



## **PUBLIC VERSION**

**Case M924/12**

**Proposed acquisition of Newtel Holdings Limited  
by Platform Technology Limited**

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## **Decision**

**Document No: CICRA 12/59**

**March 2013**

**Jersey Competition Regulatory Authority**  
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## **The Notified Transaction**

1. On 14 November 2012, 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 by Platform Technology Limited (**Purchaser**), owned by Mr Duncan Saville, of certain shares (the **Sale Shares**) in Newtel Holdings Limited (the **Target**) from Financial Media Holdings Limited (**FMHL**), an affiliate of Utilico Investments Limited (**Utilico**), and Utilico (together the **Sellers**) (the **Acquisition**).
2. The JCRA registered a notice of its receipt of the Application on its website on 15 November 2012, inviting comments on the Acquisition by 29 November 2012. No comments were received.
3. The Target has a number of subsidiaries, including Newtel Limited, which holds a Class II Telecommunications Licence under the *Telecommunications (Jersey) Law 2002*. In addition, it is intended that the Target will conduct its business in Guernsey through Y Tel Limited, a company holding a fixed telecommunications licence under *The Telecommunications (Bailiwick of Guernsey), 2001*, and whose shares are currently held by [REDACTED]. It is proposed that the shares in Y Tel will be transferred to the Target after the Acquisition is completed. The JCRA received change of control notifications from Newtel Limited and Y Tel Limited, made pursuant to the provisions of their telecommunications licences. The JCRA has decided to issue this decision and its decision on the change of control notifications simultaneously.

## **The Parties**

- (a) *The Purchaser*
4. The Purchaser is a company incorporated for the purposes of acquiring the Sale Shares and as such does not carry on any trading activities. It is wholly owned by Mr Saville for his own benefit.

5. Mr Saville is director and sole shareholder of ICM Limited, the investment manager to Utilico, which itself holds 3.5% of the shares in Utilico. The directors of Utilico are responsible for [REDACTED].
6. According to the Application, Mr Saville holds a number of non-executive positions, including some in companies in which Utilico holds significant interests, and other associated undertakings. He is a non executive of [REDACTED].

*(b) Target*

7. The Target is incorporated in Jersey. In 2009, it sold certain subsidiaries that were mainly active in Guernsey.<sup>1</sup> In 2011, 84% of the ordinary and preference shares in the Target were acquired by FMHL from Jersey Electricity PLC, Carveth Limited and a number of other shareholders.<sup>2</sup> For the 9 months ending 31 December 2012, the Target's turnover in Jersey was £[REDACTED].
8. According to the Application, the Target is active in the supply of private circuits (both on- and off-island), internet access (broadband and leased lines) and application services (voice over IP and cable television). The Target operates Jersey's only cable television network, which has the ability to provide 50 television channels, including the Sky premium services, to [4000-5000] homes and currently has a customer base of [1000-2000]. The cable network also provides basic terrestrial aerial services to a further [2000-3000] homes owned by the States of Jersey.
9. Any reference in this decision to the Target includes reference to any of its subsidiaries unless otherwise expressed.

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<sup>1</sup> JCRA Decision M457/09: Newtel Guernsey Limited and Guernsey.net Limited/Wave Telecom, 16/11/09.

<sup>2</sup> JCRA Decision M670/11, March 2011.

(c) *Sellers*

10. According to the Application, FMHL is an investment company that invests in utilities and related infrastructure and is incorporated in Bermuda. FMHL holds 84% of the ordinary shares and 100% of the convertible preference shares in the Target. Shares in FMHL are indirectly held by General Provincial Life Pension Fund Limited (**GPLP**), which also holds a 56.8% stake in Utilico. GPLP is a private investment holding company that does not actively trade in any part of the world. FMHL is therefore an affiliate of Utilico.
11. Utilico is incorporated in Bermuda and listed on the London Stock Exchange. Utilico currently holds 16% of the issued ordinary shares in the Target and 96% of the issued redeemable preference shares in the capital of the Target. In addition, Utilico has a 3.4% shareholding in Jersey Electricity plc.
12. For the period 1 January 2012 – 31 March 2012, Utilico's gross assets less current liabilities (excluding debt) were valued at £463 million. Save for the Target, neither of the Sellers' corporate groups have any turnover attributable to television distribution in Jersey.

**The Requirement for JCRA Approval**

13. The Acquisition involves the Purchaser acquiring control of the Target as defined under Article 2(1)(b) of the Law. The parties applied for JCRA approval of the Acquisition on the basis that the Target has an existing share of supply of 40% or more of the supply of television distribution services via cable in Jersey, as a result of which the Acquisition falls within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the **Order**).
14. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the Acquisition is executed.

### **Defining the affected relevant market(s)**

15. The parties contend that based on previous JCRA decisions<sup>3</sup>, the relevant product market is television distribution, but accept that the JCRA may wish to further segment the market to encompass only television distribution via cable. According to the Application, the relevant geographic market for television distribution via cable is Jersey.
16. In the absence of any evidence of potential horizontal, vertical or conglomerate effects (see discussion below), the transaction will not give rise to a substantial lessening of competition in any potential market. Therefore, the JCRA need not make a definitive determination of the boundaries of the relevant market. The JCRA has therefore observed the market definitions previously adopted<sup>4</sup> and proceeded on the basis that the following market is relevant to the Acquisition: the supply of television distribution services via cable in Jersey.

### **Effect on Competition**

17. As noted in paragraph 13 above, the obligation to apply for the JCRA's approval of the Acquisition arises by virtue of the fact that the Target has a share of 40% or more of the supply of television distribution services via cable in Jersey.
18. According to the Application, neither the Purchaser, nor its group of companies, nor any company of which Mr Saville is a director, produces or supplies goods or services in Jersey in the same or similar markets in which the Target carries on activities in Jersey. Moreover, there is no vertical upstream or downstream relationship between the Purchaser and the Target. As such, the parties contend that the Acquisition is entirely neutral in its effects on competition. Given the complete lack of overlaps between the parties' activities, the JCRA is satisfied

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<sup>3</sup> JCRA Decision M622/10: BSkyB/Virgin Media Television Rights Limited and Virgin Media Television Limited, together with the rights to all assets used exclusively in the Virgin Media television business

<sup>4</sup> JCRA Decision M622/10 and JCRA Decision M670/10.

that the Acquisition will not give rise to horizontal, vertical or conglomerate effects on competition. The Acquisition constitutes a transfer of control without resulting in a change in market shares in any of the markets in which the Target is active.

19. As such, the JCRA has decided that there is no basis for concluding that the Acquisition would substantially lessen competition in any relevant markets in Jersey.

### **Conclusion**

20. Based on the preceding analysis, the JCRA hereby approves the Acquisition under Article 22(1) of the Law.

**27 March 2013**

**By Order of the JCRA Board**