



CABLE & WIRELESS

**Initial Notice re application from Clear
Mobitel (Jersey) Limited for a Class II Licence**

Response to document
issued by the Jersey Competition Regulatory
Authority on 17 July 2009

19 August 2009



Introduction

Cable and Wireless Jersey Limited (C&WJ) welcomes the opportunity to respond to the Jersey Competition Regulatory Authority's (JCRA's) Initial Notice (the "Initial Notice") issued on 17 July 2009, which calls for written representations or objections to its preliminary conclusion that a Class II Telecommunications Licence should be granted to Clear Mobitel (Jersey) Limited ("CMJ") with effect from 21 August 2009.

Proposed Usage of 2600 MHz spectrum by CMJ

C&WJ was astonished and extremely concerned to see from the Initial Notice dated 17 July 2009 that the JCRA is considering granting a licence specifying use of 2600 MHz spectrum to anyone, let alone an entirely new prospective licensee. The JCRA had only asked for Expressions of Interest in acquiring an allocation of the 2600 MHz spectrum in its Consultation Document¹ dated the 3 June 2009, with formal Expressions of Interest requested by the 1 July 2009.

In that Consultation Document the JCRA stated:

1. The JCRA will consider any Expressions of Interest received in response to this consultation and will make recommendations to Ofcom with regard to the granting of licences to Interested Parties;
2. The JCRA expects to issue a statement shortly after the closing date of this consultation, which will set out the JCRA recommendations to Ofcom for frequency assignments in the 2.6 GHz band.

The JCRA has issued no such statement, issued no such recommendations that C&WJ is aware of, nor issued any document, decision or finding of any sort following receipt of responses to its consultation. There can be no proper consideration or determination on the grant of a licence to a new licensee for use of that 2600 MHz spectrum without such further process.

Whilst C&WJ is unclear how the Consultation Document is provided for in the JCRA's Guideline on Procedure² in the absence of any Initial Notice, it notes that at paragraph 17 the Guideline states "*within a week of the close of the consultation period [set out in an Initial Notice] the JCRA will publish a statement on its website stating (inter alia) an estimated time-table of when the JCRA intends to publish a Final Notice concerning the matter*". C&WJ is unable to find any such statement or time-table on the JCRA website.

By reference to paragraph 21 of the Guideline, it would appear that the next stage in the process in respect to 2600 MHz spectrum should have been to issue an Initial Notice of its proposals for the allocation of 2600 MHz taking account of the responses and Expressions of Interest received pursuant to its Consultation Document. C&WJ is not aware that the JCRA has published any such Initial Notice. C&WJ also notes that paragraph 2 of the Guideline states that, where the JCRA departs from the Guideline, it will give reasons why it has done so. Again, C&WJ is not aware of the JCRA having made any statement as to why it has not issued an Initial Notice following the closing date of the Consultation Document relating to 2600 MHz spectrum.

¹ JCRA Consultation Paper 2009-T01 Distribution of Spectrum in 2600 MHz band, 3 June 2009

² JCRA Guideline on Procedures under the Telecommunications (Jersey) Law 2002, 20 April 2009

C&WJ will not repeat the various arguments it made in its Expression of Interest³ in response to the Consultation Document. It would, however, like to highlight that it had emphasised that whilst it had tried to respond in as much depth as possible, it was not possible to provide some of the level of detail and specifics requested at this early stage. C&WJ therefore finds it difficult to see how CMJ could have responded in sufficient detail within the same timescale.

It has been suggested in discussions between C&WJ and the JCRA prior to submitting this formal response to the Initial Notice that an attraction of CMJ is that its proposition to provide Long Term Evolution ("LTE") wireless services is a novel proposition and something not currently offered to Jersey customers. This position ignores and does not consider the various and very specific considerations of LTE in our Expression of Interest. The JCRA should particularly note the fact that 2600MHz spectrum is of potential application and relevance to both "mobile operators going indoors" and "fixed operators going outdoors" and therefore presumed to be of considerable interest to all current operators.

Proposed timing for grant of any licence to CMJ

C&WJ notes that the applicant, CMJ, was only incorporated on 9 July 2009 and yet only 8 days later the JCRA states that it intends to grant it a licence on the 21 August 2009, less than 2 months after incorporation. We would question how any - let alone any proper and appropriate - due diligence and investigation can be undertaken in that timescale.

There is no information available to C&WJ in respect of CMJ other than the registered address and the identity of the trust company that presumably acts as its agent. In particular, there is no other information available on its suitability, business plans, ability to operate within Jersey, etc. Nor is there any information regarding whether CMJ has experience of operating in any other telecommunications market.

Whilst C&WJ has no knowledge of the conversations that may have been taking place between the JCRA and CMJ, it can refer the JCRA to the time it took, and the processes involved, for C&WJ to obtain its licence in Jersey. C&WJ is both a wholly owned subsidiary of a major world telecommunications operator, Cable & Wireless plc, and an associated company of Cable and Wireless Guernsey Limited, a licensed provider in both Guernsey and Jersey at the time of application by C&WJ. Despite this pedigree and background, it took C&WJ considerable time and effort to be licensed. In summary this timescale was:

- Jan 14th 2003 - C&WJ registered with JFSC as a legal entity
- March through August 2003 - various meetings with the JCRA, including a public debate, culminating in a formal licence application in August 2003
- October 2003 - C&WJ was due to receive a licence, but owing to a procedural issue this was delayed
- December 10th 2003 - C&WJ awarded a Class II Licence

During early meetings with the JCRA it was made perfectly clear that the award of a telecommunications licence would only follow once the Regulation of Undertakings requirements, now the responsibility of Economic Development, confirmed that C&WJ was a creditable operator, had the right credentials, would employ the right mix of local / non-local staff and would deliver clear benefits to Jersey

³ C&WJ Response to consultation dated 1 July 2009

We would ask the JCRA:

- to explain and verify the reason why it proposes to grant a licence to CMJ within 2 months of its incorporation, as against the 11 months it took C&WJ;
- to confirm that it has undertaken all appropriate due diligence on CMJ to ensure it is a fit and proper company to operate in Jersey.

C&WJ further notes that at paragraph 21 of its Guideline on Procedure the JCRA states "*in an attempt to identify issues and minimise differences of opinion, the JCRA will endeavour to engage with industry and other relevant stakeholders prior to issuing an Initial Notice. This process may also involve a public consultation*". There has been no such engagement or consultation. Nor has there been any statement by the JCRA, in line with paragraph 2 of the Guideline, as to why it has departed from its Guideline.

Provisions of the Telecommunications (Jersey) Law 2002

The JCRA makes reference in its Initial Notice to the requirement to perform its functions in a manner consistent with its duties as set out in Article 7 of the Telecommunications (Jersey) Law 2002 ("the Law"). C&WJ notes that Article 7 (2) (a) requires that the JCRA must consider long-term interests of users of telecommunications services within Jersey. C&WJ is of the view that rushing to grant a licence to CMJ in the manner proposed has not considered such long term interests. Further, Article 7 (2) (e) of the Law requires that the JCRA must ensure that persons engaged in commercial activities connected to telecommunications in Jersey have sufficient financial and other resources to conduct those activities. As already noted above, C&WJ finds it hard to understand how the JCRA could have undertaken the necessary due diligence of CMJ within such a short timescale.

Other issues

As noted in our Expression of Interest, it is imperative that the spectrum packaging structure adopted by the JCRA in conjunction with Ofcom enables licensed operators to evolve and develop services for customers. C&WJ considers it vitally important for the JCRA/Ofcom to recognise spectrum harmonisation not just across Europe but also across the Channel Islands. The harmonised availability of 2600MHz spectrum across Europe and the Channel Islands will further develop market opportunities and importantly, will allow customers to roam as easily as they are accustomed to on other networks. More locally, this stimulates and further enhances the value of the Mobile Number Portability (MNP) investments that have been made by the existing mobile operators. C&WJ is of the general view that the whole mobile community, including users, operators and vendors, benefit from harmonized spectrum usage. A harmonized approach guarantees the timely availability of cost efficient equipment due to economies of scale and also brings more choice for customers in terms of handset device brands and models.

The JCRA must ensure such an approach before contemplating the granting of spectrum specific licences to any new operators. A key issue to C&WJ, the Channel Islands and bordering operators is radio interference risks. How can the JCRA contemplate issuing a licence without market analyses and consideration of an efficient and effective frequency plan, which plan needs to be discussed and agreed with Ofcom and all licensed operators?

Summary

C&WJ strongly objects to the proposal to grant a licence to CMJ effective 21 August 2009. The JCRA must:

- consider the responses to its Consultation Document in respect of 2600 MHz spectrum;
- follow its own Guidelines and procedures in respect of that Consultation by way of Initial and Final Notices;
- undertake full and rigorous due diligence on CMJ;
- consider all representations and objections received to the Initial Notice as required by Article 11 (4) of the Law;
- by 26 August publish a statement on its website stating:
 - the number of responses received to the Initial Notice relating to the granting of a Class II Licence to CMJ;
 - the identity of the respondents; and
 - an estimated time-table of when it intends to publish a Final Notice.
- If, as C&WJ believes it must, after consideration of all representations and objections, it wishes to change its proposal other than the date when it is to take effect, issue both a Final Notice closing this consultation process and a fresh Initial Notice.

C&WJ does not consider any part of this response and objection to be confidential and agrees to it being published in full.

Cable & Wireless Jersey Limited

19 August 2009