

TELECOMMUNICATIONS (JERSEY) LAW 2002

FINAL NOTICE

JERSEY TELECOM – DIRECTION TO COMPLY WITH A LICENCE CONDITION

Procedural background

1. On 17 May 2010 the Jersey Competition Regulatory Authority (“JCRA”) issued an Initial Notice under Article 11 of the Telecommunications (Jersey) Law 2002 (“the Law”) concerning a Direction it proposed to give to Jersey Telecom (“JT”) under Article 19(1) of the Law. The proposed Direction had been necessitated by JT’s failure to comply with the requirements contained in Condition 33.1 of its Telecommunications Licence and to adhere to the obligation not to cause undue preference or unfair discrimination pursuant to Condition 31 of that Licence.
2. Condition 33.1 requires JT to publish at least 21 days in advance, and concurrently provide full details of the same to the JCRA, any (i) new prices for telecommunications services, (ii) discounts to published prices for telecommunication services in which JT is dominant, or (iii) special offers to customers of telecommunication services in which JT has been found to be dominant. Pursuant to the JCRA Board Decision dated 19th April 2010, JT was designated as having Significant Market Power (dominance) on three relevant fixed telephony markets. (JT had previously been found to be dominant in fixed line telephony under the JCRA Decision Paper and Direction 2004-1).
3. JT had failed to comply with the obligations in Condition 33 and / or Condition 31 as set out below concerning an offer or promotion referred to by JT as “JT Complete Bundle”.

Brief Facts

4. On 18 January 2010 JT submitted a draft Condition 33 Notice advising of a “triple play” proposed fixed, mobile and broadband bundled offer. At a meeting at the JCRA offices on 22 January, the JCRA objected to the package on the grounds that it was not replicable by Other Licensed Operators (“OLOs”) using JT’s wholesale offers. The proposed offer would thus have put JT in breach of Condition 31 of its Licence (which deals with undue preference and non-discrimination).
5. JT agreed to withdraw the LC33 Notice and the offer.

6. On 5 March 2010 JT submitted a further LC33 Notice advising of its intention to introduce a “double play” offer of a mobile and fixed broadband bundled at a price of £25.55 per month, subject to the subscriber accepting on-line billing and Direct Debit. It was due to enter force on 26 March 2010. The JCRA did not object to the “double play” LC33 Notice because its elements would be replicable by OLOs given JT’s obligation to supply OLOs with an equivalent wholesale product for retail sale by OLOs.
7. However, in breach of the JCRA’s requirement that the composition of the offer in the LC 33 Notice described in paragraph 4 above be withdrawn, JT had advertised on its web-site an offering which includes the non-replicable fixed line element to which the JCRA objected at the meeting held on 22 January 2010.
8. The actual advertisement is entitled “JT Complete Bundle – Three great services, one great price” and the full advertisement was set out in Annex One to the Initial Notice (and is replicated as Annex One to this Final Notice, for ease of reference.
9. The JCRA took the view that that advertisement comprised the non-replicable part of the offer proposed in the 18 January 2010 draft LC33 Notice to which the JCRA objected, as described in paragraph 4 above. This in turn meant that JT would have been advertising a promotion (to which the JCRA had already objected and which JT withdrew in the light of that objection) without filing a new LC33 Notice.
10. On 30 April the JCRA contacted JT and requested it to remove reference to the triple-play offer voluntarily, but by letter dated 7 May JT declined to do so.
11. In the light of the facts and matters described above and in the Initial Notice, the JCRA proposed to issue a Direction under Article 19(1) of the Law to JT, in the form set out in Annex Two of that Initial Notice and replicated as Annex Two to this Final Notice, for ease of reference.

Responses to the Initial Notice and the JCRA’s observations on them

12. If any representations or objections are made within the time period specified in the Initial Notice, the JCRA is obliged to consider them and give Final Notice in relation to the proposed exercise of the specified regulatory function set out in the Initial Notice.
13. The JCRA received one set of representations, from JT, to the proposals contained in the Initial Notice. JT raised the following three issues, to which the JCRA gives its response below.
14. First, JT says that its two products “JT Complete” (the two-part bundle of mobile and broadband services being offered at a discount at a price of £ 25.55) and Coreline 100 (access to the fixed line at £ 12.40 per month and available to

- everyone) are quite distinct. It says that Coreline is a standard product and is available to JT customers and non-JT customers alike (including customers of OLOs for which it is a prerequisite). It says that there is no requirement for a customer to purchase “JT Complete” in order to obtain “Coreline 100” at a price of £ 12.40 or at all. Nor does a customer have to purchase “Coreline 100” in order for that customer to get “JT Complete” at a price of £ 25.55 or at all.
15. In other words, JT states, there is no link or bundling between the “JT Complete” product and the “Coreline 100” product..
 16. JT goes on in its response to the Initial Notice to explain that the position with JT’s “Triple Play” product (which was withdrawn at the JCRA’s request) was different. The fixed line service was bundled up with, and only obtainable by a customer who purchased “Triple Play” and was not available to a customer who had not purchased “Triple Play”.
 17. In response the JCRA would say that in its opinion the advertisement to which it objected in the Initial Notice did not make this clear and gave the impression, as its advertising was no doubt intended to achieve, that the “JT Complete” bundle gave its customers “...Three great services, one great price...”.
 18. JT’s second point in its response to the Initial Notice, is that although Triple Play did involve the bundling of the fixed line service with the other two services, the JCRA has confused the issue: JT says that the advertisement did not involve bundling and that the JCRA is thinking of the advertisement as concerning “Triple Play by another name”. JT says that there is no three-part product or bundle. The advertisement is merely marketing separate and distinct products: the discounted two-part bundle known as “JT Complete” and the non-discounted ordinary land-line service known as Coreline 100.
 19. JT concludes on this point that it is the advertisement of Coreline and JT Complete together which has exercised the JCRA and it is the advertising which the JCRA wishes to stop, not the actual selling of those products, and it refers to an interview which the JCRA’s Executive Director, Chuck Webb gave to BBC Radio Jersey. JT says that the advertisement to which the JCRA objected in the Initial Notice was simply giving details of various products in a single message, and that does not make them a single package. JT further says that advertising products which are uncontentious in themselves does not fall within Condition 31 (non-discrimination) as that applies to “... provision of any Telecommunications Services or Access..”, and whilst the products themselves may fall under that definition, the advertising of them does not. JT advances a similar argument in relation to whether “advertisements” fall under Condition 33 of the Licence, which again refers to “Telecommunication Services”.
 20. The JCRA disagrees with this view. In the first place, and advertisement can create the impression that a number of products, taken together, can constitute

“...Three great services – one great price...”. Secondly, an advertisement for a price or other term and condition in respect of a service is, in the context of a prior-notification requirement such as that set out in Condition 33, clearly key to the introduction of that Telecommunication Service as the wording of that provision in JT’s Licence makes clear. Any advertisement that a particular service or product will be available at a particular price, discount or special offer is the very essence of the introduction of a product (particularly discounts, as paragraph 19 of JT’s Response acknowledges). The JCRA is firmly of the view that it has power to use both Conditions 31 and 33 in relation to advertisements.

21. Finally, the third JT issue mentioned in its Response to the Initial Notice makes a general observation that the JCRA is bound to act within its powers conferred by the Law (and again refers to the non-applicability of Condition 31 and 33 in the context of advertising), to which the JCRA has responded above. It also refers to Article 7(3) of the Law which requires the JCRA to ensure that telecommunications services are accessible and affordable by the maximum numbers of business and domestic users. The JCRA does not disagree with the quote from Article 7(3) and understands JT’s point that, in its view, all the advertisement was doing, was to bring to peoples’ attention the fact that broadband and mobile services are available for just an additional £ 25.55 per month. The JCRA would simply say that the ability of JT to introduce new products and services, discounts and promotions, and at what price, is also dependent upon and subject to the various obligations (such as those contained in Article 31 and 33) of its Licence. This final point of JT’s representations includes a suggestion that in his BBC Radio interview, Mr. Webb indicated that the JCRA had pre-determined certain things (see paragraph 35 of JT’s response). This is certainly not the case nor was it intended that such an impression be formed by anyone listening to the interview nor reading the transcript.

Next steps following receipt of JT’s representations on the Initial Notice

22. The JCRA has carefully considered JT’s representations on the Initial Notice and events which have happened since the Initial Notice was issued. It has responded above to the written points made by JT.
23. The JCRA also notes that, subsequent to the JCRA’s issuance of the Initial Notice, JT voluntarily amended the wording of its advertisement in a way which makes it unnecessary for the JCRA to proceed with issuing the Direction (provided JT does not revert to the style of the former advertisement). The current text of the relevant advertisement is set out at Annex Three to this Final Notice.
24. Particular changes to note, in the light of what was said in the Initial Notice are:

- JT has removed its website front page tab referring to JT Complete – the new tab just refers to Service Packages;
- The term JT Complete Bundle is now only used to refer to the double play bundle, to which the JCRA did not object;
- The fixed-line products are now clearly referred to as “Optional Services”.

25. The text of this Final Notice is the entirety of it.

26. In view of the changes made to the advertisement in question, the JCRA is of the opinion that it is not necessary to issue a Direction in the terms of that proposed in the Initial Notice of 17 May 2010. Therefore, in the interests of proportionality, the JCRA has decided to not issue the Direction.

23 July 2010

By Order of the Board of the JCRA

ANNEX ONE

**Advertisement for “JT Complete Bundle” taken from the JT Website on
Wednesday 12 May 2010**

Three great services, one great price





For £25.55 per month start with...

2 Meg broadband with unlimited usage. **+** **Mobile** with 200 call minutes, unlimited texts and 100 Meg data.

...then add fixed line.

Coreline Talk100 – 100 local calls* and 20% off your Top Ten numbers.

All for just £39.95 per month!



Need more?

Faster broadband

Choose our **4 Meg** service with unlimited usage for an £5 extra per month, or our **8 Meg** service with unlimited usage for an £10 extra per month.

Extra mobiles

Add up to 4 additional mobiles all with unlimited text messages for just an additional £5 each per month.

More shared mobile minutes and data

Add additional shared minutes from £10 per month and additional shared mobile data from £4.99 per month.

**For more details call 0800 7352500
or visit the JT shop.**



ANNEX TWO

Draft Direction to JT Pursuant to Article 19 of the Law and Condition 33.4 of JT's Licence

13 May 2010 – For consultation purposes only.

WHEREAS:

1. The JCRA served an Initial Notice on Wednesday 19 May 2010 concerning the failure by JT to comply with its obligations under Condition 33.1 of its Telecommunications Licence granted on 1 July 2003, in particular as such a failure would place JT in breach of its undue preference and unfair discrimination obligations as set out in Condition 31.
2. By reason of the facts and matters described in the Initial Notice, the JCRA is of the opinion that JT is in contravention of its aforesaid obligations (Conditions 33 and 31).
3. Article 19.1 of the Law states that where the JCRA is of the opinion that a licensee is in breach of a licence Condition it shall issue a Direction to the licensee to take steps or specified steps, to ensure compliance with that Condition.
4. The JCRA is satisfied that none of its Article 7 duties under the Law preclude the giving of such a Direction, nor that the breach is trivial, nor that JT is taking steps to comply with the condition nor remedy the effects of the contravention.

UNDER ARTICLE 19 OF THE LAW AND CONDITION 33.4 OF JT's LICENCE, THE JCRA HEREBY DIRECTS THAT:

- 1. JT shall cease to advertise the offer or promotion currently referred to as "JT Complete Bundle" as such, or similar wording which makes reference to "...then add fixed line. Coreline Talk 100 – 100 local calls and 20% off your Top Ten numbers".**
- 2. JT may advertise its "double play only" offer or promotion (currently referred to as "2 Meg broadband + Mobile with 200 call minutes with unlimited usage unlimited texts and 100 Meg data" for £25.55 per month").**

[DATE]

By Order of the Board of the JCRA

ANNEX THREE

The text of JT's revised advertisement

All of our services for one great price

Reset

Create your own Jersey Telecom package. Make your broadband and mobile choices, then decide if you would like to add additional services before signing up. You can stay on your existing homephone tariff or change to one of our great value coreline tariffs.

JT Complete - Please select from the options below

Broadband*



2 Meg Home

Unlimited usage



4 Meg Home

Unlimited usage



8 Meg Home

Unlimited usage

Invalid broadband number Invalid broadband number

Enter your home

Mobile**



200 shared call minutes***

Unlimited text messages

100MB data

Invalid mobile number Invalid mobile number

Enter your mobile

Optional Service (standard prices)

HomePhone



Coreline

Entry level tariff ****



Talk100

100 free local calls

20% off your top 10 numbers



Talk250

250 free local calls

25% off your top 10 numbers



TalkUnlimited

Unlimited local calls

30% off your top 10 numbers

Invalid home number

Please note, in order to sign up online you must have all services currently listed under the same JT account number. [Click here](#) if you do not have your services on one JT account.

 [JT Complete Terms and Conditions](#)

* Should your chosen speed not be attainable on your line we will provide you with the closest tariff on the same contract terms. In order to get the best service we recommend, for 8 Meg Home Broadband, you use an ADSL2+ compatible modem / router. Please refer to the compatibility list for details.

** Please note this mobile service must be out of contract in order to sign up for this service

*** Inclusive call minutes and data will be shared across all mobile services subscribed to JT Complete

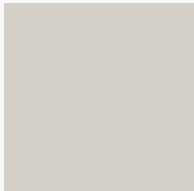
**** Coreline pricing based on 12 month contract, Talk options on 18 month contracts

Your price
£25.55per month



Need more?

Add additional mobile services with unlimited text messages



Your price

£25.55 per month

Need more?

Add additional mobile services with unlimited text messages

