

**TELECOMMUNICATIONS (JERSEY) LAW 2002**

**JERSEY COMPETITION REGULATORY AUTHORITY**

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**FINAL NOTICE to JERSEY TELECOM LIMITED**

**Under Article 11 of the Telecommunications (Jersey) Law 2002**

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On 13 November 2006, the Jersey Competition Regulatory Authority ('JCRA') published in the Jersey Gazette an Initial Notice of a proposed direction to Jersey Telecom Limited ('JT') under Article 19 of the Telecommunications (Jersey) Law 2002 (the 'Law'). This Initial Notice and proposed direction were necessitated by JT's alleged failures in 2006 to comply with the requirements contained in Condition 33.1 of its Telecommunications Licence issued under the Law. As described in the Initial Notice, these incidents concerned JT's (i) 18 Month Contract Offer, (ii) Jersey Live Offer, (iii) House Proud Promotion, (iv) Change in Broadband Portfolio, and (v) Direct Debit Offer.

The JCRA requested that any written representations on the exercise of this proposed specified regulatory function be made to it by 14 December 2006. Only JT responded, via a letter to the JCRA dated 11 December 2006. In its response, JT disputed the JCRA's grounds for the alleged infringements of Condition 33.1. For example, concerning offers such as the 18 Month Contract or House Proud Promotion, JT asserted that Condition 33.1 did not apply because these offers concerned the sale of ancillary products (such as handsets and accessories) and were not discounts for the provision of telecommunication services. Alternatively, JT stated that even if the examples identified in the Initial Notice constituted infringements of Condition 33.1, such infringements were de minimis and did not warrant the proposed enforcement action. JT further stated that the proposed direction's requirements concerning JT's internal compliance policies and procedures were not necessary because JT already has well developed policies and procedures in place. JT also submitted that the JCRA should review the scope of Condition 33.1, and potentially modify it, in light of changing market circumstances.

The JCRA does not accept that the infringements of Condition 33.1 did not occur, or that these infringements were de minimis. The grounds for each infringement are set forth in the Initial Notice and need not be repeated here. The JCRA's enforcement action is based on all five infringements of Condition 33.1, meaning that JT's argument that each one taken in isolation may be seen as de minimis is irrelevant. Concerning JT's submission that the JCRA should review the scope of Condition 33.1 and potentially modify it, the fact that JT may wish that these requirements be changed in the future is no excuse for JT's failures to comply with them in the past.

Considering the matter further, however, the JCRA recognizes that JT did otherwise comply with Condition 33.1's requirements with respect to other offers during the time at

issue in the Initial Notice. Thus, the five failures to comply set forth in the Initial Notice appear to be based on a misunderstanding of Condition 33.1's requirements by JT, rather than a complete disregard for its compliance obligations. In response to the JCRA's Initial Notice, JT detailed its own internal compliance policies and procedures and stated these should be sufficient to avoid further infringements of Condition 33.1.

Therefore, although the basis for the JCRA's Initial Notice remains, the JCRA concludes that, in the interests of proportionality, proceeding with the originally intended enforcement action is not warranted at this time. As an alternative to proceeding with a direction under Article 19, the JCRA is issuing a guideline on the scope of Condition 33.1, which will be provided to JT with this Final Notice and available publicly on the JCRA's website. The intention of this guideline is to clearly define for JT (and for interested third parties) the scope of Condition 33.1 and the types of offers that are subject to it. It is the JCRA's intention that this guideline should assist JT in knowing when to file Condition 33.1 notices in the future. In light of JT's representations concerning the robustness of its internal compliance policies and procedures, the JCRA would expect JT to ensure that the guidance provided is disseminated within the company so that no further infringements of Condition 33.1 occur. Should further infringements of the Condition 33.1 requirements still occur, the JCRA retains its full powers to seek subsequent enforcement action under the Law.

**3 May 2007**

**By Order of the Board of the JCRA**