



Retail price control

Final Notice

Determination issued to JT (Jersey) Limited

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CONTENTS

1. Introduction.....	1
2. Structure of the Final Notice.....	3
3. Legal Background.....	4
4. Previous price controls and subsequent developments.....	5
5. Initial Notice, Submissions and JCRA Analysis	6
<i>Initial Notice.....</i>	<i>6</i>
<i>Submissions and JCRA comment.....</i>	<i>8</i>
6. Determination.....	11

1. Introduction

1. On 31 December 2012, the existing one year price control¹ applying to certain services supplied by JT (Jersey) Limited (*JT*) at a retail level expired.
2. Since January 2010, the telecoms industry in the Channel Islands has been working with the Channel Islands Competition and Regulatory Authorities (*CICRA*), comprising the Jersey Competition Regulatory Authority (*JCRA*) and the Guernsey Competition and Regulatory Authority (*GCRA*), on the development of new wholesale access products, aimed at increasing choice and competition in fixed-line telecoms services. Creating fairly-priced wholesale access products is central to the development of fixed-line competition. If successful, competitive access to JT's network may stimulate further competition in the fixed-line services, providing consumers with greater choice and better pricing and helping to drive innovation in the services provided to telecoms users. An Initial Notice and a Draft Decision, requiring JT and Cable and Wireless Guernsey Limited (*C&WG*) respectively to introduce a Wholesale Line Rental (*WLR*) product, were issued on 21 November 2012.
3. In the event that competition is increased in fixed-line services, the need for price controls will be less and there may be scope to significantly reduce, or remove entirely, the price controls applying to JT's retail products. However, the JCRA believes it is necessary to retain a price control on certain of JT's retail services for the time being, and that the services to be price controlled should remain those covered by the existing price control. Accordingly, in November 2012, the JCRA issued JT with an Initial Notice proposing a 12 month extension to the existing price control.
4. The Initial Notice stated that the time period in which sufficient competition might develop in fixed-line services, given the likely introduction of new wholesale fixed-line products during 2013, was such that the JCRA proposed to refrain from setting an entirely new retail price control for an extended period of time (i.e. the normal three year price control) given the resources involved and the possibility that the period of such a control may need to be revisited if effective competition develops over a shorter time period. Instead, the JCRA proposed to set a further one year price control.
5. The JCRA received three submissions on the Initial Notice. The JCRA has considered the issues raised in these submissions, but has decided overall to confirm the

¹ *Final Notice of Determination: T817J*, 23 December 2011

proposals set out in the Initial Notice. The basis for that decision is set out in this Final Notice.

2. Structure of the Final Notice

6. This Final Notice is structured as follows:

- Section 3: Sets out the legal and regulatory framework for price controls on JT products;
- Section 4: Discusses the background to the current price control and subsequent developments;
- Section 5: Outlines the submissions received on the Initial Notice and the JCRA's views on the issues raised; and
- Section 6: Sets out the determination.

3. Legal Background

7. The JCRA is entitled to subject JT's services to price control by virtue of the licence issued to JT by the JCRA under Article 14 of the *Telecommunications (Jersey) Law 2002*. Condition 33.2 of JT's Licence states as follows:

“The JCRA may determine the maximum level of charges the Licensee may apply for Telecommunications Services within a relevant market in which the Licensee has been found to be dominant. A determination may:

- a) provide for the overall limit to apply to such Telecommunications Services or categories of Telecommunications Services or any combination of Telecommunications Services;*
- b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or*
- c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.”*

8. This condition allows the JCRA to regulate the prices that JT charges for its telecommunications services in a way and for a time that it deems appropriate, where JT has a dominant position in the relevant market. In April 2010, the JCRA determined that JT has a dominant position in, inter alia, the following markets²:

- Access to the public telephone network at a fixed location for residential and non-residential customers;
- Call origination on the public telephone network provided at a fixed location; and
- Call termination on individual public telephone networks provided at a fixed location.

² Response to the Consultation Paper 2009 – T3 “Review of the Telecommunication Market in Jersey” and Decision on the Holding of Significant Market Power in Various Telecommunications Markets, 19 April 2010

4. Previous price controls and subsequent developments

9. The current one year control on certain of JT's retail prices expired at the end of December 2012. It followed a three year price control that ran between 2009 and 2011.
10. As stated earlier, CICRA is working with the telecoms industry as part of the Channel Island Wholesale Access Project (*CIWAP*) initiative, to look at ways of increasing competition in the fixed-line services. More effective competition may provide scope to remove or significantly reduce the scope of JT's retail price controls. The JCRA believes that the evidence from the mobile telecommunications services sector, where greater competition was facilitated in 2008 through the introduction of mobile number portability (*MNP*), demonstrates that enabling consumers to choose from whom they obtain fixed-line services would provide a significant boost to competition, and as a result delivers better prices and better service than regulation alone can achieve.
11. While a significant amount of work has been undertaken by the CIWAP, any new wholesale services will probably only be available to consumers in the Channel Islands from Quarter 3 of 2013. The JCRA wishes to avoid setting a price control for an unnecessarily long period, since it anticipates that it might be appropriate to remove retail price controls from some services offered by JT from as soon as 2014, depending on the development of competition in fixed-line services. However, having no price control in place risks a situation where consumers are inadequately protected.
12. Therefore, in the Initial Notice, the JCRA considered that a further one year price control should be imposed with effect from 1 January 2013. This would enable a view to be taken during 2013 on whether further price controls were required and, if so, the duration of any further control. CICRA has recently proposed, as part of its 2013 work programme, to consider on a pan-Channel Islands basis the issue of whether retail price controls should continue to be set for JT and C&WG.
13. The detail of the retail price control determination for JT is set out in section 6.

5. Initial Notice, Submissions and JCRA Analysis

Initial Notice

14. In the Initial Notice, the JCRA noted that JT was considered to be dominant in the following markets³ which are relevant for the purposes of this proposed price control:
- Access to the public telephone network at a fixed location for residential and non-residential customers;
 - Call origination on the public telephone network provided at a fixed location; and
 - Call termination on individual public telephone networks provided at a fixed location.
15. When considering whether any changes had occurred that would alter this view, the JCRA stated that it understood that JT continued to provide 100% of all fixed exchange lines for residential customers. Based on its knowledge of alternative products available in the market, the JCRA also held the view that JT would continue to have a market share of well over 80% of calls on fixed lines (compared to a market share of 90% in 2009 and 88% in 2010). In addition, the JCRA did not believe that competition from mobile telephones (as a substitute for a fixed line) or broadband-facilitated calling services (e.g. voice over internet protocol, or VoIP, including calls made using WiMax spectrum through the service offered by Y:tel) as yet exerted sufficient pressure on JT that would lead to a conclusion that fixed-line markets were competitive. Therefore, the JCRA remained of the view that JT is dominant in the markets listed above. As a consequence, the JCRA concluded that a continuation of a control on the prices charged by JT for services in these retail markets is warranted in the circumstances.
16. In 2008, the JCRA set a price control for the period 2009-2011 which included the following features:

³ Response to the Consultation Paper 2009 – T3 “Review of the Telecommunication Market in Jersey” and Decision on the Holding of Significant Market Power in Various Telecommunications Markets, 19 April 2010

- That the appropriate level of the Weighted Average Cost of Capital (WACC) for the period of the price control is 11.6%;
- That a price control of RPI–3% should apply to JT in respect of its charges for local calls, calls to the UK and international calls; and
- That a sub-cap of RPI–1% should apply to JT’s charges in respect of the connection of fixed subscriber lines and line rental.

17. The JCRA stated in the Initial Notice that, as this control is proposed for a one year period, it would be inappropriate to expend the resources necessary to re-calculate an appropriate WACC for JT. Noting that, in the event that the JCRA contemplates a retail price control for JT lasting for a longer period at some point in the future, then it would reserve the right to produce a new calculation of WACC.
18. The existing price control retained the two sub-baskets used for the 2009-2011 price control. Under the 2012 price control, JT was required to freeze charges for the baskets (i.e. allow no change to tariffs in nominal terms) for the duration of 2012. The JCRA stated in the Initial Notice that the same stance should be adopted for 2013. A number of factors informed the JCRA’s proposed decision, and they are outlined below.
19. CICRA recently issued an Initial Notice and a draft decision requiring JT and C&WG to introduce wholesale line rental (*WLR*). The notice contemplates that JT and C&WG should, at least initially, be given the opportunity to propose the prices that they intend to charge for the WLR service. In the event that CICRA considers that one or both of the prices are not cost-justified, then it may become involved in setting this price, which in turn will require detailed work on the costs involved in providing exchange lines. Any such work could inform decisions on the retail charges should be charged by JT for this service in the future. Prior to WLR prices being announced or determined, the JCRA believes that it would be premature to make a detailed determination with respect to the appropriate level for JT’s retail exchange line prices.
20. The JCRA also took account of the fact that since January 2009, JT has made significant changes to its cost base through its business transformation programme. It has further made significant changes to the underlying equipment used to deliver certain services (including the Next Generation Network, and a new billing system), and the JCRA expects that these combined measures would impact the cost of providing the services which are the subject of the proposed price control. The JCRA believes that before allowing further price increases, a detailed assessment of these costs (and their impact) should be made. As it may be necessary to undertake a

costing exercise as part of the introduction of WLR, the JCRA does not believe that it would be an efficient use of either its own or JT's resources to run parallel exercises in this area. The JCRA notes that even if a prize freeze is adopted, JT's standard line rental at its current £12.75 (excluding GST) will still be significantly higher than line rental charges applied by C&WG in Guernsey (£9.75) and that call charges are also higher, with a minimum local call charge in Jersey of 7p compared to 3.3p (peak) or 2.9p (off-peak) in Guernsey.

21. In light of these factors, the JCRA proposed that no change should be made to the price controlled services covered by the proposed decision for the period to December 2013. In the event that any costing work undertaken in 2013 as part of the wholesale access project identifies reasons why this should be amended earlier than December 2013, the JCRA stated it would consider this at that time.

Submissions and JCRA comment

22. The JCRA received submissions from JT, ACS Telecommunications Consultants (**ACS**) and Nitel Limited (**Nitel**). The points of substance raised in each submission are summarised below. Following this summary of submissions, the JCRA has addressed the issues raised.
23. JT submitted that the proposed price freeze would mean that it would have been subject to a price freeze for two years, during which it will have invested heavily in its network. JT stated that it must be allowed to recover its efficiently incurred costs in the provision of fixed line services and urged the JCRA to review the line rental price control prior to 31 December 2013.
24. As noted earlier, the JCRA is in the process of requiring the introduction of WLR in the Channel Islands. In the Initial Notice in which the introduction of the WLR service is proposed, the JCRA states that:

“JT is entitled to share the efficient costs of the provision of the WLR service equally with each of the Other Licensed Operators that seek WLR. The JCRA will intervene if JT and potential customers for the WLR product are unable to agree on a price.”⁴

⁴ JCRA, *Channel Islands Wholesale Access Project – Wholesale Line Rental: Initial Notice of modification of licence of JT (Jersey) Limited*, November 2012, Page 12

25. It is likely that the introduction of WLR will stimulate competition in the provision of retail line rental services. Should a sufficient level of competition develop, it is likely that the current price control measures, in their current structure, may no longer be appropriate. The JCRA will consider the developments in the market before concluding on the appropriate action for 2013 and beyond.
26. JT also submitted that its investment in Gigabit Jersey makes comparisons with Guernsey unfair because the networks in the two islands differ significantly. By contrast, both ACS and Nitel observed the price differential between Jersey and Guernsey for line rental and calls, and submitted that the incumbents in both jurisdictions are likely to have a similar cost base.
27. ACS referred to the declining value of JT's copper network and the trend of increasing or maintaining the retail price for line rental services on a number of occasions. ACS also expressed concern that the trend of maintaining or increasing line rental prices has taken place in the absence of separated accounts, that current prices might be inflated and that these inflated prices may be transferred over into the pricing of fibre services.
28. JT has recently made a decision to remove its copper access network and replace it with a fibre access network. Because the copper access network has a limited remaining lifetime and its use is increasingly diminishing, the JCRA holds the view that ensuring the prices for fibre services are appropriately set is the most appropriate use of resources.
29. Since 2008, the JCRA has issued two decisions placing controls on the retail prices of a range of JT's services. In 2008, the JCRA set a price control for the period 2009-2011. As part of this decision, the JCRA commissioned Frontier Economics to conduct a review of JT's business and its accounts in order to assess JT's relative efficiency and performance in the marketplace at the time. Frontier Economics conducted a comprehensive review and the JCRA remains satisfied that the retail price control applied for the 2009-2011 period achieved the desired outcome.
30. On 24 November 2011, CICRA issued a consultation document for the CIWAP project. The CIWAP project proposed the introduction of a range of wholesale services, many of which, if introduced, would affect the assessment of whether retail price controls remained appropriate. Accordingly, the JCRA took the view that conducting a comprehensive analysis of JT's costs did not represent an appropriate use of the JCRA's or JT's time and resources and chose to extend the price control that was in place for a further year. The complexities of the CIWAP project have meant that it has taken longer than expected to introduce new wholesale services to

the market. With the forthcoming introduction of WLR, the JCRA maintains the view that extending the 2012 price control measures for another 12 months, rather than undertaking a comprehensive cost analysis, is the most appropriate approach to undertake. The JCRA recognises the risks involved in setting prices without direct reference to separated accounts. However, because the prices being set are informed by recent costs, as calculated by Frontier Economics for the period 2009-2011, and will be enforced only as a transitory measure, these risks are not considered significant.

31. The JCRA is currently investigating the cost to JT of providing fibre access and broadband services. It is expected that cost model being developed as part of this project will inform the JCRA's view on what is considered an appropriate price for line rental services in the future. TERA, the consultants examining the fibre cost model, are doing so independently of the prices currently offered by JT. Accordingly, the JCRA does not share ACS's concerns that the pricing of copper services will be transferred over to the pricing of fibre services.
32. ACS concluded by welcoming the continuation of a freeze on local call costs, although expressed the same reservations with local calling as those expressed for line rental.
33. The JCRA notes ACS' reservations. However, the JCRA believes that for the reasons already outlined above, the approach outlined in this determination best addresses the current situation.

6. Determination

34. For the reasons set out above, the JCRA gives Final Notice of its decision to make a determination under Condition 33.2 of JT's licence as follows:
- Charges levied by JT for local calls, calls to the UK and international calls shall be capped at the rates applying on 31 December 2012; and
 - The maximum charges levied by JT in respect of the connection of fixed subscriber lines and exchange line rental shall be capped at the rates applying on 31 December 2012, being £49.99 for connection of a fixed subscriber line without an engineering visit, £120.49 for connection of a fixed subscriber line with an engineering visit, and £12.75 per month for exchange line rental, plus GST.
35. The determination will take effect at midnight on Wednesday, 20 March 2013. It will expire on 31 December 2013.