

TELECOMMUNICATIONS (JERSEY) LAW 2002

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

INITIAL NOTICE

1. The Jersey Competition Regulatory Authority (“JCRA”) issues this Initial Notice under Article 11 of the Telecommunications (Jersey) Law 2002 (“the Law”) concerning a proposed modification which it intends to make (subject to any views and representations expressed during the consultation period) to the telecommunications Licence granted to Jersey Telecom Limited (“JT”) on 1 July 2003 regarding the publication of separated accounts.

Background

2. On 15 December 2009 the JCRA published a Consultation Document¹ on the question of whether, and if so, in what format JT should have to publish separated accounts for its regulated activities. On 21 June 2010 the JCRA published an Initial Notice (“IN”) of a proposed Direction and changes to JT’s Licence Condition 29 on the publication of its Separated Accounts (“SA”). In it, the JCRA proposed to bring the changes into effect on 16 July 2010 subject to any prior representations.
3. The JCRA received two representations to this IN which were considered by the JCRA and which resulted in a Final Notice which was published on 12 August 2010.
4. Consequent to these representations, the JCRA made changes to its original Direction and published an IN to propose an amended Direction and changes to the JT Licence Condition 29 on 12 August 2010.
5. That IN was withdrawn by the JCRA in a Final Notice published on 14 April 2011 in response to representations from JT, Cable & Wireless Jersey and Jersey Airtel as well as further concerns over JT’s SA as a result of subsequent investigations by the JCRA. As a consequence the JCRA appointed telecommunications consultants KPMG to review the JT SA in January 2011.

¹ JCRA Consultation Document 2009 – T4 *Consultation on the Publication of Jersey Telecom Limited’s Regulatory Separated Accounts*. Available at:
<http://www.jcra.je/pdf/091215%20JT%20Separated%20Accounts%20Consultation%20T-4.pdf>

6. The purpose of this IN is, therefore, to make changes to the JT Licence Condition 29 in order to enable any possible future Direction concerning JT's SA.
7. A separate IN will outline any possible future Direction regarding the format, audit and publication requirements resulting from the KMPG review which is currently on-going.

The Specified Regulatory Function which the JCRA proposes to exercise

8. The JCRA is now proposing to modify Condition 29 of JT's licence with the insertion of a revised Condition 29.1 which shall oblige JT to publish its separated accounts in such format as the JCRA may from time to time require in such manner as the JCRA shall require. As required by Article 11(2)(b) of the Law, a copy of Condition 29 as it is currently worded is set out at Annex One to this Initial Notice, and a copy of the proposed amended Condition 29 (containing the proposed new Condition 29.1) is set out at Annex Two. For the avoidance of doubt this modification provides for the principle of publication. The detail and format of the published separated accounts will be the subject of a separate consultation in the near future.

Reasons for the Proposed Modification

9. As stated in the 2009 Consultation on the publication of JT's SA:

“The reason for creating separated accounts for an incumbent operator is to demonstrate that it is not discriminating between its own downstream operations and those of competing providers. It is the view of the JCRA that making these accounts publicly available will assist in the detection of (or help to verify in the absence of) anticompetitive behaviour in the relevant retail and wholesale markets. This will assist in the development of competitive markets that will ultimately benefit the consumer.

Publication of the dominant operator's accounts is in line with best international practice in both large and small jurisdictions. The Office of Utility Regulation in Guernsey requires publication the Regulatory Separated Accounts of Cable & Wireless Guernsey Limited² as does UK regulator Ofcom with regard to British Telecom plc³. Therefore the JCRA is of the preliminary view that JT's separated accounts should be published”.

10. It should be noted that publication of JT's separated accounts (in an appropriate format) was one of the recommendations contained in the Regulaid Report

² Cable & Wireless Guernsey Limited regulatory accounts, available at <http://www.surecw.com/guernsey/page-966>

³ British Telecommunications plc Regulatory Statements – available at <http://www.btplc.com/Thegroup/Regulatoryinformation/FinancialStatements/index.htm>

concerning JT's regulatory accounts and wholesale access provision⁴. The same is true of the report commissioned by the Economic Development Department from LECG on the JCRA's powers in telecommunications regulation.

11. Regulatory Separated Accounts are an important aspect of regulation of telecommunications markets. The JCRA is aware that the publication of these accounts is undertaken by smaller operators such as Kingston Communications plc, Malta Telecom as well as Cable and Wireless Guernsey and consequently is of the view that it is also appropriate for JT.
12. In order to achieve the optimum level of transparency, the JCRA is of the view that the published information should be in sufficient detail for other operators to be able to determine that there is no discrimination between JT's internal retail arm and the wholesale services offered to OLOs. On the other hand, the JCRA is also aware of JT's need to protect commercially sensitive information. The format and level of information that JT may ultimately be required to publish will be addressed through a separate consultation process once the current review has been completed.

The JCRA's duties under Article 7 of the Law

13. The JCRA's primary duty under Article 7(1) of the Law is to perform its functions in such a way as it considers best calculated to ensure (as far as is reasonably practicable) that such telecommunications services are provided both within Jersey and between Jersey and the rest of the world as satisfy all current and prospective demands for them.
14. In this regard, and as stated in the 2009 Consultation:

“Separated accounts can assist the regulator in many ways, particularly with potential abuses by the regulated entity of its dominant status in some relevant markets, for example, the access market. Some of the potential uses for such accounts are:

- Monitoring of the operator's performance for purposes of regulated product price control;
- Informing on costs for the purpose of setting wholesale access charges;
- Setting interconnection pricing;
- Aiding the NRA in detecting anti-competitive behaviour such as unfair cross subsidisation and undue discrimination at levels of disaggregation appropriate to the relevant market; and
- Assisting in comparative competition (the process of benchmarking a company's performance in relation to other companies' performance).

⁴ Regulated Review of the Jersey Telecom Limited Separated Accounts and Wholesale Access Provisions Recommendation 4.5. Available at: <http://www.jcra.je/pdf/091127%20final%20redacted.pdf>

If they are published, such information may also inform other stakeholders with regard to market behaviour”.

15. The publication by JT of its separated accounts in such format as required by the JCRA will assist the JCRA in fulfilling its primary duty that telecommunications services are provided and are provided in a way that and at a price that does not entail JT breaching any of its relevant Licence Conditions.
16. The JCRA’s secondary duties are set out in Article 7(2) (a) to (f) of the Law and again, the JCRA is of the view that the greater transparency provided by the publication of JT’s separated accounts will assist it in performing those duties.
17. Thus for example Article 7(2)(a) requires the JCRA to perform its functions in such a manner as it considers is best calculated to protect and further the short and long term interests of users within Jersey of telecommunications services and to do so, where appropriate, by promoting competition among persons engaged in commercial activities connected with telecommunications in Jersey.
18. The publication of separated accounts (which, unlike statutory accounts concentrate on the costs and revenues from individual business activities with greater granularity than normal financial account reporting), will enable competitors of JT to raise concerns with the JCRA if it appears from the published separated accounts that potential Licence Condition breaches or abuses of dominance are taking place. This in turn will enable the JCRA to carry out an open and transparent investigation in order that the ultimate outcome will protect the short and long term interests of users of telecommunications services in Jersey.
19. The greater transparency provided by the publication of JT’s separated accounts (subject only to the excision of genuinely confidential information) will likewise assist the JCRA in performing its duties under Article 7(2)(b) and (c) which relate, respectively, to the JCRA promoting efficiency, economy and effectiveness in commercial activities connected with telecommunications and to furthering the economic interests of Jersey. If the proposed requirement to publish the separated accounts is adopted, this will assist in preventing the dominant player, JT, from abusing its dominant position by adopting anti-competitive practices such as predatory pricing and unfair cross subsidy policies.
20. The requirement to publish separated accounts will be neutral in terms of the JCRA’s duties under Article 7(2)(d) to (f) inclusive (which relate to restrictions placed upon persons engaged in telecoms activities, the financial and other resources necessary to conduct telecommunications activities, and the special needs of persons who are disabled or have limited financial resources). All of these duties of the JCRA will benefit at a general level from the publication of the separated accounts.

The Proposed Amendments to Condition 29

21. The current text of Condition 29 is set out at Annex One to this Initial Notice and the proposed revised Condition is set out at Annex Two.

Consultation

22. The JCRA therefore intends to make the amendments proposed in this Initial Notice which would be effective on 14 May 2011, unless the JCRA receives representations or objections about the proposal prior to that date. In that case the effective date will be specified in any Final Notice issued by the JCRA under Article 11(5) of the Law. Copies of the proposed Licence and this Notice are available for inspection at the offices of the JCRA and on its website at www.jcra.je. Written representations or objections to the exercise of this specified regulatory function may be made by letter or email on or before 13 May 2011 marked for the attention of:

Graeme Marett
Telecommunications Case Officer
2nd Floor, Salisbury House
1 – 9 Union Street
St Helier
Jersey
JE2 3RF

enquiries@jcra.je

23. In compliance with the procedures set out in the Guideline on Procedures under the Telecommunications (Jersey) Law 2002, the JCRA intends to publish full non-confidential texts of any representations or objections received in response to this Initial Notice. Thus, respondents to this consultation should clearly identify all confidential information contained in their responses.

11 April 2011

By Order of the Board of the JCRA

ANNEX ONE

CURRENT TEXT OF CONDITION OF JT's LICENCE

29. SEPARATION OF ACCOUNTS

29.1 Within six (6) months of the Licence Commencement Date, the Licensee shall confirm to the JCRA that it maintains accounting records in a form that enables the activities specified in any direction given by the JCRA to be separately identifiable, and which the JCRA considers to be sufficient to show and explain the transactions of each of those activities.

29.2 The JCRA may require reports on the accounting records and/or activities from time to time. The JCRA may direct the Licensee as to the basis and timing of such reports as the JCRA may require

ANNEX TWO

PROPOSED AMENDED TEXT OF CONDITION 29 OF JT's LICENCE

29. SEPARATION OF ACCOUNTS

29.1 Within six (6) months of the Licence Commencement Date, the Licensee shall confirm to the JCRA that it maintains accounting records in a form that enables the activities specified in any direction given by the JCRA to be separately identifiable, and which the JCRA considers to be sufficient to show and explain the transactions of each of those activities. [TO BE DELETED]

29.1 The Licensee shall publish its separated accounts in such a form and containing such information as the JCRA may from time to time specify.

29.2 The JCRA may require reports on the accounting records and/or activities from time to time. The JCRA may direct the Licensee as to the basis and timing of such reports as the JCRA may require.

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