



**Procedures under the  
Telecommunications (Jersey) Law 2002**

**Consultation Document 2008-T1**

**8 April 2008**

## **I. Introduction**

The Jersey Competition Regulatory Authority (“JCRA”) acts as the regulator of telecommunications in the Bailiwick of Jersey pursuant to the Telecommunications (Jersey) Law 2002 (the “Law”). Under this Law, the JCRA acts primarily through undertaking so-called “specified regulatory functions.” These include, but are not limited to, issuing licences to providers of telecommunication services (Article 14 of the Law), modifying licence conditions (Article 18 of the Law), issuing directions to comply with licence conditions (Article 19 of the Law), and revoking licences (Article 20 of the Law).

In addition to the JCRA’s functions under the Law, the Law also provides for separate functions undertaken by the Minister of Economic Development (the “Minister”). These include the issuance of directions and guidance to the JCRA (Article 8 of the Law).

Article 7 of the Law sets out the considerations, primary and secondary, that both the JCRA and Minister must take into account when performing their respective functions with respect to telecommunications. In addition, Article 11 of the Law sets out the procedures the JCRA must follow when proposing to exercise a specified regulatory function.

Articles 7 and 11 of the Law form the centre of this consultation. Specifically, through this consultation, the JCRA is requesting comments on the procedures it follows under Articles 7 and 11. The ultimate goal of this consultation is for the JCRA to produce a guideline on procedures under the Law, which would assist in its assessment of future potential regulatory functions and provide greater transparency to those we regulate.

This consultation will proceed in two separate phases. Phase I, which is initiated by this Paper, will address the issue and ask for comments generally, as set out below. The deadline for submissions to this Phase I consultation is **Friday, 6 June 2008**. The JCRA will consider the responses to this consultation, along with independent research it may conduct, and thereafter produce a draft guideline for comment, which will be subject to a separate, and subsequent, Phase II consultation. The JCRA broadly anticipates to complete this process, and issue the final guideline in light of the comments it may receive during the Phase II consultation, in the latter half of 2008.

## **II. Article 7 of the Law**

Article 7 of the Law is set out in full below.

### **“7 Duties of Minister and Authority**

- (1) The Minister and the Authority shall each have a primary duty to perform his, her or its functions under this Law in such manner as each considers is best calculated to ensure that (so far as in his, her or its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising.
- (2) In so far as it is consistent with paragraph (1) to do so, the Minister and the Authority shall each –
  - (a) perform his, her or its functions under this Law in such manner as each 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 each considers it appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey;
  - (b) perform his, her or its functions under this Law in such manner as each considers is best calculated to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey;
  - (c) perform his, her or its functions under this Law in such manner as each considers is best calculated to further the economic interests of Jersey;
  - (d) perform his, her or its functions under this Law in such manner as each considers is best calculated to impose a minimum of restriction on persons engaged in commercial activities connected with telecommunications in Jersey;
  - (e) in performing his, her or its functions under this Law, have regard to the need to ensure that persons engaged in commercial activities connected with telecommunications in Jersey have sufficient financial and other resources to conduct those activities; and
  - (f) in performing his, her or its functions under this Law, have regard to any special needs of persons who are disabled or have limited financial resources or have particular needs.

- (3) The Minister and the Authority shall, in considering whether the services referred to in paragraph (1) satisfy the demands referred to in paragraph (1), have regard to –
- (a) whether the services are accessible to and affordable by the maximum number of business and domestic users;
  - (b) whether there is innovation in the services and their provision;
  - (c) whether the services are of high quality and are reliable;
  - (d) whether users are able to express their views about the provision of the services; and
  - (e) any objectives that the States prescribe by Regulations, including, but not limited to –
    - (i) the provision of a universal service, a social service or any form of cross-subsidized service, and
    - (ii) the provision of certain services at uniform tariffs or at tariffs that are cross-subsidized by other tariffs.
- (4) The States may, by Regulations, modify paragraph (3)(a) to (d).”

Article 7(1) sets out the primary consideration the JCRA must have regard to in the exercise of all its functions under the Law. This primary consideration concerns the satisfaction of all current and prospective demands for telecommunication services in Jersey, to the extent that the satisfaction of such demand is, in the JCRA’s view, reasonably practicable. Article 7(3) of the Law is read in conjunction with Article 7(1), and lists factors that the JCRA must have regard to in considering whether telecommunication services satisfy current and prospective demands in Jersey. These factors include accessibility, affordability, innovation, quality, and reliability; and remain subject to modification pursuant to States regulations.

Article 7(2) sets out secondary considerations, i.e., factors the JCRA must consider in the exercise of its functions under the Law, but only to the extent consistent with the primary consideration set out in Article 7(1). These secondary considerations include the protection and furtherance of short-term and long-term user interests; the promotion of efficiency, economy and effectiveness in commercial activities; the furtherance of Jersey’s economic interests; the imposition of minimum restrictions on telecommunication providers; the financial and other resources of telecommunication providers; and special needs for telecommunication services.

In its consideration of a specified regulatory function, the JCRA's procedures under Article 7 start with determining whether the exercise of the function, as proposed, would be best calculated to ensure that demands for current and prospective telecommunication services in Jersey is satisfied, as required by Article 7(1). This determination is informed by the considerations listed in Article 7(3), to the extent relevant to the potential exercise of the specified regulatory function.

Thereafter, the JCRA will assess whether the exercise of the specified regulatory function would be consistent with each of the Article 7(2) considerations. It may be that, concerning a specified regulatory function, one or more of the Article 7(2) considerations may be of little to no relevance.<sup>1</sup> If this is the case, the JCRA will consider that the exercise of the specified regulatory function would not be inconsistent with that consideration.

If the JCRA determines that the potential exercise of a specified regulatory function would be consistent with the primary consideration set out in Article 7(1) (as informed by Article 7(3)), but inconsistent with one or more of the secondary considerations listed in Article 7(2), Article 7 requires the JCRA to proceed with the exercise of a specified regulatory function.

The level of detail in the JCRA's procedures under Article 7 is proportionate to the nature of the specified regulatory function under consideration.

The considerations set out in Article 7 form the basis for the exercise of any specified regulatory function under the Law. That is, the JCRA cannot undertake a function in its role as the regulator of telecommunications that would be inconsistent with the Article 7 considerations. The Law gives no grounds for the JCRA to depart from these duties.

### **III. Article 11 of the Law**

Article 11 of the Law sets out the procedures the JCRA must follow when undertaking a specified regulatory function. Article 11(1) of the Law requires the JCRA to issue an Initial Notice that must (1) specify the regulatory function the JCRA proposes to exercise, as well as the reasons for it; (2) state when the proposed regulatory function would take effect; (3) specify the place where the document giving effect to the proposed regulatory function may be inspected; and (4) specify

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<sup>1</sup> For example, the consideration set out in Article 7(2)(f) – having regard to the special needs of the disabled or persons having limited financial resources – may not be relevant to the exercise of all specified regulatory functions.

the period within which written representations or objections in respect of the proposed regulatory function may be made.

Article 11(3) then mandates a 28-day comment period concerning a proposed regulatory function. If any written comments are received by the JCRA during this period, Articles 11(4) and 11(5) require it to issue a Final Notice that must (1) refer to the matters contained in the Initial Notice; (2) contain a summary of the comments received; (3) contain details of the JCRA's response to these comments in sufficient detail to enable the response to be understood and the reasons for it be known; (3) if applicable, specify the place where the document setting out the full text of the JCRA's response to the comments may be inspected; and (4) give a statement on whether, in light of the comments, the JCRA still intends to proceed with the proposed regulatory function and, if it does, the date of implementation.

The remainder of Article 11 sets out publication and service requirements with respect to Initial and Final Notices. In addition, Article 11(10) states that if, in response to comments received in response to an Initial Notice, the JCRA wishes to change its proposal as to the exercise (other than the date when it would take effect), it must issue a fresh Initial Notice concerning the matter.

#### **IV. Consultation Questions**

In light of the summaries of Articles 7 and 11 and to assist us in preparing the guideline, the JCRA is seeking responses to the following questions. Responses may be provided to all or some of the questions, at the respondent's discretion. Where commentary is provided to questions, this is given for informative purposes only, and is not intended to influence or restrict the discretion of interested parties in providing their views. If a response cites to extraneous materials, providing copies of the materials, or links to them, would be greatly appreciated.

##### **1. Do respondents have comments on the JCRA's procedures under Article 7?**

*Comment 1* – As stated above, the Law requires the JCRA to have regard to the considerations listed in Article 7 in the exercise of any specified regulatory function, and the Law provides no grounds for departure from this requirement. Thus, Article 7 must control the JCRA's analysis of proposed specified regulatory functions under the Law.

*Comment 2* – The procedures the JCRA follows in its analysis of the potential exercise of a specified regulatory function are summarised above. The JCRA is

seeking comment on these procedures and suggestions of additional procedures that can help the JCRA apply Article 7.

*Comment 3* – Responses should explain how and in what manner, in the respondent’s view, any additional procedures identified are relevant to, and would help the JCRA to apply, Article 7. If the suggested procedures are relevant to only some of the Article 7 considerations but not others, please specify.

## **2. Should the JCRA publish responses received to consultations under Article 11?**

*Comment 1* – As stated above, Article 11(5) of the Law requires, in a Final Notice, for the JCRA to summarise comments received and provide its responses to them.

*Comment 2* – The JCRA could discharge its duty to provide a summary of the comments received by attaching copies of the responses to the Final Notice. The Final Notice still, of course, would need contain the JCRA’s responses to the comments, and comply with the other requirements of Article 11(5).

*Comment 3* – In responding to this question, interest parties consider that the publication of consultation responses could necessitate more work on behalf of parties responding to consultations – as they potentially would need to submit both confidential and non-confidential versions of submissions. Interested parties should also consider the strict confidentiality restrictions Article 61 of the Law places on the JCRA.

## **3. How should the JCRA publish notices of proposed regulatory functions to ensure the widest possible consultation?**

*Comment 1* – Customarily, the JCRA has published notice of its proposed regulatory functions in the Jersey Gazette and on its website, in addition to serving copies on parties in accordance with the Law.

*Comment 2* – Publication in the Jersey Gazette, however, is not the only way the JCRA may bring the public’s attention to proposed regulatory functions.

*Comment 3* – Bringing the widest possible publicity to proposed regulatory functions, and thereby ensuring the widest possible consultation, is in the JCRA’s interests. Therefore, we are interested in suggestions of other media in which the JCRA should

publish notice of its proposed regulatory functions, while keeping considerations of cost in mind.

**4. Are there other measures the JCRA should consider to improve or contribute to the regulatory process under the Law?**

*Comment 1* – The JCRA’s core values, which extend across all of our areas of responsibility including telecommunications, are fairness, accountability, proportionality, and efficiency. To further these values in the area of telecommunications regulation, we are interested in other suggestions on how we can improve our procedures under the Law.

*Comment 2* – In responding to this question, interest parties should keep in mind both the potential cost of regulation and the legal requirements of Articles 7 and 11.

**V. Procedure and Time-frame for Responding**

Responses to this Consultation Paper to be made to the JCRA no later than **5PM on Friday, Friday, 6 June 2008**. Submissions should be clearly marked “Comments on Consultation Document 2008-T1” and may be supplied either in hard copy or electronically, addressed (as appropriate) to:

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N.B. The JCRA reserves the right to publish on its website any submissions to this or other consultations. Any commercially sensitive information that a stakeholder may wish to submit as part of a response should therefore be clearly marked as such.