Clear Mobitel (Jersey) Limited
Clear Mobitel (Guernsey) Limited

Response to Future Economic Regulation of the Broadband Market

June 2018

Introduction

The fixed broadband wholesale market in the Channel Islands has traditionally been regulated at the Retail Minus level with effectively a "White Label" version of the incumbents' own product range. The level of discount and the methodology of determining an appropriate price has been consulted on previously[1] but to date no changes to the original wholesale pricing methodology has been implemented or proposed by CICRA.

The current wholesale product range and the available wholesale rates make it difficult for new entrants to effectively compete with the incumbents save for price differentiation. Discussions on the viability of Local Loop Unbundling and Cost Plus pricing have largely been ineffective, the latter being attributed to the disproportionate economic analysis required in small jurisdictions. This has effectively permitted the development of a weak competitive market.

Changes in technology and consumer requirements have now moulded the consumer market in such a way that the traditional approach of provision fails to meet current needs. A "Broadband Only" product is now seen by users as a better approach, many perceiving the need for a bundled fixed line as unnecessary and wasteful. While Wholesale Line Rental has introduced an element of competition into the fixed line market, there has be little impact on the broadband element.

Furthermore, there has been a significant divergence of technological approach between the islands which now means that there is little comparability between the individual incumbents' products. This make it difficult for pan-island regulation which has been desired by both the operators and CICRA in recent times.

Response to Consultation

Question 1: Does the respondent agree with CICRA's provisional view relating to the Channel Islands' broadband markets set out above? If the respondent has alternative views or relevant evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform CICRA's consideration and next steps.

Currently incumbents provide only white label versions of their own retail products that are discounted (in the cast of JT at least) at an arbitrary rate unrelated to the cost of provision. Since these products are still largely under

[1] T1222GJ - Consultation - Broadband price control review
T878J - Consultation - CICRA Considers Wholesale Broadband Charges in Jersey

the control of the wholesale provider there is little opportunity for service differentiation save price competition.
The role of the regulator in this situation is therefore confined to ensuring that the incumbent is providing to third parties the same essential elements as it requires for its own retail products. In this respect the regulator has maintained a regime of equanimity on both islands.

Nevertheless, as a vertically integrated business where wholesale offers are not based on cost, it is difficult to determine whether the incumbent is able to apply a margin squeeze. This is because of its ability to apply economies of scale to its own retail products unavailable to wholesale providers. This has resulted in part to the continued dominance in the broadband market of the incumbent operators on both islands.

Question 2: Does the respondent agree with CICRA's statement relating to best practice regulatory framework? If the respondent has alternative views or evidence the respondent is asked to explain those and provide all of its analysis and assessment relating to this matter to inform CICRA's consideration and next steps.

The proposed remedies are appropriate in order to ensure that wholesale services are delivered at an optimum cost that would ensure a fair level of competition in the retail marketplace.

As noted earlier,it has previously been accepted that a cost based wholesale price has been considered too onerous for operators in a small jurisdiction. However, since regulatory separated accounts have now been in place across the islands for some time, it is perhaps now appropriate for the regulator to require a cost justified product range.

Cost justification would ensure that all parties have an equitable platform from which to build retail products that would give consumers a real choice.

Consequently cost justification should be included in the complete list of proposed remedies.

Question 3: Do respondents consider there is appropriate access and reasonable control over the wholesale network elements listed above by retail broadband providers? If these descriptions are ambiguous or would benefit from further elaboration in terms of their definitions respondents are asked to set out their views in as much detail as feasible.

Building out a fixed line network is an expensive undertaking, particularly in the residential market. However, it has not prevented new operators on both islands from at least building networks to serve business and in the case of Y-

Tel in Jersey using existing infrastructure to support its own fixed line services, albeit over a limited area.

Nevertheless, apart from, this new fixed network build requires a level of investment that would take a considerable period of time to recover, particularly from residential users.

For alternative network providers, therefore, wholesale access to the incumbent's infrastructure is therefore necessary in order to offer a competitive service.

The level of differentiation of products is a key matter in attracting consumers. Using current white-label products limits the service provider to price only competition. In order to have a greater degree of difference between providers, it would be necessary for the new entrant to have deeper access to wholesale network product. This would enable IP based services to be managed independently from the incumbent's network and thus enable the offering of tailored services to consumers.

There are no technical issues that would prevent this level of network management being offered to alternative network providers. However, thus far the regulator has not mandated this which has had the effect of narrowing the ability of incoming service providers to offer truly alternative and competitive options.

Question 4: Are there additional wholesale network elements that have not been identified that have a material bearing on the ability of broadband retailers to provide services? If so respondents are asked to set these out fully?

Apart from the options set out above for third parties to have deeper access to the incumbent's network there are alternative solutions that have been implemented elsewhere.

Co-location of broadband equipment in the incumbents facilities is an option that would enable third parties to have more control over their own services. This would require that the incumbent provides direst access to its fixed network components that can then be connected to the co-located equipment, While this is a relatively simple exercise in the case of copper based networks, it becomes more difficult with fibre or mixed fibre/copper network topology. Nevertheless, it is technically feasible to provide a VPN between the subscriber and the third party equipment at the IP level.

This is effectively Local Loop Unbundling (LLU) but using a broadband-only solution. While LLU has been used elsewhere it is now more likely that consumers are less likely to demand a fixed line service alongside their broadband provision. Therefore the fixed telephone service is superfluous to users requirements, particularly in a competitive broadband market. Thus a broadband only option is a realistic solution for incoming operators.

A further solution that would enable new operators to build out their own competitive networks at a lower cost would be to require the incumbent to allow access to its underground network ducts. This is an option that has already been considered by Ofcom for BT's network[2].

This would be an option, particularly in Jersey where JT has announced its intention to recover its copper network infrastructure post completing its fibre rollout programme.

Alternatively, the regulator could require JT to permit the use of its redundant copper for new entrants to implement high speed DSL solutions as an alternative to fibre.

While this may be more difficult to achieve at this time in Guernsey, the regulator should look towards equivalence between the islands.

Question 5: Do respondents consider there is a need for economic regulatory intervention of the wholesale charges by the monopolists who control access to the networks elements above or any additional elements respondents have identified?

In the scenarios outline above it is important the regulator fixes the wholesale price at a cost based level, or at least at a level commensurate with the ability for operators to compete on a level playing field with the incumbent. It is likely that while the vertically integrated incumbent will nevertheless be able to leverage more margin between its wholesale and retail arms, incoming operators are likely to be more efficient. Thus a competitive market should quickly develop.

Question 6: What do respondents consider are the appropriate investment incentives that an economic regulatory framework should provide to both support investment upstream in the wholesale network as well as support innovation and choice by competing retailers? The respondent is asked to set out the alternatives it considers feasible and its evidence and reasoning for those its supports and those it does not.

Since the liberalization of the telecommunications market in Europe, competition law in itself has rarely been used with regard to telecommunications. In almost all disputes and market management, *ex-anti* regulatory remedies have been applied. A particular example of this would be

[2] https://www.ofcom.org.uk/__data/assets/pdf_file/0024/109356/Revised-implementation-timetable-DPA-remedy.pdf

the the examples set by Ofcom, the UK regulator, in its relationship with the former incumbent, BT. Ofcom has continually used its *ex-anti* powers to ensure that there is fair competition in the UK market. Despite this, there has been several notable litigations where either side has found the regulator lacking.

The telecommunications market is continually evolving and now broadband as a stand alone service is likely to take precedence over traditional forms of customer provisioning. It is important, therefore, that any intervention by the regulator recognizes this and so should mandate broadband only services at the wholesale level. This would permit the new entrant to tailor services according to its customer's needs.

The suggestion of providing a single "pipe" which could then be manipulated by the service provider according to its customer's needs is appealing. However, no mention is made in the consultation as to how this would be managed. As noted above it may be pertinent to include a co-location requirement into the wholesale offer in order that the service provider has complete control over its network.

Whatever the solution chosen by the regulator, it is important that any wholesale offer is cost-oriented so that there is little opportunity for the vertically integrated incumbent to apply implied or otherwise margin squeeze.

For the avoidance of doubt, this document may be published in its entirety.

Clear Mobitel (Guernsey) Limited, Clear Mobitel (Jersey) Limited

JCRA
2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF