

# ACS

Telecommunication Consultants

**Response to CICRA Consultation 14/12  
Wholesale Access to Fixed Telecoms Services -  
Wholesale Line Rental**

**May 2014**

## Introduction

This is the second consultation on Wholesale Line Rental (WLR) implementation in the Channel Islands. WLR is a product that has been available in other jurisdictions for many years and was designed by regulatory authorities to enable an element of competition on incumbent fixed operators' copper lines. WLR has limitations in providing competition inasmuch as new entrants are restricted to the services offered by the incumbent, consequently in many jurisdictions it has now been augmented or superseded by Local Loop Unbundling (LLU) and/or Broadband Only access including configurable xDSL or fibre based products. As a consequence of these limitations WLR can be considered as a legacy product and is likely to have limited utility in view of the imminent changes in technology. Nevertheless, it does enable new entrants to take ownership of their customers and thus present a complete service from the users viewpoint. In this respect WLR as proposed has a distinct marketing angle that gives an extra dimension to competition.

## Response to the Consultation

### Question 1

**CICRA seeks respondent's views on level of interest that it currently assigns to WLR. Respondents should state whether they see WLR as a necessary product, a somewhat necessary product, no strong opinion, a somewhat unnecessary product or an unnecessary product.**

**Respondents should provide supporting information to justify their choice of level of interest. If a respondent's response differs from its previous response then the respondent is requested to provide a rationale to support the change.**

In CICRA's last consultation and its ensuing Directions<sup>1</sup> it would appear that it was generally agreed that WLR was a desired product. Indeed, in the subsequent legal challenge to the Direction by JT Ltd<sup>2</sup> there was no direct challenge to the principle outlined in that direction. Furthermore, Sure in Guernsey made no challenge to the provisions set out in the Directions.

From the foregoing it would appear that there is no need to revisit the principle of WLR, but it is worthy of reviewing the actual details of the implementation of WLR which the first Direction only addressed in part.

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<sup>1</sup> [http://www.cicra.gg/\\_files/WLR%20Guernsey.pdf](http://www.cicra.gg/_files/WLR%20Guernsey.pdf) and [http://www.cicra.gg/\\_files/WLR%20Jersey.pdf](http://www.cicra.gg/_files/WLR%20Jersey.pdf)

<sup>2</sup> [https://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display.aspx?url=2013/13-08-06\\_JT\\_%28Jersey%29\\_Limited-v-Jersey\\_Compensation\\_Regulatory\\_Authority\\_159.htm&JudgementNo=\[2013\]JRC159](https://www.jerseylaw.je/Judgments/UnreportedJudgments/Documents/Display.aspx?url=2013/13-08-06_JT_%28Jersey%29_Limited-v-Jersey_Compensation_Regulatory_Authority_159.htm&JudgementNo=[2013]JRC159)

## **Question 2**

**Respondents are asked to set out in as much detail as possible what they consider is the appropriate definition of the WLR product they propose.**

**This definition should include the respondent's requirement for 1) PSTN single line WLR, 2) PSTN multiple line WLR, 3) WLR on ISDN lines as well as the availability of a calls service.**

**If a respondent's response differs from its previous response then the respondent is asked to provide a rationale to support the change.**

As previously commented<sup>3</sup> a key component absent from the product description in the consultation is the provision of Carrier Pre-selection (CPS). CPS would allow other operators to optimize its fixed line call provision and provide more consumer choice and competition.

ACS sees no reason why fibre based access products should be excluded from WLR albeit that Sure in Guernsey has no such technology at present. JT unilaterally decided to implement a Fibre to the Home (FTTH) roll-out, albeit with taxpayer support, in order to provide the island with a fully digital network. JT proclaims that it will have converted all of its consumer base to fibre by 2016 and thereafter proposes the removal of its copper network. ACS is alarmed by the assertion in the consultation that this FTTH project is seen as "in trial". It would appear to be reckless to replace a known working infrastructure with an experimental network in such a wholesale manner without any fall-back position and ACS questions how such a project gained regulatory approval in the first instance.

Given the position adopted by JT, the product description should also include a clause that captures the possible alternative connection technologies (such as SIP) that may be implemented over a fibre network for the connection of subscriber lines, particularly private switchboards, to the call switching network.

ACS is pleased to note that the provision for multi-line services is included in this definition and it hopes that this will not be dropped from any Direction as it was in the last case. In all other respects the proposed description adequately describes the product commonly available in other jurisdictions.

## **Question 3**

**CICRA requests respondents to indicate the principles that should inform both the extent of technical and operational details the regulator should prescribe in WLR access product definition, as well as those aspects it should leave to negotiations between operators and incumbents.**

When regulatory authorities impose the provision of additional services on operators it is best that any such direction should be set at a high level, while capturing the essential facilities required for the efficient implementation of the new product. Being too prescriptive with technical detail runs the risk of mismatching with the operators' particular network

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<sup>3</sup> ACS response to CICRA Consultation 12/52 WLR

topology and thereby leading to unnecessary dispute and consequent delay. ACS is therefore of the view that the basic service requirements should be outlined rigorously within the direction while leaving the technical interfacing to the operators to resolve. At the same time a strict timeline should be imposed that should prevent operators from using delaying tactics. ACS is further of the view that as in the case of Mobile Number Portability this requirement should be as part of an amended licence condition.

The fundamental principles of WLR are well known within the telecommunications industry and for the most part its provision is more of an administrative issue. The authority should set out the fundamental requirements for the process ensuring that the consumer is protected from potential abuse by operators<sup>4</sup>.

#### **Question 4**

**CICRA requests respondents to indicate their views on the approach taken by CICRA in the assessment of WLR as set out in its 2013 decision. If they consider that a revised cost benefit analysis should be carried out respondents are asked to identify the main elements of such a high level analysis that they regard as appropriate. Where possible respondents should identify and provide evidence/rationale for any significant changes to the high level cost benefit analysis as set out in the 2013 decision.**

and

#### **Question 5**

**CICRA requests respondents to indicate whether a regulatory impact assessment is needed to support the regulatory decision and to provide evidence / a rationale to support their review.**

Given the outcome of the JT challenge to the last WLR direction and the general acceptance by both incumbent operators of the principles of WLR, ACS sees no reason to revisit these matters. WLR is a widely accepted solution to fixed line market dominance throughout the EU and its principles and cost models are well understood within both the regulatory community and the telecommunications industry.

#### **Question 6**

**CICRA wishes to understand the timescale that is reasonable for introducing WLR sought by respondents. The incumbents in particular are requested to set out work processes they consider comprise the process of introducing WLR.**

Consequent to the result of the last legal challenge to the introduction of WLR and the further advancement of the JT fibre network rollout and its new billing system, then the timeline principle set out in the court judgement should be sufficient for all parties involved. Realistically, given

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[http://stakeholders.ofcom.org.uk/binaries/consultations/protecting\\_consumers\\_misselling/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/protecting_consumers_misselling/statement/statement.pdf)

that the judgement made no comment on whether WLR itself was in dispute, all parties should have now had sufficient time to work out the principles of WLR and the product could probably be brought to market quickly. However, given the previous legal challenge based on time to implementation it would be prudent to ensure that all parties agree on a realistic date.

#### **Question 7**

**CICRA wishes to understand what evidence incumbents draw upon to inform their views on the extent and nature of demand in this area. Evidence from incumbents from consultation or discussion with retail operators in particular is therefore sought. Where incumbents have chosen to respond to such demand they are asked to set out their process and timescale for delivery to meet that demand.**

ACS has no basis for addressing this question.

#### **Question 8**

**CICRA seeks views on the pricing principles that should inform the setting of a WLR access price and the above approach proposed.**

From the regulatory viewpoint the normal process for determining the price of WLR would be through the incumbent operators, regulatory separated accounts (SA). However, the preparation of these accounts is inconsistent between the incumbent operators and JT's accounts appear to show that its current access network is loss making at the wholesale level. This is surprising given that its current copper network would appear to hold only scrap value and that since its announcement to replace it with a fibre network, it has moved from profit to loss in its published SA.

Clearly there has to be a discount from the retail price that is attractive for new entrants in order that they can cover the administrative and management costs that will necessarily follow the adoption of a single billing point for their customers. There is a cost to taking responsibility for the initial assessment of consumer problems that must be covered by the new operator, therefore a discount of not less than 20% of retail is suggested.

Furthermore, in the absence of CPS new entrants, particularly the smaller operators, may be required to purchase bundled minutes from the incumbent. Clearly these call minutes must be set at a price that does not unfairly discriminate against new entrants who, in the first instance, may only be purchasing relatively small bundles. The price of any such call minutes would therefore need to be placed below the largest discounted bulk minute pricing that is currently offered by incumbents (in the case of JT, for example, below its Premier Plus discount scheme) in order for the wholesale pricing requirements of licenses to be compliant.

## **General Comments**

ACS is fully supportive of the principle behind WLR which is a tentative step forward in ensuring a level playing field in the telecommunications market. This small but important step is long overdue which would seem to have been caused by regulatory indecision and consequent legal challenge. ACS looks forward to WLR being in place before the beginning of 2015 and thereafter hopes to see a more competitive market.

**For the avoidance of doubt, this document may be published in full.**

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