

CONSULTATION DOCUMENT 2002/3:
TELECOMMUNICATIONS LICENCE FEES

1. INTRODUCTION

As part of the new Telecoms licensing regime, which will be introduced when the Telecommunications (Jersey) Law 2002 comes into force, Telecommunications operators in Jersey will be charged licence fees by the JCRA. This consultation paper has been issued by the JCRA in order to present the current views of the Authority on the most appropriate way to formally address the issues relating to the charging of licence fees.

At this stage, it is the view of the JCRA that the fee structure should be based on a flat application fee, to cover the administrative costs of the application procedure, and a periodic licence fee, that would be calculated on the basis of turnover (for Class II and Class III licensees). The application fee levels would depend on the class of licence being applied for, and the licence fee for Class I licensees would also be set at a flat rate. This consultation paper examines that proposed fee structure, in the light of various alternatives and best practice elsewhere, and puts forward the reasons for why the JCRA considers this structure to be the most appropriate for Jersey.

Comments are most welcome upon any of the points raised in this paper, although we would encourage consultees to focus in particular upon the direct questions that have been posed. These arise throughout the paper and are set out clearly in bold italics.

2. CONSULTATION PROCEDURE AND TIMETABLE

The consultation period will run from 8 July 2002 until 29 July 2002. Written comments should be submitted before 5.00pm on 29 July 2002 to:

Jersey Competition Regulatory Authority
6th Floor
Union House
Union Street
St. Helier
Jersey
JE2 3RF

E-mail: enquiries@jcra.je

All comments should be clearly marked “Comments on Licence Fees Consultation Document”, and marked for the attention of Mr Charles Latham.

3. LEGAL BASIS FOR THE CHARGING OF FEES

- 3.1 Article 12 of the Competition Regulatory (Jersey) Law 2001 and the Article 17 of the Telecommunications (Jersey) Law 2002 set out the rights and powers of JCRA in relation to the charging of fees. (Please see appendix 1 for the full text of the relevant articles.)
- 3.2 The key provisions are Articles 17(1) and 17(2) of the Telecommunications Law: Article 17(1) establishes the principle that the fees charged should be referable to the JCRA's costs, the intention being that the JCRA becomes financially self-sufficient; Article 17(2) gives the JCRA power to determine the basis upon which fees should be calculated.

4. PROPOSED FEE STRUCTURE

- 4.1 The proposed fee structure has been devised in accordance with the JCRA's licensing structure, which is comprised of three types of licence: a Class I licence to cover telecommunications operations which have no discernable impact on the competitive market; a Class II licence for entities that provide telecommunications systems to the public but that do not possess significant market power; and a Class III licence for entities providing telecommunications systems to the public who do have significant market power.
- 4.2 The proposed fee structure is to have a one-off application fee, and a periodic licence fee. The level at which these fees was set would differ according to licence type: Class I fees would be set at the lowest level and Class III fees at the highest.
- 4.3 Given the intention that the JCRA should be financially self-sufficient, with licence fees as its source of income, the costs of the JCRA have to be used as the benchmark for the projected total of the licence fees paid by Telecoms operators. Since Class I applicants are likely to generate minimal regulatory work, it is proposed that the Class I licence fee would be set a flat rate. For Class II and Class III applicants, the JCRA is of the view that a licence fee calculated on the basis of turnover would be the most appropriate and equitable means by which to spread the costs of regulation between the different players in the market.

5. APPLICATION FEE

- 5.1 The JCRA intends to charge an application fee to cover the administrative costs involved in processing licence applications. This would entail a flat fee for each licence class, and would be payable on submission of the licence application. The

JCRA would reserve the right not to consider any licence application until the relevant fee had been paid.

- 5.2 An application fee will be essential to cover the administrative costs of licensing that will have to be borne by the JCRA before any licence is awarded, and therefore before any licence fee is levied. For example, under Article 11 of the Telecommunications (Jersey) Law, the JCRA will have to issue *at least* two public notices in the Jersey Gazette for *every* application, and further notices would have to be issued if there were any objections or appeals relating to the award of a licence. A single notice would cost around £200. This, in addition to the time spent by the JCRA staff in processing applications, would suggest that an appropriate application fee for a Class I licence would be in the region of £500.
- 5.3 Considerably more time would need to be spent on the assessment of Class II and Class III applications. There is also a greater likelihood that Class II and Class III application could be subject to objections and appeals, which would draw out the time and costs associated with the application yet further. In recognition of this, the JCRA is of the view that £1000 is an appropriate figure for the Class II application fee, and, that £1500 is an appropriate figure for the Class III application fee.
- 5.4 It is the view of the JCRA that the proposed application fee-levels strike a balance that will discourage time-wasters, without creating a barrier for serious potential entrants. Indeed, given that most serious applicants will bear significant costs in enlisting the services of lawyers and consultants, it is unlikely that the application fee, by comparison, would be prohibitive in any way.
- 5.5 The JCRA does not consider there to be a viable alternative to the model of an application fee as proposed above. According to the funding principles for the JCRA which are set out in the Law, not having an application fee would mean that all the costs processing applications would have to be covered by the licence fees. This would effectively entail successful applicants subsidizing unsuccessful applicants, even though the costs of turning down an application would not differ substantially from the costs of granting a licence.
- 5.6 In light of all the above reasons for why an application fee is appropriate, the JCRA is of the view that to set this fee at a token level would serve no purpose whatsoever.
- 5.6 The JCRA would envisage that the relevant application fee would also apply if an existing licensee was to move between licence types, for example if a Class II licensee achieved SMP and therefore moved into the Class III category. The application fee would apply even if a formal application was not submitted and the move just entailed the triggering of further licence conditions. The JCRA

considers this to be important not only to cover the additional administrative costs that will still apply in such a case, but also because it is the only way to ensure that the system could operate fairly. For example, it would prevent a Class I operator, who had plans to introduce a Class II telecoms service, from avoiding the Class II application fee by only revealing those plans to the JCRA after a Class I licence had been granted.

6. LICENCE FEE

- 6.1 The JCRA intends to charge a licence fee to any telecoms operator who is granted a Class I, Class II or Class III telecommunications licence.
- 6.2 The JCRA's approach to licence fees will be guided both by the funding principles established in the law – that the fees should cover the costs of the JCRA - as well as by best practice elsewhere.

Class I

- 6.3 The nature of Class I licences means that they will not generate significant regulatory costs for the JCRA. In view of this it is proposed that the Class I licence fee should be a flat fee payable annually in advance. A Class I licensee would therefore be required to pay the licence fee upon notification from the JCRA of a final decision to grant the licence, and annually thereafter.

Class II and Class III

- 6.4 Under the Law, licence fees '*may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis.*' The JCRA proposes that licence fee for Class II and Class III operators should be charged on the basis of turnover.
- 6.5 The use of a percentage of turnover to calculate fees is common in many jurisdictions. It enables the costs of regulation to be spread across all licensees in proportion to their activities in the market. The rationale behind spreading the cost in this way is the relationship between the turnover of licensees and the volume of regulatory work generated. This was demonstrated in an internal evaluation by Oftel for a 1997 consultation¹. The evaluation demonstrated not only that the volume of regulatory work generated by larger operators was greater than that generated by smaller operators, but that as a rule the complexity of the issues tended to be greater also. In the view of the JCRA, this clearly mitigates against having a flat fee for each licence class, which could not take into account the relative size of operators within that class.

¹ A Review of Telecommunications Licence Fees in the UK, December 1997

- 6.6 Furthermore, the JCRA considers it preferable to charge on the basis of turnover, rather than profit, in recognition of the fact that levies based on profits may have an adverse effect on commercial incentives, and that it is particularly difficult to generate accurate measure of the profitability of a new entrant in the start up phase of its business. Given that the JCRA will have to generate a certain amount of revenue from licence fees – however charged – in order to cover its costs, a profit-based charge would be likely to impose a disproportional cost burden on to the incumbent operator, particularly in the first year or two. And after that initial stage a profit-based licence fee would shift the regulatory cost burden disproportionately on to the more efficient, profitable companies.

Mechanism for Calculating Turnover

- 6.7 A turnover-based licence fee will only work if there are clear guidelines on how to calculate turnover, which must apply equally to all players. The turnover on which the fee will be levied will be turnover that is *referable to Jersey*.

Timing of Payments

- 6.8 The JCRA proposes that licence fee payments are made quarterly. It is suggested that this will be preferable in terms of cash flow for both the JCRA and the licensees.

Proposed Fee Levels

- 6.9 The proposed level would be turnover based, justified by reference to JCRA costs.

Reconciliation of Costs and Fees

- 6.10 In the event that the amount collected by way of licence fees in a particular year (calculated on the basis of the final year end accounts of the JCRA) exceeds the amount required by the JCRA to meet the purposes described in the Law, it is intended that such a surplus not be retained by the JCRA, and that a mechanism be in place for balancing any excess fee collected. Similarly, if in any year there is a shortfall in the licence fee collected due to unanticipated costs, the JCRA will consider making up such a shortfall imposing an additional fee or levy on the licensees within the calendar year in which the shortfall arises, or by obtaining short term funding and increasing the licence fee or levy in the following calendar year.

Enforcement and Recovery of Fees.

- 6.11 The requirement to pay the licence fee will be included in the licence conditions and therefore a failure to pay a fee will constitute a breach of licence. However, under the Law, fees “*shall be recoverable as a civil debt to the authority*”. The

JCRA is of the view that it may be judicious to include an additional licence condition that a bank guarantee is in place for the payment of licence fees. In this respect consultees are reminded if the JCRA were to suffer a shortfall in revenue, owing to one licensee's failure to pay their licence fee, ultimately the shortfall would have to be made up by the remaining licensees.

- 6.12 In order to encourage the prompt payment of fees, the JCRA also proposes that if a licensee fails to pay any amount due to the JCRA by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four percentage points above the published base rate of the Bank of England.

APPENDIX 1

Legal Provisions Relating to the Charging of Fees

Competition Regulatory Authority (Jersey) Law 2001:

ARTICLE 12

Fees and Charges

The Authority may charge, retain and apply in the performance of its functions-

- (a) fees and charges of such amounts, paid by such persons, and paid in such manner, as may be specified by or under this or any other such enactment;
- (b) fees for the performance of its function under Article 6(4);
- (c) such fees and such charges (not inconsistent with this or any other enactment) of such amounts, paid by such persons, and paid in such manner, as may be decided by the Authority in respect of any service, item, matter, that does not arise under this or any other enactment; and
- (d) such fees and charges (not inconsistent with this or any other enactment) as may be agreed between the Authority and any person for whom the Authority provides advice, assistance or other services under this or any other enactment, in respect of the advice, assistance or other services.

Telecommunications (Jersey) Law 2002:

ARTICLE 17

Licence Fees

- (1) Any payment, or fee, required under this law to be paid to the Authority in respect of a licence (including any application fee) may be fixed from time to time at such amount as is necessary to enable the authority to recover its costs of establishment, its short term costs, and its long-term costs (whether these costs are actual or projected or direct or apportioned) so far as the costs are referable to the performance of the functions of the Authority under this Law.
- (2) Such a fee may be fixed as a percentage of the turnover or profit of a licensee or members of a class of licensees, or on the basis of some other formula relating to a licensee or members of a class of licensees, or on any other basis.
- (3) Such a fee shall be recoverable as a civil debt due to the Authority.