



# Newtel Limited and Y Tel Limited - Notifications of change of control

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## Decision

### Channel Islands Competition and Regulatory Authorities

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## 1. Introduction

Each of the individual telecoms licences issued to operators in the Channel Islands contains a condition requiring the licence holder to notify its regulator when it becomes aware of a proposed or actual change in the identity of the person (or group of persons) that has ultimate control of the licence holder. The regulator must then decide whether to approve or refuse the change of control, or to approve the change subject to changes to conditions in the licence holder's licence.

This decision concerns proposed changes of control of two licensees:

- Newtel Limited (**Newtel**), which holds a Class II Licence issued under the *Telecommunications (Jersey) Law 2001*; and
- Y Tel Limited (**Y Tel**), which holds a fixed telecommunications licence issued under *The Telecommunications (Bailiwick of Guernsey) Law, 2001*.

On 15 November 2012, the Jersey Competition Regulatory Authority (**JCRA**) received a notification of a proposed change of control of Newtel. The change of control would result from the proposed acquisition of Newtel Holdings Limited (**NHL**) by Platform Technology Limited (**Platform**).

Newtel is a wholly owned subsidiary of NHL. NHL currently has two shareholders, Utilico Investments Limited (**Utilico**), which holds 16% of the ordinary shares, and Financial Media Holdings Limited (**FMHL**), which holds 84% of the ordinary shares. Shares in FMHL are indirectly held by General Provincial Life Pension Fund Limited (**GPLPF**), which also holds a 56.8% stake in Utilico.

Platform is a company incorporated in Bermuda. According to the notification, the entire share capital of Platform is held directly by Duncan Saville for his own benefit and not as nominee, trustee or agent for any other person or entity.

The proposed acquisition of NHL by Platform was also notified to the JCRA under the merger and acquisition provisions in Article 21 of the *Competition (Jersey) Law 2005*.

Mr Saville is also director and sole shareholder of ICM Limited, the investment manager to Utilico, which itself holds 3.5% of the shares in Utilico. In addition, Mr Saville holds a number of non-executive positions, including some in companies in which Utilico holds significant interests, and other associated undertakings.

After reviewing the notification and various background materials, the JCRA sent a letter to the parties involved in the proposed acquisition, requesting them to indicate whether Mr Saville currently controls GPLPF (and therefore whether any change of control was, in fact, occurring through this transaction). The JCRA has

been provided with a copy of an email from [REDACTED], one of the current directors of NHL, which states that Mr Saville does not currently have any control over, or personal interest in, GPLPF. GPLPF has therefore been considered by the JCRA to be the ultimate controller of Newtel for the purposes of our assessment of the change of control.

On the basis of that additional information provided by the parties, the JCRA has proceeded on the basis that the proposed change of control is notifiable under Newtel's licence, and it has therefore undertaken an assessment of the change of control of Newtel.

On 19 March 2013, the Guernsey Competition and Regulatory Authority (**GCRA**) received a separate notification in respect of a proposed change of control of Y Tel. At present, the shares in Y Tel are held by [REDACTED]. However, once the proposed acquisition of NHL by Platform has taken place, it is intended that those shares will be transferred to NHL, with Mr Saville therefore becoming the ultimate controller of Y Tel.

The JCRA and GCRA co-ordinate their activities with respect to telecommunications regulation in the Channel Islands. For the purpose of this document, the JCRA and the GCRA are together referred to as the Channel Islands Competition and Regulatory Authorities (**CICRA**), 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. 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 Newtel's Class II licence 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 Newtel's Class II licence (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.*

### 3. 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".

Newtel plays an important role in bringing competition to fixed services markets in Jersey, through its traditional broadband services and its growing WiMAX service marketed under the "Y:tel" brand. However, Newtel does not hold significant market power in any market, and also does not supply wholesale services to other telecoms operators to any significant extent. Y Tel has recently announced its intention to commence operations in Guernsey, and has applied for the allocation of spectrum in the 3.4GHz band for the delivery of those services. However, it is not yet actively providing services in Guernsey.

CICRA is not aware of any evidence that the proposed changes of control over Newtel and Y Tel would jeopardise those licensees' willingness or ability to provide high quality, sustainable telecoms services, or to comply with their licence conditions or other regulatory requirements. Given the position of Newtel and Y Tel in the

telecommunications markets in which they operate (or will operate) in Jersey and Guernsey, CICRA does not consider that a detailed review of the change of control would be appropriate.

Accordingly:

- the JCRA hereby approves the proposed change of control of Newtel under Condition 2.6 of Newtel's licence; and
- the GCRA hereby approves the proposed change of control of Y Tel under Condition 2.5 of Y Tel's licence.