

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 12 August 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 was to require JT to audit and publish its Separated Accounts (“SA”).
2. The JCRA received three responses to the Initial Notice from Cable & Wireless Jersey Limited (“CWJ”), Jersey Airtel Limited (“JAL”) and JT. These responses, and the JCRA’s comments thereto, are detailed below. In summary, consequent to these representations the JCRA has determined that it needed to reconsider the Direction to JT concerning SA audit and publication. The JCRA has therefore made amendments to its proposed Direction to JT, and is publishing the same with 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, JAL and JT, and also bring to a close the consultation process initiated by the 12 August 2010 Initial Notice.
3. JAL, while supporting both audit and publication requirements, was concerned that the proposed format of the accounts was too focused on retail products and that they should reflect more closely JT’s wholesale business.
4. CWJ commented that in its SA reporting JT should not group any telecommunications services in which JT holds no Significant Market Power (“SMP”) under “other activities” and should show these separately, since they are still licensed activities and not unregulated other activities. CWJ also noted that while JT was no longer dominant in the mobile retail market it remains dominant in mobile termination and to that extent relevant disclosure should continue to be published.
5. CWJ was also concerned that the SA showed no clarity as to the reasoning for transfers between its core and access activities and proposed a different format with a reconciliation statement between its various business activities.

6. In relation to the audit requirement for the SA, CWJ commented that the Direction was again unclear as to the audit level and whether this was an internal audit or an external audit. CWJ itself favoured an external audit approach.
7. 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.
8. JT commented that it should not be required to submit SA for services or markets in which it does not hold SMP. Further it should not be required to report on sub-businesses and asserts that it should not disclose any mobile or other business in its publication. It sought further clarification on the format of publication.
9. In its response JT accepted that some form of SA publication should be made, although it disagreed with publication of market data where it holds no SMP. At the time of its response, it continued to dispute the validity of publishing the 2009 SA. However in January 2011 JT voluntarily published an extract of these accounts.
10. With regard to the requirement to audit its SA JT continued to assert that this is disproportionate for the Jersey market. It also commented that the level and format of audit was undefined in the Initial Notice.
11. In relation to the requirement in the Direction to adopt Current Cost Accounting (“CCA”) JT commented that it was undertaking a major restructuring of its business to move to a Next Generation Network and as a consequence in its view a move to CCA was onerous and unnecessary.
12. Finally JT commented that it was generally in favour of aligning the format of SA between Jersey and Guernsey but in its view this should exclude an audit and CCA requirement.
13. The JCRA has noted these representations and is now considering further the format and extent of the SA and has appointed in January 2011 telecommunications consultants KPMG to conduct a new review. The outcome of this review of the SA will inform the JCRA of the format of the JT SA and the type of any audit requirement. However the JCRA continues to believe that publication of the SA in an appropriate format is important for the development of a competitive telecoms market in Jersey.
14. In light of these representations, the JCRA no longer intends to proceed with the proposed Direction attached to the Initial Notice of 12 August 2010, and that consultation is now closed. The JCRA now intends to proceed with a revised Direction to JT which shall be published in a fresh Initial Notice.

11 April 2011

By Order of the Board of the JCRA