



## Final Notice

### Marathon Telecom Limited

### Decision not to exercise regulatory function

## Channel Islands Competition & Regulatory Authorities

**Document No: CICRA 18/38**

**13 September 2018**

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## 1. Introduction

1.1 This paper constitutes the Final Notice (**FN**) of the Jersey Competition Regulatory Authority's (**JCRA**) decision not to revoke the Class II Telecoms Licence (the **Licence**) issued to Marathon Telecom Limited (**Marathon**) under the Telecommunications (Jersey) Law 2002 (the **Law**).

1.2 The JCRA has concluded that whilst Marathon failed to act on a Direction issued by the JCRA in breach of Condition 4 of the Licence, Marathon has subsequently rectified the breach and the JCRA therefore does not currently intend to revoke the Licence.

1.3 It follows the JCRA's Initial Notice (**IN**) of 19 June 2018 (document 18/27). This paper discusses key aspects of the responses and sets out the JCRA's decision not to proceed with the revocation of the Licence.

## 2. Legislation and Licensing

2.1 The Telecommunications (Jersey) Law 2002 (the **Jersey Law**) prohibits a person from operating a telecommunications system in Jersey unless that person has a telecommunications licence. The body authorised to grant telecommunications licences in Jersey is the JCRA. Such conditions may be included in a telecommunications licence as the JCRA considers necessary and desirable.

2.2 Marathon holds a Class II Telecoms Licence dated 5 December 2016, having initially been granted a Class I Telecoms Licence in August 2010. Marathon also holds a Wireless Telegraphy Licence for spectrum in Jersey, issued by Ofcom on the recommendation of the JCRA. Marathon's registered address is 28 Halkett Street, St Helier, Jersey, JE2 4WG, Company Number 93007.

2.3 Article 19 of the Law provides that where, in the opinion of the JCRA, a licensee is in contravention of a condition contained in a licence the JCRA shall give a Direction to the licensee to take steps to ensure compliance with that condition. Article 20 of the Law provides for revocation of a licence where the licensee has failed to comply with a Direction given under Article 19.

2.4 Article 11 of the Law lays out the procedure for the exercise of such a specified regulatory function. Before exercising a specified regulatory function, Article 11(1) of the Jersey Law requires the JCRA to give initial notice. Article 11(4) provides that if any representations or

objections are made within the specified period, the JCRA shall consider them and give final notice.

2.5 The Final Notice may state either (i) that the JCRA intends to exercise the specified regulatory function or (ii) that the Authority does not intend to exercise the specified regulatory function.

### 3. Initial Notice

3.1 On 19 June 2018, CICRA issued an IN that it proposed to revoke the Licence issued to Marathon under Article 20 of the Law. The JCRA had concluded that Marathon was in breach of its Licence by failing to comply with a Direction given on 29 May 2018 (the **Direction**) under Article 19 of the Law.

3.2 The IN was as follows:

#### MARATHON TELECOM LIMITED

##### Revocation of a Telecommunications Licence in Jersey

The Jersey Competition Regulatory Authority (**JCRA**), in exercise of its powers under Article 20 of the *Telecommunications (Jersey) Law 2002* (the **Law**), intends to revoke the Class II licence granted to Marathon Telecom Limited (**Marathon**).

Marathon has failed to respond to a Direction made under Article 19 of the Law. This Direction required provision of certain information and documents under Condition 4 of the Licence.

Copies of the existing licence arrangements and this notice are available for inspection at the offices of the Channel Island Competition and Regulatory Authorities (**CICRA**) at 2<sup>nd</sup> Floor, Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF, between the hours of 09:00 and 17:00 Monday to Friday.

It is intended that the licence will be revoked on 18 July 2018.

Written representation or objections to the exercise of this specified regulatory function may be made by letter and delivered to 2<sup>nd</sup> Floor, Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF or by email to info@cicra.je on or before 17.00 17 July 2018.

**Document: CICRA 18/27**

**19 June 2018**

3.3 Four responses were received to the Initial Notice, from Marathon Sure (Jersey) Limited, JT (Jersey) Limited and Airtel-Vodafone Limited. The JCRA then sought further information from Marathon to clarify and confirm the information it had submitted as part of its response.

## 4. Responses to the Initial Notice

4.1 Article 11(5) of the Jersey Law requires that, *inter alia*, an FN shall contain a summary of any representations and objections to the IN and details of the JCRA's response with sufficient content to enable it to be understood and the reasons for it to be known.

4.2 In response to the IN, an individual representing Marathon contacted the JCRA and advised that Marathon had appointed him as a local advisor 'to help transition their business to the next stage', and confirmed that 'going forward, Marathon's priority is to cooperate fully with CICRA<sup>1</sup> in a timely manner and provide the information requested in a transparent accurate manner'.

4.3 In a section titled 'Additional Information – Confidential' the letter received from that local advisor states:

[✂]

4.4 The JCRA also received a non-confidential response to the IN from Sure, as follows:

*Sure (Jersey) Limited ("Sure") is responding to the Initial Notice Reference 18/27, which was issued on the 19th June 2018 regarding CICRA's intention to revoke Marathon Telecom Limited's ("Marathon") Class 11 Licence.*

*Sure is fully supportive of this proposed action. It appears to us that Marathon has not used its allocation of spectrum for several years and its lack of response to CICRA's requests to engage in a spectrum reconfiguration exercise is preventing CICRA from taking actions in line with its 2014 Statement of Intent. In particular, by not engaging with CICRA, Marathon is preventing the more efficient use of spectrum by other operators, including Sure who has been awarded an additional allocation of 2.1GHz spectrum but is currently being prevented from using it until the reconfiguration takes place. Marathon's actions are therefore against the interests of Jersey consumers. We also note that Marathon is in breach of other Licence Conditions, which further reinforces our support for CICRA's intended action.*

4.5 A response was also received from JT:

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<sup>1</sup> The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. The JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

*Marathon's LinkedIn profile describes their services as outbound roaming services and M2M global roaming solutions in 213 countries. It is our understanding that Marathon are not active in the Jersey market and therefore not providing any benefits to Jersey consumers. The JCRA provided Marathon with a licence and spectrum was allocated in the 1.9GHz and 2.1GHz frequencies to satisfy the JCRA's duties under the Law, however it appears that Marathon are not providing services in Jersey.*

*Spectrum is a scarce resource and should be used to provide services to consumers. The JCRA provided spectrum to Marathon to operate services in Jersey however we are not aware of any services being offered by Marathon in the Jersey market and therefore there are no benefits to Jersey consumers.*

*For the reasons detailed above we support the JCRA's proposal to revoke Marathon's licence.*

4.6 There was also a confidential response from Airtel-Vodafone:

[~~X~~]

## **5. Marathon Response to the Direction**

5.1 In addition to the response to the IN, Marathon also provided a response to the Direction which resulted in the issue of the IN. While this response is beyond the deadline in the Direction, given the nature of the IN, the JCRA notes the response below.

5.2 General Comment: 2.1MHz Spectrum Allocation

*Marathon acknowledges the requirement for the efficient use of Spectrum and will cooperate fully with CICRA in order to make use of a more efficient band in line with the 2014 statement of intent.*

*Marathon does not require a large amount of spectrum on Jersey and therefore can be flexible at a higher band where there is less demand. We would ask CICRA to suggest which band would be best applicable and we would anticipate a 5MHz slot.*

*Section 4.4 states. 'JCRA wrote again in March 2018 enclosing a copy of the letter, and seeking clarification on information received that Marathon may be in the process of being sold. As the Licence is personal to the Licensee, it cannot be transferred without the written consent of the JCRA'.*

*Answer. Marathon is aware of the requirement to notify in the event of change of ownership and will comply should this type of event occur. To date the ownership remains the same and there are plans to provide additional investment into the company.*

5.3 Details of any Change of Control of Marathon Telecom which may have taken place in the past year as defined in Licence Condition 2.5 to 2.7

*Answer. To date the ownership of Marathon Telecom Ltd remains the same. The management is discussed in ii below.*

5.4 Confirm that the administration and management of the running of the Licensed Telecommunications System is conducted from Jersey (Licence Condition 2.10)

*Answer. Currently the technology is located in 9 Racks on Jersey. There are currently no plans to relocate this equipment. The administration and management of this equipment is outsourced to Airtel-Vodafone for first line support. System Vendor support (CRM, Billing, HLR etc) is outsourced outside of Jersey. Business administration and management for Marathon will be conducted by myself locally as of July 10th 2018. This is backed up by a team in London.*

5.5 A comprehensive report on its use of radio spectrum, and the anticipated future use (Licence Condition 4.2)

*Answer. Radio spectrum is currently not used. Future anticipated requirements are minimal – hence the flexibility with band selection now and in the future.*

5.6 Information on what steps it would need to make to re-plan spectrum usage in the 2.1 GHz band in order that the JCRA can complete the 2014 Statement of Intent for this spectrum band (Licence Condition 20.4).

*Answer. Marathon does not anticipate a complex business or technical process with regards spectrum re-allocation and Marathon is happy to work with JCRA in a flexible timely manner in order to re-allocate spectrum. We anticipate this process taking days rather than weeks.*

*Section 4.8, as stated there are currently no plans to sell Marathon Telecom. In the event that this looks likely, Marathon Telecom will inform CICRA formally.*

5.7 The JCRA sent a further request to Marathon for specific copies of company documentation to assist with its consideration of the responses made. Some, but not all, of the information requested was provided.

## **6. JCRA Consideration**

6.1 Although the response to the Direction came after the deadline for response from Marathon and as part of its response to the Initial Notice, this is discussed below.

### **Administration and Control**

6.2 The first two questions in the Direction related to the administration and control of Marathon. It is of utmost importance to the JCRA that it has an effective means for maintaining contact with its licensees, and also to understand the nature of the businesses being carried out within the jurisdiction, including the use of valuable spectrum. There are clearly numerous and wide-ranging issues where it is not possible to maintain meaningful contact.

6.3 There were numerous attempts to contact Marathon with significant issues encountered communicating with the company over the past 10 months, until very recently with the issue of the IN.

6.4 Other than the appointment of an advisor in Guernsey, there was no assurance of a local presence for the company in Jersey other than the registered office. Very little information has been provided in the response about the business which is being carried out in Jersey or how the business will be developed. It is also of note that the company has not declared any 'regulated turnover' in Jersey; that is, gross revenue paid to the licensee in respect of all telecommunications services for which a telecoms licence is required.

6.5 Without the ability to communicate with a licensed operator and where a licensee disregards its obligations over an extended period of time, CICRA cannot meet its duties under the Law including the duty to promote efficiency, economy and effectiveness in commercial activities connected with telecommunications in Jersey.

6.6 Some more detailed documentation has since been provided by Marathon with regard to the administration of the company, and CICRA intends to continue to investigate this issue to monitor the current and future administration and management of the business in Jersey.

### **Spectrum Management**

6.7 CICRA has set out a number of objectives to guide process and criteria for joint allocation of spectrum in the Channel Islands, including to further consumers' interests in the short and long term, having regard to prices and costs, and the availability and range of services to consumers' different needs. The objectives also include the need to seek to ensure the processes and criteria adopted by CICRA are consistent with Ofcom's duties, including the duty to secure the optimal use of wireless telegraphy of the electromagnetic spectrum. This last objective is necessary to ensure that Ofcom is able to act on CICRA's recommendations, as it needs to be made in furtherance of similar objectives to those assigned to Ofcom.

6.8 Marathon has confirmed that it does not use the spectrum allocated to it and that its future requirements are minimal. It has also subsequently agreed to the reallocation of existing spectrum as outlined in the CICRA 2014 Statement of Intent.

### **Response to the Initial Notice**

6.9 The JCRA has also considered the responses received from Airtel-Vodafone, JT, Marathon and Sure, and assessed the options available to it by either exercising the specified regulatory function and revoke the Licence or by cancelling the IN.

6.10 The response from Marathon to the Direction came after the deadline for action, and after many months of attempting to contact the Licensee. However, this has been taken into account by the JCRA, along with the follow up request for documentation, as part of its consideration and in making this decision.

## **7. Final Notice**

7.1 In line with Article 11(5)(e)(ii) of the Jersey Law the JCRA does not intend to exercise its regulatory function by taking the action proposed in the Initial Notice, CICRA 18/27.