

## **JERSEY COMPETITION REGULATORY AUTHORITY**

### **FINAL NOTICE TO JERSEY TELECOM LIMITED**

#### **Under Article 11 of the Telecommunications (Jersey) Law 2002**

On 24 October 2006, the Jersey Competition Regulatory Authority ('JCRA') published in the Jersey Gazette an Initial Notice of a proposed Direction to Jersey Telecom Limited ('JT'). This Initial Notice and proposed Direction arose from JT's alleged infringements of Conditions 5.1(b) and 19.4 of its Licence issued under the Telecommunications (Jersey) Law 2002 (the 'Law'). These alleged licence infringements were based on JT's failure to comply with the JCRA's Direction dated 5 June 2006 concerning the introduction of Mobile Number Portability ('MNP') in Jersey by JT, Cable & Wireless Jersey Limited ('CWJ'), and Jersey Airtel Limited ('JA').

In compliance with Article 11 of the Law, the JCRA requested that written representations or objections to this proposed regulatory function be directed to it no later than 22 November 2006. The JCRA received two responses during this time: one from JT, the other from CWJ. A summary of these submissions, and the JCRA's responses to them, are set forth below:

1. CWJ expressed its support for the introduction of MNP in Jersey, and stated its view that the process followed by the JCRA to accomplish this goal has at all times been appropriate. CWJ also expressed its extreme disappointment at JT's decision to delay the MNP implementation process. The JCRA notes these comments and agrees with CWJ that the introduction of MNP is important for the development of effective competition in mobile telecommunications in Jersey.
2. JT objected to the JCRA's exercise of the proposed regulatory function on the grounds that, first, the JCRA's 5 June Direction which was intended to implement MNP in Jersey was void and had no legal effect. JT stated that should the JCRA wish to require the implementation of MNP in Jersey, it should do so through modification of the mobile operators' licences under Article 18 of the Law. The JCRA disagrees that it had no legal basis to issue the 5 June Direction and insist on its compliance by JT, CWJ, and JA. However, in order to facilitate the earliest possible introduction of MNP in Jersey, and without prejudice to its position on this issue, the JCRA has decided to require the implementation of MNP at this time via modifications to the licences of JT, CWJ, and JA under Article 18. These licence modifications are detailed in the Initial Notices that the JCRA is issuing concurrently with this Final Notice.
3. JT's second objection was based on the view that the JCRA's proposed exercise of the proposed regulatory function was unreasonable, disproportionate, and inconsistent with the JCRA's duties under Article 7 of the Law because the JCRA failed to assess properly the costs and benefits of implementing MNP in Jersey.

JT goes on to explain why, in its view, the costs of implementing MNP in Jersey as proposed by the JCRA clearly outweigh the benefits.

4. The Law places no duty on the JCRA to conduct the specific type of cost/benefit analysis JT suggests. However, the Law places on the JCRA a primary duty to ensure that telecommunication services are provided to satisfy all current and prospective demands for them in Jersey, so far as in the JCRA's view it is reasonably practicable to do so. As detailed in the Initial Notices issued concurrently with this Final Notice, the JCRA has established that there is a demand in Jersey for the introduction of MNP and the resulting increase in consumer choice and competition in the provision of mobile telecommunications in Jersey. The JCRA also has established that it is reasonably practicable to satisfy this demand through the introduction of MNP. Alternatives to MNP suggested by JT, such as various voice response or text services, or changing only part of a user's number when switching providers, are not reasonable substitutes to the ability of a user to retain a phone number when changing mobile phone providers.

To conclude, although the JCRA does not intend to proceed with the regulatory function proposed in its 24 October 2006 Initial Notice, the JCRA still intends to mandate the implementation of MNP in Jersey, but through modifications to the licences of JT, CWJ and JA issued under Article 18. In compliance with Article 11(10) of the Law, these modifications are detailed in the Initial Notices the JCRA is publishing concurrently with this Final Notice. Because the JCRA is mandating that a new procedure be followed concerning the implementation of MNP in Jersey, the JCRA withdraws the 5 June 2006 Direction with effect from the date of this notice.

**1 May 2007**

**By Order of the JCRA Board**