

Our reference: IMJ/KLC/7702

5 October 2009

Graeme Marett
Telecommunications Case Officer
Jersey Competition Regulatory Authority
2nd Floor Salisbury House
Union Street
St Helier
JE2 3RF

Dear Graeme

Comments on JCRA Consultation Document 2009-T2

We welcome the review of Jersey's Telecom Ltd's activity and the opportunity to comment on the draft Regulaid report. As you know we were one of the OLO interviewees and note that a number of items we brought to Regulaid's attention are covered in their report.

For ease of use, our comments are referenced against the specific paragraphs in the Regulaid report.

1.1 Report Summary. We support the view that greater level playing field competition is needed in Jersey and that the local wholesale prices constrain the commercial viability of certain service offerings.

1.2 Recommendations. We have long considered that JT may be cross subsidising its data centre business and of course have previously formally referred the matter to you. The issue of bundling is important in this area. Further we suggest that the onus should be on JT to demonstrate proper behaviour, rather than the JCRA having to prove otherwise.

We have also previously argued that there is inadequate separation between the wholesale and retail functions within JT, even to the extent of requiring JT to form separate businesses (as in the UK). Whilst the limitations of a small island may render such a complete move uneconomic, the case is proven for far greater distinction between the functions.

3.1.6 Regulatory Remedies. In our view, JT's operations are still sufficiently opaque and the JCRA's resources so limited that the time to remedy is too long. We concur with the view that JT must publish fully separated accounts, align its T&C's for internal as well as OLO's and separate its functions. In this way the JCRA would be able to more quickly determine if there is an issue for which it needs to intervene.

3.2.2 Wholesale price levels. The lack of sufficient margin on JT's wholesale lines certainly prevents us from developing services that rely on these products. As you know Itex is the leading local managed services provider, for which connectivity is crucial and yet it is not viable for us to use JT's wholesale priced products as we develop managed services and on sell these, either stand alone or as a bundle, to local clients.

4.4.3 JT's Disaster Recovery Service. This was the subject of an investigation in 2006 prompted by ourselves and other OLO's, which did appear to prompt some behaviour change in JT's pricing. However, this has fallen away and it is damning indeed to learn that Regulaid view JT's service to be "loss making and the loss is quite significant". Datacentre hosting requires considerable investment and is vital to the local economy. Clearly, with JT subsidising this part of its business, it jeopardises the business that both Itex, and presumably other



Itex (Jersey) Limited

4 - 6 La Rue Sinnatt, Rue des Prés Trading Estate, St Saviour, Jersey JE1 3UN
Tel: +44 (0)1534 633633 Email: info@itexoffshore.com www.itexoffshore.com

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datacentre providers, have in the island. **It is essential that this issue is dealt with once and for all - and quickly.**

4.5.2 Wholesale Discounts. We agree that the 9% wholesale discount is insufficient, particularly, as the report notes; there is significant scope for JT to offer a much greater discount – to say 25% as noted in 5.7.2.

5.4.4 Wholesale IP product. We argue that despite JT's view that IP is not a regulated service, this is an outdated view and that the principle of being to replicate products means that JT must provide a wholesale IP product.

6.1.1 Changes to Wholesale function. Whilst we cannot comment on whether the wholesale function is antagonistic or legalistic, in a relatively small telecoms business, it does not operate as an arm's length, commercially independent function. Greater separation from the retail function is necessary. This certainly includes separation of customer records (6.2.3). Further, we would argue that the paradigm on regulation needs to move in accordance with 6.2.4 to be the wider definition of activity in the telecoms market rather than narrow product specific issues only.

In conclusion, we welcome the Regulaid report and agree with many of its recommendations. The issues concerning datacentre economics, wholesale pricing and functional separation are in our view key to a fair and competitive market and we would urge the JCRA to address these issues urgently.

Should you require any further clarification or information, please do not hesitate to contact me.

Yours sincerely

Ian Jauncey
Chairman