power to you

Jersey Competition Regulatory Authority,
2nd Floor,
Salisbury House,
Union Street,
St Helier,
Jersey,
JE2 3RF.

09 September 2010

For the attention of Mr Graeme Marett – Telecommunications Case Officer

Dear Graeme,

Proposed Modification to the Class III Licence Granted to Jersey Telecom Limited on 01 July 2003 Concerning the Publication of Separated Accounts – Initial Notice

With reference to the Initial Notice published by the Jersey Competition and Regulatory Authority (JCRA) on 10 August 2010 regarding the Proposed Modification to the Class III Licence Granted to Jersey Telecom Limited (JT) on 01 July 2003 Concerning the Publication of Separated Accounts, Jersey Airtel Limited (JAL) is pleased to provide its comments.

Firstly, JAL welcomes and fully supports the JCRA's justifications, proposals and approach to mandating the publication of Separated Accounts by JT through the proposed modification to JT's Class III Licence.

JAL supports the JCRA's proposed modified wording to the JT Class III licence , but would recommend the JCRA's Final Notice issued to conclude this matter specifies a clear publication date by which JT must publish the initial Separated Accounts for 2009. In our view, JT have had adequate time and direction to prepare the initial Separated Accounts and tit is not unreasonable to expect JT to deliver the initial draft to the JCRA during October 2010, in readiness for formal publication during November 2010.

Publication of Accurate Separated Accounts is a critical requirement to re-build the basis of sustainable competition in the Jersey telecoms market

In view that both the JCRA and LECG report commissioned by the States of Jersey have concluded that the basis of effective competition in the Jersey telecoms market is fundamentally damaged, then JAL firmly believes that the publication of comprehensive separated accounts by JT will be an important milestone in enabling the JCRA and other stakeholders to monitor and verify JT is not discriminating between its retail business and its wholesale customers (OLOs) and thereby the Separated Accounts will provide a highly effective mechanism to prevent anti-competitive behaviour now and in the future.

JT's apparent opposition to the publication of Separated Accounts is untenable

The publication of Separated Accounts by incumbent operators is widely viewed as an essential core regulatory and competition requirement for dominant operators, both across the European Union and within similar compact/ independent jurisdictions.

For instance, published Separated Accounts have been a core requirement in both Guernsey and Gibraltar, where both Cable & Wireless and Gibtelecom, have both accepted their obligations in this respect as being reasonable. Both operators have established internal mechanisms to ensure the annual Separated Accounts are prepared and published with minimal fuss and additional resourcing.

Despite recent re-structuring, JT still has significant resources and thus the publication of Separated Accounts should not be onerous and require significant incremental effort.

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As a wholly States of Jersey owned organisation, JT has an obligation to publically demonstrate its activities are managed in the best interests of the Jersey economy and consumers. Consequently, JAL is disappointed that JT still resists such a fundamental mechanism for demonstrating its efficiency, openness and fair approach to supporting legitimate competition.

JT has argues against the use of the widely accepted Current Cost Accounting (CCA) approach within its preparation of Separated Accounts, on the basis that this would require excessive resourcing to re-value its assets on a CCA rather than the existing HCA basis. JAL would respectively point out that JT is currently undergoing a fundamental investment and roll-out of its Next Generation Network (NGN) which impacts most areas of its asset base. Thus, JAL would argue that with the NGN roll-out, now is the perfect time for JT to migrate from HCA to CCA, since a significant portion of its assets are new and current.

JT's Separated Accounts must be Clear, Accurate and Independently Audited

Key criticisms within the LECG report findings were the apparent inconsistencies, inaccuracies and lack of transparency in JT's accounting approach and activities. On this basis and considering JT is fully owned by the States of Jersey, then JAL firmly believes that JT is obliged to ensure that its Separated Accounts are structured around industry standard/ accepted accounting practices and formats, ie incorporating GAAP and CCA approaches. But critically, JT's Separated Accounts must be audited and signed off by an appropriate and qualified independent party, rather than merely reviewed and approved by JTs own directors.

From our research into the Separated Accounts approach adopted in other similar jurisdictions, it is evident that the Separated Accounting formats, approaches and deliverables are clearly defined by the local regulator from the outset and are based around industry accepted best practices. JT has argued that the JCRA should only mandate the least onerous Separated Accounting requirements. However, JAL believes it reasonable and appropriate for the JCRA to mandate JT to comply with a clearly defined Separated Accounting framework, which outlines the Separated Accounting methodologies, structure, approach, format and deliverables, which is based on industry accepted best practice and enables stakeholders to effectively benchmark JT's performance against dominant operators in similar jurisdictions. In view of the similar market conditions and close proximity to Guernsey, it makes sense that the JCRA mandated Separated Accounting framework should enable effective benchmarking of JT's performance and activities to those of Cable and Wireless/ Sure in the Guernsey market.

JT Initial Published Separated Accounts Must Include Mobile Retail and Wholesale Businesses

Despite JAL's opposition, the JCRA's recent determination that JT is no longer dominant in the Jersey mobile market despite its ability to maintain 70%+ market share, however, JAL firmly believes that this decision does not preclude the inclusion of JT's Mobile Retail and Wholesale Businesses in at least the initial Separated Accounts to be published by JT for 2009. JAL argues that the JCRA's decision to remove SMP status in the mobile sector was only made in 2010 and thus this decision does not impact the content of the JT's initial 2009 published Separated Accounts, since JT was still held to be dominant / have SMP in the mobile sector during 2009.

JT's Separated Accounts should Include Wholesale Core and Access Pricing

The JCRA's proposed Separated Accounting framework, seems to focus on JT's retail products and pricing. In Gibraltar, the Gibraltar Regulatory Authority (GRA) mandates that the incumbent, Gibtelecom, must provide separated accounts for its Wholesale Core and Interconnect businesses. The GRA uses this analysis to assess and set wholesale pricing in the Gibraltar market place for fixed and mobile termination, leased line, unbundling and broadband access products.

The JCRA has stated that part of the justification for mandating JT to publish Separated Accounts is to assess the appropriateness of wholesale access charges and interconnection pricing. JAL would therefore suggest the structure and content of the proposed JT Separated Accounting framework is amended to include the following additional business groups :-

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- Wholesale Core
    - Fixed Termination
    - Fixed Origination
    - Mobile Termination – Voice and SMS
    - Mobile Origination – Voice and SMS
    - Lease Lines
- Wholesale Access
    - Broadband Access

JAL believes that providing Separated Accounting information on these key wholesale business areas will enable the JCRA and other stakeholders to fully meet the objectives set-out in the Initial Notice document, by providing the critical information to benchmark and assess the appropriateness of JT's wholesale interconnection and access approaches, products, frameworks and charges. JAL believes JT's Separated Accounts must be capable of enabling the key wholesale product drivers to be accurately assessed, since these products play a crucial role in enabling real and sustainable competition to exist in the Jersey telecoms market.

We trust the comments and suggestions we have made are appropriate and of assistance to the JCRA in progressing this key regulatory initiative. In the meantime, please do not hesitate to contact me if you have any further questions in this regard.

Yours sincerely

James Wild
Head of Regulatory Affairs – Channel Islands
Jersey Airtel Limited

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