us to be a sensible approach although, as noted above, it is also possible that such issues may be capable of being resolved by industry action and without the need for regulatory intervention.

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

We have no further comments.