



27th November 2013

Mr Andrew Riseley
Executive Director
JCRA
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Dear Andrew

Interactive Online Limited

CICRA has issued Initial Notice 13/42 ("the Initial Notice") setting out that it intends to grant a Class 1 licence to Interactive Online Limited.

JT has concerns in relation to the granting of such a licence in the context of amongst other things, the obligations under article 7 (and in particular, articles 7(2)(a), (b), (d) and (e)) of the Telecommunications (Jersey) Law 2002 ("the 2002 Law").

A. Relevant Background

The Initial Notice proposes (without giving any reasons beyond repeating the statutory wording set out in article 7(2)(a) of the 2002 Law) to grant a licence, to a seemingly unknown company, for an unspecified telecommunications service.

Accordingly, in order to respond to this Initial Notice at all, JT has carried out additional investigations.

Interactive Online Limited had a Class 1 licence that ceased in January 2009. The initial notice published by the JCRA in respect of that cessation, noted that:

"As a result of the integration of the business into that operated by Newtel Limited, Interactive Online's parent company by virtue of the purchase of 100% of its share capital in May 2005, the JCRA has come to understand that Interactive Online Limited no longer runs a telecommunications system within the Bailiwick of Jersey. Thus, the need for Interactive Online Limited to hold a Licence under the Law is no longer required. Accordingly, in the interests of the proper administration of the Law and to reduce the administrative burden on Newtel Limited, the JCRA proposes to modify Interactive Online Limited's Licence by changing the term to expire at 11:59 pm on 2 January 2009."

There is no reference to this previous initial notice or cessation in the current Initial Notice.

We have carried out searches on the Jersey Financial Services Commission website in relation to Interactive Online Limited and it would appear from those searches that:

1. As at 1 January 2011, Interactive Online Limited had 2 shares, both of which were held by Newtel Holdings Limited.
2. On 5 December 2011, Interactive Online Limited changed its name to Infuse Hosting Services Limited.
3. As at 1 January 2012, Infuse Hosting Services Limited's shares were held by Newtel Limited.
4. On 16 April 2012, Infuse Hosting Services Limited changed its name back to Interactive Online Limited.
5. As at 1 January 2013, Interactive Online Limited's shares were held by Newtel Limited.
6. Interactive Online Limited still has a registered office at Nelson House, David Place, St Helier, Jersey (which is the same address as the registered office of Newtel Limited).
7. Newtel Limited is part of what might be described as the Newtel group comprising Newtel Limited, Newtel Networks Limited and Newtel Cable Limited.
8. Newtel Limited has a registered business name of Y Tel (Jsy).

It does not appear that Newtel has disposed of its interest in Interactive Online Limited.

Newtel has a Class II licence (and has had one since 2003). It has a clear brand identity. It also operates through the registered business name of Y Tel (Jsy) (which has a brand and a high street presence). There is no reference to Interactive Online Limited on Newtel's website or that of Y Tel (Jsy).

Interactive Online Limited does not have a web presence nor does it have a brand; insofar as we are aware it is not providing telecommunication services. Accordingly, the only inference we can make is that Interactive Online Limited intends to provide some form of telecommunication service. However, we have not been able to discover any publicly available information to indicate what telecommunication services it intends to provide, where and/or to whom and/or when.

B. The Initial Notice and the Consultation Process

We note above that there is no reference in the current Initial Notice about the previous licence held by Interactive Online Limited, the initial notice issued in respect of that licence or the cessation of that licence.

In addition nothing has been set out either by the JCRA, Newtel or Interactive Online Limited, as to what has changed factually or legally since 2009 such that Interactive Online Limited now requires a licence.

Moreover, there is no publically available information as to what telecommunications services Interactive Online Limited proposes to provide, to whom, or where. Nor is it clear

as to why these proposed services cannot be provided through Newtel and its Class II licence.

For the reasons set out above, it will be difficult (if not impossible) for the public to provide any or any proper responses to the Initial Notice.

In our view, the Initial Notice therefore needs to be revisited in order to provide a more complete set of information.

C. Transparency

One of the purposes of the 2002 Law was (as noted above) *"to ensure the highest degree of transparency, both as between the Authority and licensees or potential licensees, and as between both the former and latter, and third parties"*.

Clearly the term *"third parties"* includes consumers.

However, there is no open source material available in relation to Interactive Online Limited; it does not have a web presence; it is not mentioned on Newtel's website nor indeed, that of Y Tel (Jsy).

The corporate machinations also appear to be rather unusual; why did Interactive Online Limited change its name to Infuse Hosting Services Limited and then back to Interactive Online Limited in the space of 5 months? This question is particularly pertinent given that Interactive Online Limited does not have any "brand value" and (on the basis of the previous initial notice) Interactive Online Limited *"no longer runs a telecommunications system within the Bailiwick of Jersey"*.

Information of this nature should be available so that interested parties might be in a position to respond more fully.

D. Financial Resources

From JT's perspective as Newtel's largest supplier, transparency of ownership is not merely a minor point of detail; it is a key concern and one which will inevitably impact on JT's willingness to continue to trade with it.

The JCRA is aware of the recent issues JT has experienced in recovering outstanding debts from Newtel and the steps that JT was required to take. Going forward, specific terms have been imposed in relation to the credit to be extended to Newtel. JT would therefore be very concerned were Newtel Holdings Limited to be encouraged or permitted to structure its subsidiaries such as to create two players in the market (say Newtel/ Y Tel on the one hand and Interactive Online Limited on the other where one player would be profitable and the other player would be loss making (as might occur were Newtel minded to try to sell on its customer base).

Against that background, JT would have expected clarity as to the controls (including for example, capital and/or other requirements and financial controls such as maximum periods for payment of debts etc) which the JCRA intends to impose on Interactive Online Limited and/or its owner, Newtel. On the assumption that the JCRA has considered the issue of resources pursuant to its statutory obligation, the fact that there is no mention of any such controls in the Initial Notice can only be indicative of the fact that the JCRA has secured binding commitments from Newtel in that regard.

In order that JT can consider this issue properly, we should be obliged for details of the commitments made by Newtel and/or Interactive Online Limited in relation to their sustainability, continued operations in Jersey, and financial controls.

E. Consumer Rights and Competition

Transparency extends beyond issues of mere corporate identity. JT notes for example, that the terms and conditions applicable by Newtel and/or Y Tel are not readily available on their respective websites.

Whilst customers will not doubt, one assumes, have copies of the applicable terms and conditions, their non-availability to others including potential customers does in fact hinder competition.

The addition of a further telecommunications provider to the Newtel group will exacerbate that problem.

Of possibly greater concern is the impact that an increased number of licensed entities under common ownership would have on competition and regulation.

To that end, how is the JCRA going to ensure that:

1. the correct licensed entity provides the correct licensed services under each licence?
2. there is no confusion (either actual or potential) in the minds of consumers, OLOs and the JCRA in relation to the entity providing the telecommunications services?
3. each entity has adequate financial and other resources and remains a going concern?
4. the various entities are not in breach of the terms of their licences, relevant permissions or leases, the 2002 Law or indeed, the Competition (Jersey) Law 2005?

F. Consistency

As noted above, Y Tel (Jsy) is currently providing telecommunication services in Jersey through a brand and a visible retail presence. It is neither licensed nor seemingly prevented by the JCRA from operating. JT assumes that from the JCRA's perspective, Y Tel (Jsy) and its operations are covered by Newtel's licence but we should be obliged if the JCRA would confirm that this is in fact the case.

If correct, there is a certain inconsistency of approach being adopted by the JCRA in relation to Y Tel (Jsy) (which the JCRA does not think needs a licence) and Interactive Online Limited which it thinks does need a licence. We believe this is an issue that requires further thought.

G. The Regulatory Requirements

We do not think it necessary to repeat the terms of the 2002 Law and in particular, article 7.

However, viewed objectively, the Initial Notice proposes (without giving any reasons beyond repeating the statutory wording set out in article 7(2)(a) of the 2002 Law) to grant a licence, for an unclear purpose, to a telecommunications provider that already has a licence sufficient for its needs and linked to its spectrum allocation.

Such a grant not only appears to be wholly unnecessary but the unintended consequences could be significant and detrimental for the island, consumers and OLOs alike (and in that regard, JT would refer once again to its recent experiences in regard to collecting outstanding debts from Newtel). There is nothing in the Initial Notice which addresses these important issues or sets out how the JCRA is going to mitigate the risks presented.

If anything, granting of multiple licences to entities within the same group encourages obfuscation and opacity which in turn would limit the JCRA's ability to control the licensee and lead to confusion amongst consumers and OLOs alike.

In our view, it is difficult to see any basis upon which the grant of a licence to Interactive Online Limited would meet the criteria set out in articles 7(1), 7(2)(a), 7(2)(b) or 7(2)(d) of the 2002 Law or indeed, any of them.

H. Conclusion

From JT's perspective, the Initial Notice raises serious questions.

To licence an entity in a factual vacuum is clearly inappropriate and detrimental to consumers, OLOs and the island. It also undermines the consultation process.

JT invites the JCRA to revisit this Initial Notice so that both JT and the public may respond properly to the proposed issue of a licence to Interactive Online Limited.

Yours sincerely



DARAGH MCDERMOTT
DIRECTOR CORPORATE AFFAIRS