



Jersey Competition Regulatory Authority (“JCRA”)

Public version of
Decision MT670/11
Proposed Acquisition
of
Newtel Holdings Limited
by
Financial Media Holdings Limited

The Notified Transaction

1. On 2 February 2011, the JCRA received an application (the “**Application**”) for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the “**Law**”) concerning the proposed acquisition of about 84% of the ordinary and preference shares in Newtel Holding Limited (“**Newtel**”) from Jersey Electricity PLC, Carveth Limited, Mattbrel LLP, McNicholas Construction (Holdings) Limited, [REDACTED] by Financial Media Holdings Limited (“**FMHL**”).
2. Following completion of the Application, the JCRA published a notice of its receipt of the Application in the Jersey Gazette and on its website on 7 February, inviting comments on the acquisition by 21 February 2011. Due to issues with the provision of information to the JCRA, the public version was not released until 7 March 2011 and the deadline for submission by third parties was extended until 14 March 2011 and later, upon request of a third party, to 18 March. The JCRA received one submission (the “**Submission**”).

The Parties

(a) Newtel

3. Newtel is incorporated in Jersey. Newtel in 2009 sold certain subsidiaries that were mainly active in Guernsey.¹ Newtel comprises the subsidiaries Newtel Limited, Newtel Networks Limited, Newtel Cable Limited and Interactive Online Limited. Newtel Limited holds a class II Telecommunications Licence under the Telecommunications (Jersey) Law 2002.
4. Newtel is active in the areas of private circuits² (both on-Island and off-Island), internet access (broadband and leased lines) and application services (voice over IP and cable television). In relation to cable television, according to the

¹ JCRA Decision M457/09 regarding the proposed acquisition of Newtel Guernsey Limited and Guernsey.net Limited by Wave Telecom Limited of 16 November 2009.

² According to the Application, private circuits are point to point fixed links.

Application Newtel provides Jersey's only cable television network which has the ability to provide services to [4,000-5,000] homes and in addition provides basic terrestrial aerial services to a further [2,000-3,000] houses owned by the States of Jersey. Newtel had a turnover in the year to March 2010 of about £[0-5]m.

5. Any reference to Newtel includes reference to any of its subsidiaries.

(b) FMHL

6. According to the Application, FMHL is an investment company that invests in utilities and related infrastructure and is incorporated in Bermuda. FMHL is ultimately controlled by a privately owned trust (the "**Trust**").
7. Utilico is an affiliate of FMHL and is also ultimately controlled by the Trust. Utilico holds about 16% of the shares in Newtel. In addition, Utilico has a minority interest in one of the sellers, Jersey Electricity Company.
8. Any reference to the Trust includes reference to any of the companies it, directly or indirectly, controls including Utilico, FMHL and General Provincial Life Pension Fund Limited ("**GPLPF**").

The Requirement for JCRA Approval

9. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. The type of mergers and acquisitions subject to this requirement is set out in the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "**Order**").
10. Newtel has an existing share of supply of 40% or more of the supply of television distribution services via cable in Jersey. On this basis, pursuant to the Order, the JCRA's approval is required under Article 20(1) of the Law before an Acquisition is executed.

Assessment

11. Under Article 22(4) of the Law, the JCRA must determine if the acquisition would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline.³ As detailed below, the JCRA concludes that this would not be the case.

Defining the affected relevant market(s)

12. For the purpose of this Decision it is not necessary to define any of the relevant products or geographic markets as the proposed acquisition does not raise competition concerns irrespective of the definition used.

Effect on Competition

13. The JCRA may refuse to approve an acquisition if it is satisfied that the merger or acquisition would substantially lessen competition in Jersey or any part of Jersey.
14. The JCRA has not identified any potential competition concern.
15. The trustee of the Trust has declared
- that the Trust indirectly holds shares in Utilico;
 - that neither the Trust, GPLPF, nor any company that the Trust or GPLPF may be deemed to control, directly or indirectly, including by virtue of negative control, carries on any business in Jersey currently carried on by Newtel, other than by virtue of Utilico's investments in Newtel and the JEC; and
 - that there no existing or proposed relationships, including supply arrangements, between any person or undertaking it directly or indirectly controls by way or shares it holds in any investment (including by way of negative control) and any Jersey business including, for the avoidance of doubt, Newtel.

³ JCRA Guideline 6, *Mergers and Acquisitions*.

The Submission

16. The Submission listed two concerns, one of which is pertinent to this Decision and one of which will be addressed by separate communication. The Submission expressed the concern that the JCRA is, or is being guided to, the cable television element of Newtel whereas Newtel has other telecoms interests that may have some impact on markets and competition in Jersey.
17. The focus on the television distribution market in the Application is the result of a choice by the Parties on the level of information they are willing or able to provide for each of the proposed relevant markets. In general, the JCRA advises parties to a merger or acquisition to provide extensive and detailed information on a particular product, service or market if it is to be expected that the JCRA may have potential competition concerns and hence requires detailed information to make its assessment. On the other hand, more limited information may be sufficient if parties to a merger cannot foresee that the JCRA identifies any competitive concerns. Whereas the parties to a merger have significant scope to choose the level of information provided in the Merger Application Form, the provision of summary information carries the risk for the parties that the JCRA will require additional information for its assessment with the possibility of a resulting delay in the application process.
18. As listed in section 4 above, the JCRA is aware of Newtel's activities and has assessed any possible impact on competition within Jersey. The proposed acquisition would appear to constitute a mere transference of control without resulting in a change of market shares in any of the markets that are involved. Also, there does not appear to be any competition concerns in relation to a possible vertical integration of Newtel with any undertaking or undertakings controlled by the Trust. This is confirmed by the declaration of the trustee listed in section 15.
19. The Submission does not contain evidence that indicates that the conclusion drawn by the JCRA is incorrect.

Conclusion

20. On the basis of the above, the JCRA concludes that the proposed acquisition will not result in a substantial lessening of competition in Jersey or any part of Jersey.
21. Given this conclusion, the JCRA hereby approves the acquisition under Article 22(1) of the Law.

23 March 2010

By Order of the JCRA Board