

TELECOMMUNICATIONS (JERSEY) LAW 2002

CLEAR MOBITEL (JERSEY) LIMITED

FINAL NOTICE

1. On 17 July 2009 the Jersey Competition Regulatory Authority ('JCRA') issued an Initial Notice under Article 11 of the Telecommunications (Jersey) Law 2002 (the 'Law') concerning the proposed grant to Clear Mobitel (Jersey) Limited ('CMJ') of a Class II Licence for a period of fifteen years for the running of a telecommunication system (the 'Licence').
2. Written representations or objections were invited regarding the proposed grant of the Licence. Three representations were received in response to the Initial Notice from Cable & Wireless Jersey Limited ('CWJ'), Jersey Airtel Limited ('JAL') and Jersey Telecom Limited ('JT').
3. The representation from CWJ highlighted what it considered to be six pertinent issues.
4. The first related to the allocation of 2600 MHz spectrum for which a JCRA consultation had been issued on 3 June 2009.¹ CWJ asserted that the JCRA should consider the responses to its Consultation Document in respect of 2600 MHz spectrum before considering CMJ's licence application.
5. The JCRA is of the view that there is no link between the two matters, since spectrum licensing is the responsibility of the UK telecommunications regulator, Ofcom, and not the JCRA. Furthermore, the JCRA also dealt with two similar matters concurrently in 2006 when it consulted on 3G spectrum and the licensing of JAL. At that time no such objection was raised by any party, including CWJ.
6. The second matter raised by CWJ related to JCRA procedures. CWJ asserted that the JCRA should follow its own Guideline² and procedures in respect of the 2600 MHz consultation by way of Initial and Final Notices.
7. In response to this comment, the JCRA notes that the 2600 MHz consultation did not involve the proposed exercise of a "specified regulatory function" as defined in Article 10 of the Law. The provisions of Article 11 of the Law, relating to the Initial and Final Notice procedures, and hence the JCRA Guideline, are therefore inapplicable with respect to the 2600 MHz consultation.

¹ JCRA Consultation Paper 2009-T01 *Distribution of Spectrum in the 2600 MHz Band* (3 June 2009).

² JCRA Guideline on Procedures under the Telecommunications (Jersey) Law 2002

8. The third point that CWJ raised was the duty of the JCRA to undertake full and rigorous due diligence on CMJ. CWJ Further commented on the apparent disparity between the length of time taken to process its own licence application and that of CMJ.
9. The JCRA is required under Article 7(2)(a) of the Law to protect and further the short and long term interests of users of telecommunications services and apparatus. Furthermore Article 7(2)(e) of the Law requires the JCRA to “ensure that persons engaged in commercial activities connected with telecommunications in Jersey have sufficient financial and other resources to conduct those activities.” The JCRA has been supplied with sufficient confidential information to enable it to conclude that these and the other Article 7 considerations are satisfied.
10. With regard to the CWJ observation on the timing of licence approvals, the JCRA would observe that CWJ’s application in early 2003 was soon after the introduction of the Law and competitive conditions were then different. A much shorter timescale was achieved in 2005 when the licence for JAL was considered. Specifically, the Initial Notice proposing the grant of a Class II Licence was issued to JAL on 28 November 2005, and this Licence took effect on 24 February 2006 pursuant to the relevant Final Notice, a time-frame which reflects the one the JCRA has followed with respect to CMJ’s licence application.
11. The fourth point raised by CWJ was the requirement that the JCRA must consider all representations and objections received to the Initial Notice as required by Article 11 (4) of the Law.
12. The JCRA is required to perform its functions under the Law by issuing the Initial Notice on the proposed grant of the Licence. It has done so and CWJ and others have commented. The JCRA has carefully considered all representations and objections received. In the light of the responses received, the JCRA has determined that the issuance of this Final Notice is appropriate. It has therefore complied with its obligations under Article 11 of the Law.
13. The fifth point raised by CWJ concerned the JCRA procedures. It proposed that the JCRA should by 26 August publish a statement on its website stating:
 - the number of responses received to the Initial Notice relating to the grant of the Licence to CMJ;
 - the identity of the respondents; and
 - an estimated time-table of when it intends to publish a Final Notice.
14. The JCRA published this information on its website on 21 August, and thus has followed this procedure.
15. The sixth and final point raised by CWJ concerns the duties of the JCRA under Article 11(10) of the Law. CWJ states that the JCRA must, after consideration of all

representations and objections, if 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.

16. The JCRA recognizes its duties under the Law and has considered all of CWJ's points together with the other representations that are dealt with below. The JCRA has determined, however, that the issuance of a Licence to CMJ is appropriate, and thus has issued this Final Notice. The JCRA has therefore carried out its functions in accordance with the Law.
17. The JCRA received a representation from JAL which raised no objection in principle to the licensing of CMJ but raised concerns about the earlier JCRA consultation on the distribution of 2600 MHz spectrum and the equitable allocation of this spectrum. As noted in Paragraph 5 above, the JCRA sees no link between the licensing of spectrum, which is the responsibility of Ofcom, and the grant of telecommunications licenses in Jersey. Nevertheless, since this representation was received the JCRA has published the responses to the 2600 MHz consultation and its recommendations to Ofcom.³
18. Finally, the JCRA received a representation from JT which again concerned the consultation on the distribution of 2600 MHz spectrum. JT commented that the JCRA should conclude that consultation before proceeding with the issuance of a telecommunications licence to CMJ.
19. As noted in Paragraph 5 above, the JCRA sees no link between the two processes and has already published the results of that consultation as noted in Paragraph 17 above.
20. The JCRA has therefore concluded that none of the representations received warrant it refusing to approve CMJ's Licence or changing the terms of the Licence as proposed in the Initial Notice. Accordingly, the JCRA publishes this Final Notice under Article 11(5) of the Law. The JCRA will now exercise the specified regulatory function and the Licence shall come into effect on 16 November 2009.

Copies of this notice, the Licence and the JCRA's response are available for inspection at the offices of the JCRA at 2nd Floor, Salisbury House, Union Street, St Helier, Jersey JE2 3RF between the hours of 9.00 am and 5.00 pm Monday to Friday or on the JCRA website www.jcra.je.

12 October 2009

By Order of the Board of the JCRA

³ Recommendations to Ofcom (17 September 2009).