

TELECOMMUNICATIONS (JERSEY) LAW 2002

PROPOSED MODIFICATION TO THE CLASS III LICENCE GRANTED TO JERSEY TELECOM LIMITED ON 1ST JULY 2003 CONCERNING THE PUBLICATION OF SEPARATED ACCOUNTS

FINAL NOTICE

1. On 24 June 2010, the Jersey Competition Regulatory Authority (“JCRA”) issued an Initial Notice under Article 11 of the Telecommunications (Jersey) Law 2002 (“the Law”) concerning a proposed modification to Condition 29 of the telecommunications Licence granted to Jersey Telecom Limited (“JT”). This proposed modification would require JT to publish its Separated Accounts (“SA”).
2. The JCRA received two responses to the Initial Notice from Cable & Wireless Jersey Limited (“CWJ”) and JT. These responses, and the JCRA’s comments thereto, are detailed below. In summary, both CWJ and JT made representations that the JCRA has determined need to be reflected in a revised Direction to JT concerning SA publication. The JCRA has therefore made amendments to its proposed Direction to JT, and is publishing the same under a fresh Initial Notice under Articles 11(1) and Article 11(10) of the Law. This Final Notice is intended to address the representations provided by CWJ and JT, and also bring to a close the consultation process initiated by the 24 June Initial Notice.
3. CWJ commented that in its SA reporting JT should not group any telecommunications services in which JT does not hold Significant Market Power (“SMP”) under “other activities” and should show these separately. The JCRA agrees with this view and has therefore made this explicit in the revised Direction to JT, published with the fresh Initial Notice.
4. In relation to the audit requirement for the SA, CWJ commented that the Direction was again unclear as to whether this was an internal audit or an external audit. It is the JCRA’s intention that the SA are audited externally and has therefore made this explicit in the revised Direction to JT, published with the fresh Initial Notice.
5. With regard to the timing of the publication of the SA, CWJ queried the delay of one month permitted in the Direction following the submission to the JCRA. The JCRA responds that this is in order for the JCRA Board to review the SA prior to publication. Therefore, no changes to the Direction are needed in this regard.

6. JT commented that it should not be required to submit SA for services or markets in which it does not hold SMP, and in this sector not be required to report on sub-businesses and asserts that it should not disclose any mobile or other business in its publication. The JCRA points to the format determined in the 2005 Direction which requires that sub-businesses are reported in SMP markets and that other business is separately reported as telecommunications markets and non-telecommunications markets although the details of the sub-business need not be disclosed, save for mobile termination in which JT continues to have SMP. Therefore, no changes to the Direction are needed in this regard.
7. The Direction included a requirement for JT to publish its Statutory Accounts. The JCRA accepts that while JT remains a private company it need not do this and has removed this requirement from the revised Direction to JT, published with the fresh Initial Notice.
8. With regard to the requirement to audit its SA JT commented that this is disproportionate for the Jersey market size. The JCRA does not agree with this view and has already noted that Cable & Wireless is required to audit its accounts in Guernsey which is a smaller market. The JCRA also disagrees that it is necessary for it to consult separately on this subject since an audit is a common form of verification of accounting practices. JT has its own statutory accounts audited in order to meet GAAP requirements and the JCRA sees no reason to suppose that the additional SA audit would be disproportionate. It is also of the view that the same timeframe for the statutory accounts audit and publication which is in line with the 2005 Direction is sufficient to complete all the necessary steps. However, for the avoidance of doubt, the JCRA only intends to impose this requirement starting in 2011 for the 2010 SA, and will make this clear in the revised Direction to JT, published with the fresh Initial Notice.
9. In relation to the requirement in the Direction to adopt Current Cost Accounting (“CCA”) JT commented that the 2009 consultation on publication of its SA¹ made no mention of CCA and that the JCRA was relying on its earlier consultation in 2004 for this requirement. The JCRA notes that the 2005 Direction sets this requirement and that the 2009 consultation was in regard to a section of that Direction that referred specifically to requirements to publish. The JCRA further notes that it has already delayed the CCA requirement from 2006 to date, based on a request by JT that the changes JT said it was making to its network would be over burdensome during this process. This revised Direction merely reaffirms this requirement and now sets a date for implementation as 2011 (for the SA to be published in 2012). The JCRA is of the view that given the current activity within JT’s network and infrastructure this is reasonable.
10. Finally JT commented that in light of its other comments the current timeframe was unrealistic or ambiguous. In response to this the JCRA has made amendments

¹ Consultation on the Publication of the Jersey Telecom Separated Accounts – available at: <http://www.jcra.je/pdf/091215%20JT%20Separated%20Accounts%20Consultation%20T-4.pdf>

and clarifications to its Direction as outlined in this Final Notice and will now proceed to a fresh Initial Notice in order to make the necessary changes.

11. In light of these representations, the JCRA no longer intends to proceed with the proposed Direction attached to the Initial Notice of 24 June, and that consultation is now closed. The JCRA now intends to proceed with the revised Direction to JT, attached to the fresh Initial Notice published concurrent with this Final Notice.

10 August 2010

By Order of the Board of the JCRA