



# **Jersey Competition Regulatory Authority**

**Decision Paper and Direction 2004-1**

**Re: Telecommunications Market Dominance**

**29 April 2004**

# Decision on Dominance

## Introduction

The JCRA considers that any decisions on Jersey Telecom Limited's ("JT Ltd") Reference Interconnect Offer ("RIO") must be informed by the determination as to whether JT Ltd, a well-established player in the Jersey telecommunications market, has a dominant position in a relevant market or markets. The concept of dominance is key to regulatory thinking, and may be employed to determine the extent to which competition is likely to occur within any relevant market through the determination of the scope and nature of those markets. In competitive markets, market forces will generally be sufficient to ensure that services are provided to consumers on just, reasonable and non-discriminatory terms. In the regulated sector of telecommunications where a Licensee such as JT Ltd is not subject to effective competition, the JCRA will require it to comply with more stringent requirements designed to replicate the operation of a competitive market.

Article 7(1) of the Telecommunications (Jersey) Law 2002 provides, *inter alia*, that the JCRA 'shall have a primary duty to perform its functions...in such a manner as it considers is best calculated to ensure that (so far as in its view is reasonably practicable) such telecommunications services are provided, both within Jersey and between Jersey and the rest of the world, and satisfy all current and prospective demands for them, wherever arising.'

The JCRA must perform its functions under the Law in the manners set out in Article 7(2). In particular, the Authority, in so far as is consistent with Article 7(1), shall-

- a) perform its functions...in such manner as it considers is best calculated to protect and further the short-term and long-term interests of users within Jersey of telecommunication services and apparatus, and perform them, wherever it considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;
- b) perform its functions...in such a manner as it considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey;
- c) perform its functions...in such a manner as it considers is best calculated to further the economic interests of Jersey;
- d) perform its functions...in such a manner as it considers is best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with telecommunications in Jersey...'

To the extent that any given market is not yet competitive, significant *ex-ante* regulatory intervention is likely to remain necessary. When this is the case, the JCRA will seek to impose regulatory requirements that are carefully crafted to achieve the stated goals.

## **Determination of dominance**

In order to arrive at a Decision on whether JT Ltd may be considered dominant in certain markets, the JCRA has relied on a practical analysis of the nature of the markets in which the company operates. The terms of reference employed followed the precedents set by UK and international competition and regulatory law and principles, in that the relevant markets were assessed in terms of the geographic area of the market and in terms of the products and services offered by JT Ltd. As the regulator, the JCRA must define these markets and then determine the position of the players within them with the aim of setting regulations which will apply in the future.

It should be stated that JT Ltd is the only operator to apply for, and be granted, a Class III Telecommunications Licence in Jersey, which is restricted to applicants with Significant Market Power (“SMP”) or who may be considered Well-Established Players (“WEPs”). This restriction is integral to the definition of Class III Licensees included in the JCRA’s *Telecommunications Licence Application Schedule*.

## **Market Definition**

In February 2002 the JCRA published a consultation document entitled *Market Definition and Significant Market Power in the Telecommunications Sector* which set out the criteria by which the JCRA was minded to assess these factors, as well as the methods that would be employed in the definition of the relevant geographic and product markets. The JCRA proposed that SMP would be calculated on the basis of the share of retail revenues from terminating calls, whereas a WEP is defined as an obligatory partner in the market in a position that enables it to command a role of ‘gate keeper’ in the provision of telecommunications services.

A WEP may also be defined with respect to the ownership of an underlying public infrastructure or public telecommunications network deemed to be an essential facility. In its reply to the consultation paper, JT Ltd made no substantial objection to the definition of these terms, and so they were included in the JCRA’s *Telecommunications Licence Application Schedule* and were applied to the Class III Licence under Part IV “Additional Conditions Applicable to Class III Licensees.”

The JCRA has also carried out a substantial quantity of consultation work with the working assumption that JT Ltd is dominant in certain markets for services (as listed below). JT Ltd does not dispute that it possesses SMP (as indicated by its acceptance of the terms of the Class III Licence).

## **Geographic market**

The scope of the geographic market in which JT Ltd operates is not difficult to determine, as its regulated business is conducted entirely within the Bailiwick of Jersey. Although JT Ltd could be said to operate in other markets (most significantly its subsidiary in Guernsey, Wave Telecom), for the purposes of the RIO and other regulatory requirements under the Telecommunications (Jersey) Law 2002, the relevant market(s) are geographically limited to Jersey.

## **Services markets**

JT Ltd's position as the incumbent, proceeding from its historic status as a States-protected monopoly, means that the company can be said to possess dominance in a variety of related markets for services. The calculation of dominance in telecommunications markets is made easier by the consideration of the incumbent's ownership of the physical network infrastructure, which is essential to the telecommunications business.

The JCRA is of the view that the high cost of duplicating this infrastructure may deter many potential new entrants to the market, and it for this reason that JT Ltd must establish reasonable terms under which access to JT Ltd's network may be purchased. The JCRA determines that JT Ltd is dominant in the following markets:

- Fixed-line telecommunications services;
- Fixed-line telecommunications networks;
- Leased circuits;
- Mobile telecommunications services;
- Mobile telecommunications networks; and
- Fixed-line broadband services.

## **Decision**

The JCRA determines that JT Ltd is dominant in the markets listed above, and is therefore minded to make this determination a cornerstone of future regulatory policy, although this does not preclude re-evaluation in the event that there is significant change within the market.

**Direction 2004-1 of 29 April 2004 under Article 19 of the  
Telecommunications (Jersey) Law 2002 issued by the Board of the  
JCRA to:**

**Jersey Telecom Limited**

**Under the terms of their Licence issued on 1 July 2003 by Order of the Board**

**Pertaining to Licence Conditions 26, 29, 33 and 34 therein.**

**WHEREAS**

After full review, the Board of the JCRA has fully considered all relevant facts and materials pertaining to Jersey Telecom Limited, proceeding from its historic status as a States-protected monopoly.

**THE BOARD OF THE JCRA NOW DIRECTS**

that Jersey Telecom Limited is dominant in the following markets:

1. Fixed-line telecommunications services;
2. Fixed-line telecommunications networks;
3. Leased circuits;
4. Mobile telecommunications services;
5. Mobile telecommunications networks; and
6. Fixed-line broadband services.

By Order of the Board of the JCRA

29 April 2004