



**Response to CICRA's consultation
on the Future Economic Regulation of the
Broadband Market**

15th June 2018

1 Introduction

- 1.1 This non-confidential response is provided by JT (Jersey) Limited and JT (Guernsey) Limited referred to jointly as JT. JT welcomes the opportunity to provide its views on this very important topic of the Future Economic Regulation of the Broadband Market in Jersey and Guernsey.
- 1.2 We have set out how our response to each of the specific questions from the consultation under the headings used in the consultation.

2 The Channel Islands Broadband Markets

Question 1: *Does the respondent agree with CICRA's provisional view relating to the Channel Island's 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.*

2.1 CICRA's provisional view of the role played by retail broadband services providers focuses on the fixed broadband services (provided over fibre optics in Jersey and XDSL in Guernsey). We believe that CICRA need to look wider than the fixed broadband markets and consider broadband access over mobile networks. Additionally, CICRA should consider the differences in the Jersey and Guernsey markets and whether the same remedies are required.

2.2 The Channel Islands markets currently provides consumers with a choice of 3 mobile broadband networks and 2-3 retail fixed broadband options (Guernsey (2), Jersey (3)). All mobile providers offer mobile broadband solutions which acts a direct substitute to the fixed broadband network.¹

2.3 Consumers choose how they consume broadband services, either in a fixed location or on the move using a mobile device (smart phones, tablets and laptops) and their connectivity will be provided over a mobile network or a fixed network. Much of the time they make their choice based on price, speed, reliability and accessibility and will choose the option that meets those needs. Some consumers will choose a broadband solution, provided over a mobile network, but will use the service in the same way as a fixed broadband connection. In this scenario a router is provided as part of the service with a SIM card inserted in the router, however from a consumer perspective the service is limited to use in a fixed location.

2.4 JT and Sure are the dominant wholesale fixed broadband providers in the Jersey and Guernsey markets respectively. Although there is upstream dominance, there is effective retail competition. The Jersey broadband market is extremely competitive with three retail services

¹<https://web.sure.com/guernsey/internet/mobile-broadband-explained>
<http://www.airtel-vodafone.com/homebroadband>
<https://jtglobal.com/Jersey/Personal/Mobile/Handsets-and-tariffs/Mobile-Broadband/>
<http://www.homenet.je/compare-broadband-services/>

providers providing fixed broadband services to around 37,000 households. In Jersey, 40% of consumers in 2018 receive fixed broadband services from one of JT's competitors².

2.7 The Guernsey broadband market is competitive with two retail services providers providing fixed broadband services to around 24,000 households. In Guernsey, 18% of consumers in 2018 receive fixed broadband services from JT, the new entrant².

2.8 In both Jersey and Guernsey, mobile broadband is used to provide households with a broadband service which replicates the fixed broadband service using a mobile network. In 2017, 5476 broadband services are provided using this technology and it is anticipated that this substitution will continue to grow.³.

3 Forward looking regulation for the Channel Islands Broadband Markets

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.*

3.1 JT agrees that it is appropriate to look to Europe and best practice and believe that it is necessary to review the market at this time. As stated in our response to question 1, substitute broadband products are readily available that allow consumers choice and emulate the service that is offered over the fixed infrastructure. Additionally, the review must consider the role 5G will fulfil in markets where the fixed broadband infrastructure has speed limitations due to the technology used to provide it.

3.2 The review needs to take proper account of the small size and scale of the Channel Islands markets and should tailor best practice to ensure that any changes do not constrain the market.

3.3 We do however believe that it is still appropriate for the wholesale provider of the fixed infrastructure with Significant Market Power (SMP) to have regulatory measures imposed. It is fundamental that the wholesale fixed broadband services provided by the incumbent operators are provided to retail downstream providers in a fair and transparent manner ensuring that the incumbent does not favour its own downstream retail arm.

The table below lists out the measures included in the consultation paper and JT's comments on each:-

Regulatory Measure	JT Jersey's Licence	Sure Guernsey's Licence	Comments
Network access on a reasonable request and fair and reasonable terms and conditions and charges	Licence Condition 36	Licence Condition 34	

² Source - CICRA Telecommunications Statistics and Market Report 2017 – page 16

³ Source - CICRA's recent Telecommunications Statistics and market Report 2017 details this information on page 15

Not to discriminate in the supply of services	Licence Condition 31 – Undue Preference and Unfair Discrimination Licence Condition 34 – Fair Competition	Licence Condition 29 – Undue Preference and Unfair Discrimination Licence Condition 32 – Fair Competition	
Produce a reference interconnect offer	Licence Condition 26	Not included	Sure provide a reference offer for fixed voice interconnection services
Requirement to notify changes to terms, conditions or charges	Licence Condition 33 – Changes to Prices Licence Condition - 18 Consumer Protection - Changes to Terms and Conditions	Licence Condition 31 – Changes to Prices Licence Condition - 17 Consumer Protection - Changes to Terms and Conditions	
Requirement to publish quality of service information	Licence Condition 18 – Consumer Protection JT publish its customer promise which details the service levels provided ⁴	Licence Condition 17 – Consumer Protection	JT provide information directly to their wholesale partners. CICRA consulted on standards (insert link)
An accounting separation obligation	Licence Condition 29	Licence Condition 27	CICRA now require JT and Sure to produce financial reports in an agreed template
A cost accounting obligation	Licence Condition 29		See above

3.4 The full suite of regulatory provisions is already included in JT and Sure’s licences for SMP services and we believe that the current arrangements are more than sufficient. Ex-ante intervention is only essential where market mechanisms and existing remedies are not working and regulatory bodies in general should act with a bias against increasing regulation.

4 Implementing a mechanism for ensuring an appropriate return on investment for the wholesale broadband providers

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.*

4.1 The consultation sets out the network elements required to provide wholesale fixed broadband services as follows:-

⁴ <https://jtglobal.com/Jersey/Footer/Company-Information/Company-Promise/>

- The access network which includes the connection from the customer's premise to the local exchange either using copper, fibre or a combination of copper and fibre;
- The broadband equipment at the local exchange;
- Backhaul connectivity across the upstream provider's network; and
- The functionality of the Broadband Remote Access Service (B-RAS) which provides management of the consumer's internet sessions.

Additionally, in a full fibre network a Broadband Network Gateway (BNG) is required which provides similar functionality to the B-RAS.

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 those out fully?*

4.2 The list provided under 4.10 in the consultation document does not include the access to the upstream IP which is purchased directly by the retail service provider.

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 network elements above or any additional elements respondents have identified?*

4.3 JT do not believe there is a requirement for further economic regulatory intervention on wholesale fixed broadband charges. Ex-ante intervention is only essential where market mechanisms and existing remedies are not working and regulatory bodies in general should act with a bias against increasing regulation.

4.4 JT is subject to a margin squeeze price control which ensures that there is sufficient margin available between the wholesale input price and the retail price to ensure a sufficient return is available for the retail downstream provider. It is JT's opinion that this margin squeeze price control is an appropriate framework to follow in Jersey and should be adopted in Guernsey instead of its current arrangements which are not followed as per section 1.5 of the consultation document.

4.5 Consumers are provided with choice between service providers and product offerings and retail operators can make a sufficient return. As there is no competition problem in Jersey or Guernsey therefore there is no need to introduce new onerous ex-ante regulation.

4.6 Current regulation has allowed for both competition and investment, and there is a danger that further regulation could lead to negative outcomes for consumers through stifled innovation. There has been significant investment in the Jersey telecommunications market over the last few years. JT has invested circa £50 million in the 'Gigabit Jersey' project; replacing the legacy copper network with full fibre. This investment and the successful roll-out of the technology places the Jersey broadband market ahead of many others: 100% of

Jersey's consumers will be using fibre broadband by the end of June 2018. Additionally, JT has now committed to replacing all copper voice lines with fibre optics by the end of 2019.

4.7 JT's fibre infrastructure supports the economic interests of Jersey, and the digital Jersey strategy of establishing the island as an internationally recognised digital centre of excellence. JT's fibre infrastructure supports the test bed environment of Sandbox Jersey and allows Jersey to stand out on the world stage.

4.8 JT is clearly motivated to ensure that wholesale pricing does not inhibit utilisation. JT recently uplifted the entry level speeds on its wholesale broadband portfolio from 100Mbps to 250Mbps (download) and 50Mbps (upload) which encourages usage of fibre broadband with no corresponding change to price. Given the investment of superfast fibre in Jersey, it is essential that JT's innovations to stimulate usage in its broadband products are not stifled. The JCRA should look at how to support such innovation which ultimately benefits consumers in Jersey. Moreover, given the huge differential in infrastructure and investment in Jersey and Guernsey, it is important that regulation is appropriate in each island.

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 reason for those it supports and those it does not.*

JT supports CICRA's aims

1. To ensure that the regulatory framework and the functioning of the wholesale upstream markets provide the right signals to potential market entrants.
2. To ensure that there is a fair and appropriate return on investment allowed for upstream operators who have invest in next generation network and associated equipment and capacity.

4.9 JT support these aims and agree that CICRA's role is to ensure that new entrants can enter the broadband retail market. It is JT's opinion that the current regulatory model is working – the retail fixed broadband market in Jersey and Guernsey is competitive, and consumers benefit from choice, value for money and innovation. There is competitive intensity with JT and Sure both being able to exert competitive pressure as entrants in Guernsey and Jersey respectively.

4.10 It is however, difficult to imagine that the number of competitors could be much higher in markets with approximately 69,000 households (42,000 in Jersey and 27,000 in Guernsey). Due to the size of the market and a minimum efficient scale it is unlikely that further competitors will enter the Jersey or Guernsey market.

Additionally, it is important that incumbent operators who have made significant network investments are allowed to make an appropriate return on their investment to allow them certainty for the future.

4.11 CICRA's latest telecommunications statistics market report for 2017⁵ provides information at table 4 on the capital investments in telecommunications in Jersey and Guernsey. The below table details the investment in each jurisdiction on an annual basis since 2012 and shows the investment made by JT against the total network investments.

Capital investment in telecommunications infrastructure in Jersey and Guernsey between 2012 to 2017						
	Total capital investment in Jersey (£m)	Of which JT (£m)	Total capital investment in Guernsey (£m)	Of which JT (£m)	Total capital investment in Jersey and Guernsey (£m)	Of which JT (£m)
2012	£31.0	£29.2	£7.5	£0.0	£38.5	£29.2
2013	£24.8	£21.5	£10.7	£3.7	£35.5	£25.2
2014	£22.4	£20.0	£8.8	£3.1	£31.2	£23.1
2015	£21.3	£13.7	£22.5	£4.3	£43.8	£18.0
2016	£22.6	£20.0	£10.0	£1.3	£32.6	£21.3
2017	£23.3	£20.5	£4.9	£0.5	£28.2	£21.0
Total	£145.4	£124.9	£64.4	£12.9	£209.8	£137.8
% of Total		86%		20%		66%

Source: CICRA Telecommunications Statistics Market Report for 2017 and JT's own data

4.12 In Jersey, JT support the approach of a single wholesale fixed broadband access service that downstream retail service providers can utilise to create a variety of retail products. However, it is our opinion that the broadband market definition must be widened to include broadband services using mobile spectrum. A variety of retail broadband products are currently available that utilise mobile networks and provide for a variety of lower speed, limited usage.

4.13 In Guernsey, retail choice is provided to consumers but the products offered are based on the capability of the network and new products are made available as new technologies such as GFast become available allowing higher speed options. JT would support an approach where entry level speeds are uplifted ensuring that access to these can be provided to allow at least 50% of consumers to achieve the advertised top level speeds at peak time.

⁵ Source - CICRA Telecommunications Statistics and Market Report 2017 – page 11