JERSEY TELECOM'S RESPONSE TO

JCRA CONSULTATION ON THE PROPOSED AMENDMENTS TO THE MERGER THRESHOLDS UNDER

COMPETITION (MERGERS AND ACQUISITIONS) (JERSEY) ORDER 2010

22nd JUNE 2011

1 Introduction

Jersey Telecom ("JT") welcomes the opportunity to respond to the JCRA's consultation on Proposed Amendments to the Merger Thresholds under the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "Order") and has the following comments and observations:-

2 Proposed Amendments to the Order

2.1 Local Turnover

In line with International Competition Network (ICN) best practice, the JCRA propose that it should adopt a turnover test where in the most recent financial year, total turnover in Jersey of all the undertakings involved in the merger or acquisition is at least £2 million.

We agree that it is a sensible approach to follow ICN best practice and to move from a market share based assessment to a total turnover assessment. While our initial thoughts are that £2 million appears to be a very low figure this would seem a reasonable starting figure based on the JCRA's own database of confidential information and the thresholds applicable to small jurisdictions in the data presented in Appendix B and C of the consultation paper.

2.2 Local Assets

The JCRA is proposing to introduce an "asset test" in conjunction with the local turnover threshold where notification will be necessary if one or more of the parties involved in the merger or takeover had:-

(a) an undertaking where employees work in Jersey; or
(b) a registered subsidiary, representative or branch office in Jersey; or
(c) parties to the merger hold a level of influence over local agents or facilities that equate to a local asset.

It is the JCRA's proposal that if the parties only pass one of the two tests there will be no requirement to notify.

JT has some concerns regarding the two part test as proposed as it would currently require notification by parties that had a turnover of £2 million or more and where a Jersey based company with local assets is involved in the merger or acquisition, even if the acquiring company was a completely unrelated business. For example, if a Jersey based company, with local assets and a turnover of £2 million, wished to acquire a UK company which had no assets or interests in Jersey and was a completely unrelated business to the Jersey company, notification would be required under the current proposal. This would appear to be against the objectives of limiting the number of mergers/acquisitions that need to notify where there is no impact on competition in Jersey.

2.3 Exemptions

It is JT's opinion that exemptions should be extended to cover mergers/acquisitions that involves one party (a non-Jersey company) where the business of that company takes a different form to the other party (the Jersey company) and will have no impact on competition in Jersey.

Should you wish to discuss the exemption recommendations in further detail please do not hesitate to contact us.