



# Telecommunications (Jersey) Law 2002

## Case T-063: Network Sharing Guidelines: Consultation Paper

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## 1. Background and structure of this Document

- 1.1 Mobile communications services are vital to everyone who lives in, or visits, Jersey. Ensuring that mobile services are provided with effective consumer choice and also that infrastructure to provide mobile services is used efficiently is a key responsibility of the Jersey Competition and Regulatory Authority (**Authority**). One aspect of this is the potential sharing by operators in Jersey of elements of their networks in relation to the roll-out of 5G (and future technologies) for reasons of cost, efficiency and respect for the environment (by avoiding a proliferation of network masts on the Island).
- 1.2 On 6 July 2021, following the suspension of an investigation into the conduct of JT (Jersey) Limited (**JT**) and Sure (Jersey) Limited (**Sure**) in relation to arrangements for network sharing, the Authority issued a Final Notice to modify the licences of JT and Sure (**Notice**).<sup>1</sup> The Authority will shortly issue an Initial Notice (**OLO Initial Notice**) to modify the licences of the other Class II licensed operators to reflect similar provisions, and the consultation period relating to this document includes the period for making representations under the OLO Initial Notice. The modifications impose obligations to notify the Authority of proposed network sharing arrangements<sup>2</sup> and to adopt an internal compliance regime to ensure awareness of, and compliance with, the provisions of the Competition (Jersey) Law 2005 (**Competition Law**) when contemplating such arrangements.
- 1.3 The concern of the Authority is therefore to balance the undoubted benefits of operators sharing network infrastructure and resources against the need to prevent such arrangements being anti-competitive, to the detriment of consumers and other operators in Jersey. Striking this balance is not a unique challenge to Jersey. Most major jurisdictions with competitive mobile markets need to consider the question of how best to ensure that the right balance between cooperation and competition is struck in the best interests of consumers. To this end, the Notice also set out the Authority's intention to introduce guidelines relating to the sharing of network elements. In this document, the Authority outlines its proposed guidelines on the sharing of network elements (**Guidelines**).
- 1.4 The Authority's approach to the Guidelines has been influenced by three factors, some of which post-date the Notice:
  - (a) the proposed introduction into Jersey law of the substance of the UK's telecommunications security regime, and in particular the requirement to remove and replace network elements manufactured by designated manufacturers (such as ZTE or Huawei) and the timing and cost implications for operators;
  - (b) the decision of the Minister to recommence the process of allocating spectrum for 5G roll-out in Jersey, leading to the Authority's updated Statement of Intent<sup>3</sup>, due to be published on 28 June 2022 in relation to such process, and in particular the limited requirements under such Statement as to:

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<sup>1</sup> [Final Notice: Licence Modifications affecting JT \(Jersey\) Limited and Sure \(Jersey\) Limited, 6 July 2021](#).

<sup>2</sup> See the definition of 'Network Sharing Agreement' and related definitions in the Notice and the OLO Initial Notice (when published) – the term 'network sharing arrangement' in this note includes but is not limited to such Agreements

<sup>3</sup> The Statement of Intent anticipates the award of up to three principal allocations of up to 100MHz of spectrum and that these will be awarded to existing mobile operators in Jersey. As each has existing infrastructure, the expectation is that infrastructure-based competition will continue, which may also encourage network sharing

- (i) the services to be provided; and
- (ii) the scale, geographical footprint and timing of deployment of such services; and
- (c) the need to avoid creating potentially confusing parallel processes for notifying the Authority of Network Sharing Agreements under the provisions of the modified licences and, where applicable, under Article 9(2) of the Competition Law.

1.5 Accordingly, the Guidelines are not prescriptive as regards preferences for the potential nature of network sharing arrangements but are indicative of the outcomes which the Authority would wish to see. They are drafted on the basis that the additional conditions set out in the OLO Initial Notice are in force, as set out in the Guidelines.

1.6 This document is structured as follows:

Section 2	Basis for the Guidelines
Section 3	Next steps
Annex A	Proposed Guidelines

## 2. Basis for the guidelines

2.1 The Authority exercises a dual role as competition authority and a telecommunications regulator. Consequently, the Authority has a duty to promote competition among persons engaged in commercial activities connected with telecommunications in Jersey. Further, it is expected to perform its function in the manner best calculated to promote efficiency in the economy and effectiveness in commercial activities connected with telecommunications in Jersey. By publishing the Guidelines, the Authority is fulfilling its duties under the Telecoms Law and the Competition Law.

2.2 Pursuant to the Notice, on 4 August 2021 the Authority issued each of JT and Sure with modified licences incorporating additional conditions and, in the accompanying [News Release](#), added that it would:

*‘...publish guidelines on fair network sharing...’*

2.3 The additional conditions contained a requirement that any future network sharing arrangement should:

*‘...comply with any relevant guidelines issued by the Authority that are in effect’*

2.4 Accordingly, by publishing these Guidelines, the Authority is:

- (a) acting consistently both as regards its expectations of JT and Sure and with its stated intentions; and
- (b) setting out for the Licensees, in addition to JT and Sure, the intended outcomes that network sharing should achieve and the Authority’s approach to considering whether any network sharing arrangements meet the Authority’s regulatory objectives, should an investigation into whether a licensee has contravened either of the additional conditions be undertaken.

2.5 In preparing these Guidelines, we have sought to align the position in Jersey with accepted regulatory best practice in other jurisdictions, especially in relation to other European markets. Consequently, we have had regard to the [BEREC Common Position on Infrastructure Sharing](#).

## Status of Guidelines

The Authority has determined that it would be disproportionate to impose on the OLOs a direct obligation to ensure that any network sharing arrangements comply with the Guidelines. Consequently, the licence modifications proposed in the OLO Initial Notice omit this obligation, which was imposed on JT and Sure.

In an investigation by the Authority into whether an OLO has complied with its obligations under the licence modifications:

- failure to comply with the Guidelines may tend to establish non-compliance with the relevant licence condition;
- compliance with the Guidelines may tend to establish compliance with the relevant licence condition.

## 2. Next steps

- 2.1 The Authority invites written views and comments on the issues and questions raised in this document. All responses to this consultation should be submitted in writing, clearly marked 'Network Sharing Guidelines Consultation Response' and received by the Authority before 17:00 on 15 August 2022. Submissions can be sent by email to [info@jcra.je](mailto:info@jcra.je) or alternatively in writing to:

Jersey Competition Regulatory Authority  
2nd Floor Salisbury House  
1-9 Union Street  
St Helier  
Jersey JE2 3RF

- 2.2 It would be helpful if any response includes direct answers to the questions asked in this document. It would also help if you can explain your views and how the Authority's proposals would impact on you, supported by any quantitative or qualitative evidence that you hold.

## ANNEX A: Proposed Guidelines

### 1 Introduction and objectives

- 1.1 The purpose of these Guidelines is to facilitate operators in their design and implementation of network sharing arrangements by clearly outlining the objectives that the arrangements must achieve so as to comply with the provisions of the licence conditions relating to Network Sharing and a Compliance Programme, as set out below for reference.
- 1.2 The Guidelines set out the background and legal basis for their adoption and summarise the Authority's regulatory objectives in relation to the licence provisions.

### 2 Background and regulatory framework

- 2.1 All operators who run a 'telecommunications system' in the Bailiwick of Jersey must have a licence from the Authority, granted under the Telecommunications (Jersey) Law 2002 (**Telecoms Law**). The Telecoms Law allows the Authority to impose conditions in such licences, including:
  - (a) requiring the licensee to provide any information as specified by the Authority; and
  - (b) relating to competition in relation to telecoms services and telecom infrastructure.
- 2.2 The Authority, pursuant to its powers under Article 18 of the Telecoms Licences, has modified the licences of all holders of Class II and Class III Licences to contain the following provisions. As the numbering varies between licences, in these Guidelines they will be referred to as Conditions X and Y.

#### [X] **NETWORK SHARING**

- X.1 *This Condition applies to any Network Sharing Agreement that the Licensee intends to enter into.*
- X.2 *If the Licensee intends to enter into any Network Sharing Agreement it shall first so notify the Authority in writing, providing reasonable details of the proposed arrangement and disclosing the identity of the Licensed Operator with which it proposes to enter into such agreement. On written request from the Authority, the Licensee shall provide the Authority with the draft Network Sharing Agreement. The Authority shall keep information received from the Licensee pursuant to this Condition confidential to it and its advisors, save where the Authority is compelled by law to disclose such information.*
- X.3 *The Licensee shall ensure that Network Sharing must:*
  - (a) *comply with the Competition (Jersey) Law 2005 (the "2005 Law"); [and]*
  - (b) *not result in a substantial lessening of competition between the Licensee and any other person (unless exempted or otherwise permitted by the Law and/or the Authority).[; and]*
  - (c) *comply with any relevant guidelines issued by the JCRA that are in effect.]*  
*[Text in green applies to JT (Jersey) Limited and Sure (Jersey) Limited only – see explanation in the covering document and in the OLO Initial Notice, when published]*
- X.4 *This Condition [X] is without prejudice to the Licensee's obligations under any other applicable law, including the 2005 Law.*
- X.5 *In this Condition:*

- (a) “Network Sharing” means, in relation to any element of the Mobile Telecommunications Network, the use (including the establishment, operation or maintenance) of that element by a Licensed Operator for or in relation to the public telecommunication system operated by that Licensed Operator;
- (b) “Network Sharing Agreement” means any contract, arrangement or understanding providing for or in relation to Network Sharing; and
- (c) “element” means any part of the infrastructure or service used to support Mobile Telecommunications Services (regardless of whether it is also used to provide other services) including wholesale services such as roaming or the use of spectrum on a shared basis, the use of electronic components, and/or access to or use of passive infrastructure (such as sites or towers).

**[Y] COMPLIANCE PROGRAMME**

Y.1 Within three months of this Condition coming into effect, the Licensee will adopt, implement and maintain an internal programme encompassing risk management and compliance management (the ‘compliance programme’) in accordance with this Condition and shall confirm to the Authority in writing that it has complied with this Condition, giving reasonable details of such compliance programme.

Y.2 The compliance programme will:

- (a) adopt good practice in relation to compliance programmes that are relevant and proportionate to the Licensee;
- (b) include at least the obligations set out under this Licence, the Telecommunications (Jersey) Law, and the 2005 Law;
- (c) be reviewed on a regular basis and no less than once annually by the Licensee’s management body to assess the delivery of the programme and compliance outcomes; and
- (d) comply with any relevant guidelines issued by the Authority that are in effect.

Y.3 Not less frequently than annually, and within 7 days of a written request from the Authority, the Licensee shall provide to the Authority a written statement from or on behalf of the Licensee’s management body that the Licensee is, and at all times since the last such statement (or the date of adoption of the compliance programme in the case of the first such statement) has been, in compliance with the compliance programme or setting out any material failures by the Licensee to comply with such programme.

2.3 These Guidelines set out the approach that the Authority will take when considering network sharing arrangements in the context of an investigation into whether a licensee has contravened either of the above conditions of its licence and its regulatory objectives under the Telecoms Law.

**Relationship with competition law**

2.4 Licensees should note that any Network Sharing Agreement must comply with the provisions of the Competition (Jersey) Law 2005 (**Competition Law**). Please see the Authority’s website and, in particular:

- [Competition Guideline 1: Anti-Competitive Arrangements](#)
- [Competition Guideline 2: Cartels](#)
- [Competition Guidelines 6: Applications for Exemption and Guidance](#)

- 2.5 **Notification under Condition X.2 does not constitute an application for exemption from the prohibition set out in Article 8(1) of the Competition Law.** The parties should seek independent legal advice if there is any doubt as to compliance with the Competition Law.

### 3 Regulatory objectives

- 3.1 The Authority's three overarching regulatory objectives in relation to mobile network sharing arrangements are:

- (c) effective competition;
- (d) better connectivity; and
- (e) the efficient use of spectrum.

- 3.2 Below we provide more detail on each of the overarching objectives. The discussion then moves to the factors we will take into account if considering network sharing arrangements in order to achieve and/ or maintain our overarching regulatory objectives.

#### Effective competition

- 3.3 The goal of securing effective competition in the mobile communications market is principally achieved either through infrastructure-based competition or through service-based competition. As with any consideration of competition, the consideration of a network sharing arrangement will require consideration of the facts of the matter in the round, and it is not possible to be prescriptive about the type of arrangements that might be compatible with effective competition. The following points provide a broad sense of the Authority's intended approach, subject to the evidence arising in any particular instance.
- 3.4 It is anticipated that infrastructure-based competition will be the principal avenue for competition in Jersey as regards the roll-out of 5G (and future) services. However, the significant investment required by each operator (depending on the scale and timing of its implementation of 5G operations) and the pressures on land development on Jersey militate in favour of network sharing.
- 3.5 Service-based competition is unlikely to deliver an expansion in the Island's network coverage footprint. This is because, in the context of network sharing, the only option offered by service-based competition, is through the means of roaming arrangements or via a mobile virtual network operator structure (whether contractual or by means of a special purpose vehicle).

#### Better connectivity

- 3.6 The goal of improved connectivity can be described as the most consumer-focused of the regulatory objectives because achieving this objective will deliver the most tangible benefits for consumers.
- 3.7 The Authority will tend to consider network sharing arrangements which secure real measurable outcomes for improved connectivity as more likely to meet the regulatory objective of better connectivity. There are various outcomes that the Authority will consider in reaching its consideration – for example, improved quality of service is a positive outcome which would tend to show that this regulatory objective has been achieved. This can be measured in a number of ways, such as throughput and service continuity. An additional measure here could be other mission-critical performance parameters such as low latency and reliability, e.g. the type of secure and reliable connection needed for connecting and enabling automated driving on roads.

### **Efficient use of spectrum**

- 3.8 Spectrum is a scarce resource. Therefore, to the extent that a sharing arrangement encourages the efficient use of spectrum and enables entry into the mobile communications market and expansion by mobile operators, the arrangement will be more likely to be considered to promote the regulatory objective of efficient use.

*Question 1: Do you agree with the proposed scope of the Guidelines?*

*Question 2: Do you have any comments on the regulatory objectives the Authority will pursue when considering compliance with Conditions X and Y?*

## **4 Factors for consideration**

- 4.1 In considering whether the overarching regulatory objectives have been met in the context of Conditions X and Y, the Authority will have regard to the specific factors noted below. This is not an exhaustive list; there may be other relevant factors that require consideration in a specific case. When notifying the Authority under Condition X.2, the licensee should briefly summarise how these factors apply to the relevant Network Sharing Agreement.

### **Evolution of competitive market forces**

- 4.2 All network sharing arrangements can be anticipated to have an impact on competition. We recognise that the extent to which competition is affected will vary depending on the nature of the arrangement and the market context in which it operates

### **Market shares/competitive forces**

- 4.3 Market sharing arrangements have the potential to change the market structure and therefore can have negative impacts on competition and the potential to breach competition law. This is particularly the case where one or more of the parties to the arrangement already enjoys a strong position in the market.

### **The number of operators involved in the sharing**

- 4.4 Closely linked to the competitive force point made above is the question of the number of operators involved in the network sharing arrangement. It is the Authority's view that the higher the number of operators taking part in a network sharing arrangement, the more likely it is that the arrangement will raise competition concerns. On the other hand, it is also relevant to consider the position of, and impact upon the competitive threat from, any operators who are not included in the network sharing arrangement.

### **The technologies involved**

- 4.5 We will consider what technologies are involved, and whether on all or only some technologies are included. Competitive technologies (in particular 5G and beyond) require a substantial investment and so network sharing arrangements are likely to be instrumental in securing the deployment of these technologies.

### **The time frame**

- 4.6 Temporary sharing arrangements (for example in relation to enabling a greater coverage footprint or quality of service pending further roll-out of individual infrastructure) will be viewed as having a short term and therefore more limited impact on competition than a permanent sharing arrangement.



### **Feasible level of competition**

- 4.7 The Authority will have regard to how much and what type of competition can realistically expected to emerge in light of Jersey's specific characteristics.

### **Type of sharing**

- 4.8 As mentioned above, the Authority's aim is to improve the overall quality of service in mobile telecommunications within Jersey. The Authority has no inherent preference for or against passive or active sharing.

### **The level of information sharing between parties**

- 4.9 In general, network sharing arrangements necessarily require parties to share information with one another (at some level). This has the potential to be problematic from a competition law perspective if operators have access to, for example, information about their competitors' deployment plans or anticipated volumes of business.
- 4.10 Consequently, in the context of infrastructure sharing arrangements, information sharing should be restricted to only the information which is indispensable to the effective functioning of the arrangement and to the persons necessary to the proper functioning of the shared network. Information relating to issues such as prices, strategy and planning should be strictly off limits. Put simply, operators must ensure that network sharing arrangements are compliant with competition law and consider how to ensure that any sharing of information is undertaken in a way that preserves the competitive state of the market.

### **Reversibility and contractual/corporate implementation**

- 4.11 The extent to which the network sharing arrangement is reversible and the way in which the parties choose to implement the contract are significant factors which will be given consideration<sup>4</sup>.

***Question 3: Do you agree with the assessment factors that the Authority will have regard to when assessing a network sharing arrangement?***

***Question 4: Are there any additional factors that you believe would be relevant?***

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<sup>4</sup> For example, whether the arrangement is by way of contract only or envisages the incorporation of a special purpose vehicle with an indefinite duration