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Jersey Competition Regulatory Authority
Salisbury House
1-9 Union Street
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20 February 2014

Dear Sirs,

CICRA 14/05 - Amendment to the General Class Telecoms Licence

This letter constitutes a formal response to the Authority's Initial Notice of 23 January.

The Telecommunications (Jersey) Law 2002 (the "Law") provides that a *"person shall not run ... a telecommunication system except under a licence"* and furthermore that a *"person shall not run a telecommunications system if any telecommunication services are provided ... in contravention of the conditions contained in the licence"*.

The proposed amended General Class Licence permits *"a Provider or User to supply, install, maintain and operate a Licensed Telecommunications Service or Telecommunications Apparatus"*. Its Appendix A then comprises a *"schedule of apparatus or services covered by this licence"*. The Law provides that *"apparatus that is situated in Jersey ... shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system"*. Thus, the permitting of "apparatus" would appear to permit the running of a telecommunications system.

There are therefore two possible interpretations of the General Class Licence:-

- that any telecommunication system made up of the apparatus listed within Appendix A is licensed for a "person" to "operate" and that the General Class Licence contains no explicit terms prohibiting the provision of any services; or
- that only those very few specific services listed within Appendix A are permitted.

The Initial Notice of 23 March 2004 in respect of the current General Class Licence stated *"The JCRA is of the opinion that ... the grant of this Licence is necessary to ensure the provision of telecommunication services to the public of Jersey"*, which would seem to support the first interpretation. It was upon this basis that I T Consultancy Limited responded to that Initial Notice in 2004.

This Initial Notice however states that *"the provision of commercial 'for profit' services to businesses or individuals"* will continue to need separate licensing. This would seem to support the second interpretation.

This second interpretation would, for example, preclude the provision of the following services unless the provider holds a Class I licence:-

- Hotels with PSTN connected extensions in guest bedrooms allowing external calls thus providing a telephony service.
- Managed or shared office accommodation where a tenant or client is provided with PSTN connected extensions or Internet connectivity, thus providing a telephony or Internet access service.
- Internet Cafés providing an Internet access service.
- Publicly available wireless networks providing an Internet access service.
- Private wireless networks providing an Internet access service to visitors.
- Website design companies providing a website hosting service to their customers.
- E-commerce services, including the provision of payment and ordering services to customers.
- Companies (eg trust companies) receiving emails addressed to their clients using domain names registered to their clients and either routing these on to the client or replying in the name of the client, thus providing an email service.
- Companies receiving telephone calls on numbers advertised for their clients and routing these to the client either automatically or manually, thus providing a telephony service.
- Cloud computing providers whose services include Internet connectivity and email.
- Fax bureau services.

It seems likely that such services are being provided locally by businesses using apparatus listed within the General Class Licence. Were the second interpretation to be the correct one, the providers would all require individual Class I licences.

I T Consultancy Limited therefore:-

- (a) Notes the possible, and indeed diametrically opposed, interpretations of the General Class Licence in respect of services.
- (b) Notes that the text of the General Class Licence does not differentiate between services operated "for profit" or otherwise.
- (c) Notes that the Authority did not engage in any consultation prior to the introduction of the current General Class Licence in 2004.
- (d) Considers that it would not be in the public interest for providers of some or all of the example services above to have to apply and pay for individual Class I licences.
- (e) Considers that, requiring such individual licensing would be likely to reduce the variety of such services provided within Jersey, which again would not be in the public interest.

- (f) Requests, by way of a formal representation, that the Authority should commence a public consultation as provided within, and indeed required by, Article 9(1) of the Law, on the appropriate licensing regime for telecommunication services within Jersey.
- (g) Requests that, following such a consultation, the Authority should draft a replacement General Class Licence, free of ambiguities and which provides clarity on the licensing of telecommunication services, and then issue a new Initial Notice in respect of it.

Yours faithfully,
for & on behalf of I T Consultancy Limited

Matthew Richardson
Director