



CICRA Guideline on notification of changes to price regulated services

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Introduction

1. In August 2016, CICRA published a consultation document on telecommunications licence conditions obliging notification of changes to price regulated services¹. Specifically these conditions are (in Jersey) condition 33 of JT's telecommunications licence and (in Guernsey) condition 31 of Sure's telecommunications licence (collectively referred to in this guideline as LC33/31).
2. CICRA received responses from JT, Sure and Airtel. CICRA's responses to specific points raised in those submissions will be added separately.
3. Having considered the content of these responses, CICRA now issues this guideline, which sets out how it will interpret LC33/31. By issuing a guideline rather than initiating a formal licence modification process, CICRA's aim is to adopt a light touch approach to the enforcement of LC33/31 whilst working constructively with operators to ensure consistency across the Channel Islands in the way that LC33/31 is applied. It will also allow for greater flexibility to modify the regulatory approach as markets develop. CICRA will keep the operation of LC33/31 and this guideline under review to assess its effectiveness.

Purpose of LC33/31

4. As set out in the consultation, CICRA considers that LC33/31 pursues a number of aims:
 - (a) First, it gives CICRA an efficient means of monitoring price and product changes given specific market circumstances.
 - (b) Second, where prima facie concerns arise from changes to product pricing, a notification process can reduce the cost of regulatory intervention and disruption to the notifying licensee, customers and competitors by allowing opportunity for informal resolution of such concerns before they impact the market.
 - © Third, where changes are made by the licensee to wholesale inputs on which other licensed telecommunications operators ("OLOs") rely, those OLOs have sufficient notice of the changes as to adapt their retail portfolios in a timely manner.
 - (d) Fourth, the licence condition contributes to a level playing field between the retail arm of the licensee and OLOs. By providing sufficient detail and time for OLOs to deliver a competing product to the market, real or perceived risks that vertical integration gives unfair advantage to the Licensee's retail arm are reduced. In a context where retail product changes are made by a vertically integrated telecom business with significant market power and where competition is less developed this can be particularly important in order to protect competition.

¹ <http://cicra.gg/files/CICRA%2016-33%20Licence%20conditions%20LC%2033-31%20-%20Consultation.pdf>, (the "Consultation").

5. Based on its experience of the operation of LC33/31 and comments received in previous consultations on this issue, CICRA's view was that the LC33/31 notification requirements, when considered in the context of the above aims, were not working as well as they could. This guideline seeks to address that issue.

Publication/notification requirement

6. All respondents to the consultation agreed that the current publication/notification requirement was insufficiently specific. The majority of respondents also agreed that information published was in some cases inaccurate.
7. In order to achieve a more level playing field between the retail arm of the licensee and OLOs, it is the view of CICRA that information should be made available not only to existing OLO customers of a licensee, but also to potential market entrants and that the information should be sufficient to achieve that end. Therefore, licensees should interpret the publication/notification requirement in the following way.
8. The information published/notified should set out :
 - (a) The essence and nature of the product which is being offered, including any significant differences between a new product and any existing product it is replacing;
 - (b) If a new price is being introduced, what the price will be. "Price" should be interpreted as including both the headline price and the actual price payable by the retail customer or OLO, taking into account any discounts or additional changes. The existing price should also be provided, to enable an easier comparison to be made.
 - © The total length of time for which the price will be available, or is likely to be applied, including any intended or likely extension to initial periods.
 - (d) The ordering process for a proposed wholesale product, including the delivery timescales on receipt of an order and any constraints applicable.
9. The information should be notified to CICRA via e-mail and published on a password protected area of the licensee's website, to which CICRA and all OLOs (whether or not they are existing customers of the licensee) must be granted access on request. All OLOs (whether or not they are existing customers of the licensee) and CICRA must be able to subscribe to e-mail updates which alert the subscriber each time the password protected area of the site is updated. The published information should remain in the password protected area of the licensee's site for three years from the date of its publication.

The notification period

10. CICRA notes the views of respondents to the Consultation that interpreting “days” as “working days” would have the effect of extending the notification period when compared with the alternative interpretation, which is that “days” should mean “calendar days”. CICRA’s view is that interpreting this as calendar, rather than working days, would leave OLOs with response periods that would vary depending on the number of weekends in a notification period and whether a notification period contained public holidays. Licensees should therefore interpret references to “days” in LC33/31 as “working days”.
11. As explained above, CICRA’s view is that one of the purposes of LC33/31 is to achieve transparency and non-discrimination between the retail arm of a licensee on the one hand and OLOs on the other. Allowing licensees to market a new product/price or to sign customers up to the same during the notification period would undermine the non-discrimination principle; there is little point in having a notification period to enable OLOs to put together a new product/price if substantial numbers of retail customers are already committed to purchasing a competing product from the licensee at the end of that period. In CICRA’s view, the claims made by respondents relating to operational difficulties that they might encounter if a standstill period were in place do not outweigh the importance of the principles set out in the Consultation, namely to give OLOs sufficient notice of changes to enable them to adapt their retail portfolios in a timely manner and to promote a more level playing field between OLOs and the retail arm of the licensee.
12. Licensees should therefore interpret LC33/31 to mean that the notification period should operate as a standstill period, during which licensees are not permitted to market the new product/price to customers nor to sign customers up to the new product/price. The notification period will begin to run on the day after notification and will end at midnight on the 21st working day after that day.

Other matters

13. CICRA notes that the JCRA has previously issued guidance on the correct interpretation of licence condition 33 in Jersey². That guidance note is not replaced or superseded by this guidance; for ease of reference, the text of the previous guideline (which remains in force) is reproduced in material part below, amended to extend to Sure in Guernsey as well as to JT in Jersey.
14. LC33/31 makes no distinction between prices, discounts or special offers that a licensee may provide to new customers or to its existing customers (or to both new and existing customers). Thus, prices, discounts or special offers provided by a licensee solely to its existing customer base still are subject to these requirements.

² <http://cicra.gg/files/070503%20JCRA%20Guideline%20on%20Condition%2033.pdf>, and attached to this guideline for ease of reference.

15. LC33/31 in general makes no distinction between prices, discounts or special offers offered directly by a licensee or on a licensee's behalf by third parties. Thus, for example, if a licensee provides a subsidy to third-party retailers who then pass it on to customers in the form of discounts or special offers as an inducement to purchase goods or services from the licensee, the licensee's provision of the subsidy is subject to LC33/31.
16. LC33/31 applies expressly to prices for, and discounts to, telecommunication services. Thus, these conditions cover any telecommunications services that JT provides within, to or from the Bailiwick of Jersey or that Sure provides within, to or from the Bailiwick of Guernsey. This would include, for example, services a licensee charges its customers that the licensee may provide in co-operation with third parties.
17. Discounts under LC33/31 can include discounts in the traditional sense (eg, a reduction in price) or the provision by the licensee of additional services for a single price. It also could include, for example, increasing the capacity of existing services (eg, like offering additional bandwidth at the same price).
18. LC33/31 applies to special offers to all or any of a licensee's customers for particular categories of telecommunication services in which a licensee has been found to be dominant. The applicability of LC33/31 depends not on what the licensee provides as a special offer but to whom the offer is made. Stated simply, if a licensee makes a special offer to customers in a market in which it has been found to hold a dominant position, then LC33/31 applies. The offer does not have to apply to the telecommunication service itself, so long as it is offered to customers of a telecommunication service in which the licensee has been found to be dominant. Thus, for example, if the licensee were to offer concert tickets, gift vouchers, free or discounted phones or anything else of value to customers as an inducement to purchase a telecommunication service, then LC33/31 applies.
19. With regard to particular prices, discounts or special offers, if a licensee is uncertain about the potential applicability of LC33/31, it should contact CICRA for further guidance. CICRA is willing to discuss with a licensee the potential applicability of LC33/31 to its prices, discounts or special offers and provide guidance in the most expedient time frame available.

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