



Change of control of 2e2 Jersey Limited and 2e2 Guernsey Limited

Provisional decision

Channel Islands Competition and
Regulatory Authorities

Document No: CICRA 13/25

April 2013

*Guernsey Competition & Regulatory Authority
Suites B1 & B2, Hirzel Court,
St Peter Port, Guernsey, GY1 2NH
Tel: +44 (0)1481 711120
Web: www.cicra.gg*

*Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier, Jersey, JE2 3RF
Tel: +44 (0)1534 514990
Web: www.cicra.je*

CONTENTS

1. Introduction 3

2. Responses 4

3. Legal Background 5

4. Provisional Decision 7

1. Introduction

On 22 April 2013, the Channel Islands Competition and Regulatory Authorities (**CICRA**)¹ received a notification of the change of control of 2e2 Jersey Limited and 2e2 Guernsey Limited (together, **the Licensees**), respectively a Class I Licensee under the *Telecommunications (Jersey) Law 2002* and a Fixed Telecommunications Services Licensee under *The Telecommunications (Bailiwick of Guernsey) Law, 2001*.

The change of control resulted from the acquisition of the entire share capital of their parent company, 2e2 Offshore Limited, for a cash consideration by Logicalis Group Limited (**Logicalis**).

Following the acquisition, the names of the licensees have changed to Logicalis Jersey Limited and Logicalis Guernsey Limited. In the event that this provisional decision is confirmed, it is the intention of CICRA to reissue the licences held by the Licensees in their new names.

Logicalis is an international IT solutions and managed services provider with expertise in communications and collaboration, data centre and cloud services, and managed services. It has annualised revenues of over \$1.4 billion, from operations in Europe, North America, South America and Asia Pacific.

Logicalis is a 100% owned subsidiary of Datatec Limited (**Datatec**), listed on the Johannesburg and London AIM Stock Exchanges, with revenues of over \$5 billion. For the purpose of this change of control, Datatec is considered as ultimate controller of the Licensees.

The Licensees are both obliged under their respective licences to notify CICRA of the change of control. CICRA is then required to consider whether to approve or reject the change of control, or to approve the change of control with conditions (eg by modifications to the licences or other regulatory action). For the reasons set out in section 4 below, CICRA has provisionally concluded that it should approve the change of control of the Licensees unconditionally.

¹ CICRA comprises the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA), and all references in this document to CICRA should therefore be read as references to each of the JCRA and the GCRA, unless the context otherwise requires.

2. Responses

CICRA invites comments on its provisional decision to approve the change of control of the Licensees.

Interested parties are invited to submit comments to CICRA in writing or by email to either of the following addresses:

Guernsey Competition and Regulatory
Authority
Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH
Email: info@bicra.gg

Jersey Competition Regulatory
Authority
2nd Floor, Salisbury House
1-9 Union Street
St Helier
Jersey
JE2 3RF
Email: info@bicra.je

All comments should be clearly marked “Change of control of 2e2 Jersey Limited and 2e2 Guernsey Limited – Provisional Decision” and should arrive by 9.00 am on 28 May 2013.

3. Legal Background

Change of control provisions in licences held by telecommunications operators in the Channel Islands

Telecoms licences in Guernsey and Jersey each contain change of control provisions, in very similar form. As an example, Conditions 2.5 and 2.6 of Class I licence granted to 2e2 Jersey Limited, and originally granted to XKO Communications Systems (Jersey) Limited, provide as follows:

2.5 The Licensee shall notify the JCRA:

(a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and

(b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty (30) days of that event.

2.6 On receipt of notification of Change of Control the JCRA may:

(a) approve, in writing, the change or the proposed change;

(b) disapprove, in writing, the change or the proposed change, giving reasons; or

(c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 18 of the Telecommunications (Jersey) Law,

and, or in addition to any of the above measures, the JCRA may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the JCRA considers necessary or appropriate.

In taking action under this section, the JCRA may have regard to whether or not the JCRA would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

The concepts of control and change of control are defined in Condition 2.7 of Class I licence granted to 2e2 Jersey Limited (and equivalent provisions in other telecoms licences):

In this Condition 2, "Control" shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event. A person or group of persons shall be deemed to Control the Licensee if:

(a) he or they exercises or controls the exercise of fifty (50) per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or

(b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or

(c) he or they exercises or controls the exercise of fifty (50) per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and "Change of Control" shall mean any change as a result of which any other person or group of persons acquires Control.

4. Provisional Decision

CICRA consulted on the application of the change of control provisions in the licences of telecommunications operators in the Channel Islands in January 2013 (CICRA 13/01), and the results of that consultation were reported in CICRA's provisional decision on the change of control of Cable & Wireless Guernsey Limited (**CWG**) and Cable & Wireless Jersey Limited (**CWJ**) (CICRA 13/06).

CICRA 13/06 set out CICRA's view that the focus of an assessment of a change of control should be on whether the change to the control of the relevant licensee jeopardises its willingness or ability to provide high quality, sustainable telecoms services, or to comply with its licence conditions or other regulatory requirements.

In CICRA 13/06, CICRA also indicated its view that the question of whether to approve a change of control of a telecoms licensee, and the appropriate intensity of the review, would depend to a large extent on the importance of the licensee's assets and services to the overall telecoms market. It noted that the impact on consumers and the wider economy of a serious breakdown in the operations of CWG (given its role as the operator of the fixed-line network in Guernsey, and by far the largest mobile operator in Guernsey) would be considerably greater than the same occurrence with respect to CWJ, or a smaller operator in either Bailiwick.

In its final decision on the change of control of CWG and CWJ (CICRA 13/10), CICRA concluded that it would not be appropriate to undertake a detailed review of the change of control with respect to CWJ. The decision also stated that "while such decisions will turn on their facts, it is likely that CICRA would take an equivalent view with respect to future changes of control for other telecoms licences in a similar position to that of CWJ".

The Licensees do not hold significant market power in any telecoms market, and do not supply wholesale services to other telecoms operators. As such, the conclusions drawn with respect to CWJ in the above decision are even more compelling with respect to the Licensees. CICRA does not therefore consider that a detailed review of the change of control of the Licensees would be appropriate.

CICRA is not aware of any evidence that the proposed changes of control of the Licensees would jeopardise their willingness or ability to provide high quality, sustainable telecoms services, or to comply with their licence conditions or other regulatory requirements. CICRA has reviewed the information provided in the notification of the proposed change of control of the Licensees, and it is now minded to approve the notified change of control of the Licensees resulting from their acquisition by Logicalis, a wholly owned subsidiary of Datatec.

CICRA provisionally concludes that no change to the existing licence terms or conditions is necessary under this Condition 2.5 notification.