



# Telecommunications (Jersey) Law 2002

Case T-030 - Initial Notice:

Proposed Licence Modification affecting:

Clear Mobitel (Jersey) Ltd

Home Net Limited

Jersey Airtel Limited

Newtel Ltd

Document No: JCRA 22/49

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Deadlines for representations: 17:00 on 15 August 2022

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## 1. Executive Summary

1.1 The Jersey Competition Regulatory Authority (the **Authority**), is issuing this Initial Notice of its intention to exercise a specified regulatory function to modify:

- (a) the Class II licence granted to Clear Mobitel (Jersey) Limited (**CMJ**) on 16 November 2009 (the **CMJ Licence**);
- (b) the Class II licence granted to Home Net Limited (**HN**) on 27 January 2014 (the **HN Licence**);
- (c) the Class II licence granted to Jersey Airtel Limited (**Airtel**) on 1 September 2015 (the **Airtel Licence**); and
- (d) the Class II licence granted to Newtel Limited (**Newtel**) on 28 August 2018 (the **Newtel Licence**)

all of which were issued under the Telecommunications (Jersey) Law 2002 (the **Telecoms Law**) and being licences to run telecommunications systems and provide telecommunications services within, to and from the Bailiwick of Jersey. CMJ, HN, Airtel and Newtel are collectively referred to as the **Licensees** and the CMJ Licence, the HN Licence, the Airtel Licence and the Newtel Licence are collectively referred to as the **Current Licences**.

1.2 The proposed modifications will take the form of new licence conditions, attached to this Notice (**Licence Conditions**). The Licence Conditions place requirements on Licensees with regard to network sharing and compliance.

1.3 This Initial Notice sets out the intention of the Authority to exercise such specified regulatory function. In due course, the Authority may issue a Final Notice or a fresh Initial Notice if responses are received, following the process outlined in Article 11 of the Telecoms Law.

## 2. Background and structure of this Document

2.1 This document sets out the modifications which the Authority intends to make, having taken account of its investigation (**Investigation**) under Article 26(1) of the Competition (Jersey) Law 2005 (the **Competition Law**) into the conduct of JT (Jersey) Limited (**JT**) and Sure (Jersey) Limited (**Sure**) (and others<sup>1</sup>), as set out in its Case Opening Statement of 4 July 2019 and Statement of Objections of 20 January 2020<sup>2</sup>. The Investigation related to the arrangements between JT and Sure (and others) for sharing network elements in connection with the roll-out of 5G services on Jersey.

2.2 On 31 March 2021 the Authority issued an [Information Notice](#) stating that the Investigation would be closed without a decision, in the light of certain steps JT and Sure had each made in relation to ensuring that any future sharing of network elements would be in compliance with the Competition Law. Those steps included agreeing the text of two additional conditions (**Additional Conditions**) and to their incorporation into their respective licences under the Telecoms Law<sup>3</sup>.

2.3 In the Information Notice, the Authority stated:

*‘...that it intends to pursue a consultation process with the aim of introducing the same provisions into the licences of **other telecoms providers on Jersey**.’ (emphasis added)*

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<sup>1</sup> This refers to other members of their respective groups

<sup>2</sup> Case C1471GJ

<sup>3</sup> Case T-038

2.4 On 4 August 2021 the Authority issued each of JT and Sure with modified licences incorporating the Additional Conditions and, in the accompanying [News Release](#), reiterated the intention set out in paragraph 2.3 and added that it would:

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

2.5 Accordingly, as anticipated in the statement in paragraph 2.4, on 23 June 2022 the Authority issued a [Consultation Paper](#) (**Consultation Paper**) setting out proposed guidelines (**Network Sharing Guidelines**). It is anticipated that, following consultation and consideration by the Authority of any comments received, that the Network Sharing Guidelines (as may have been amended as a result of the consultation) will be adopted on or about 13 September 2022.

2.6 The Authority has formed the views that:

- (a) such provisions should be introduced only into the Class II licences of the Licensees, as these licences refer to persons running (or licensed to run) a Public Telecommunications System in the Bailiwick of Jersey; and
- (b) as further explained in paragraph 3.7, the obligation in the Additional Conditions relating to certain guidelines would be overly burdensome on the Licensees and should be omitted.

2.7 The document is structured as follows:

Section 3	Outlines the legislative and licensing basis for this Initial Notice
Section 4	Sets out the benefits of the Licence Conditions
Section 5	Sets out the next steps

### 3. Legislative and Licensing Background

3.1 The Authority has a dual role:

- (a) as **Competition Regulator** it ensures that there are healthy commercial markets for goods and services within Jersey, for the good of businesses and consumers on the island, by, amongst other things, investigating potential breaches of the Competition Law; and
- (b) as **Telecoms Regulator** it regulates providers of telecommunications services, pursuant to the Telecoms Law. It also regulates other entities on Jersey, which are not relevant to this Initial Notice.

3.2 As noted above, in exercising its role as Competition Regulator the Authority determined that the Investigation could be closed without a decision on the basis that JT and Sure agree to the Additional Conditions.

3.3 The mechanism for incorporating the Additional Conditions in JT and Sure’s respective licences was by way of the Authority, as Telecoms Regulator, modifying those licences pursuant to Article 18 of the Telecoms Law:

*(1) The Authority may, of its own motion or on the application of any person, modify any condition contained in a licence by virtue of Article 16.*

...

*(3) The power to modify a condition contained in a licence includes the power to insert a new condition ... but any new condition ... –*

*(a) may only be a condition that a licence may contain by virtue of Article 16; and*

(b) shall be taken, as from the date when the modification takes effect, to be a condition contained in the licence by virtue of that Article.

3.4 Article 16 of the Telecoms Law allows the Authority to include within licences, conditions, inter alia:

*requiring the licensee to provide to the Authority, in the form and at the times required by it, such documents, accounts, estimates, returns or other information relating to activities conducted by the licensee under a licence as the Authority may specify; - Article 16(1)(f)*

*for the prevention or reduction of anti-competitive behaviour; - Article 16(1)(i)*

*[which relate to or impose requirements about] competition in relation to telecommunication services, telecommunication systems, apparatus and telecommunication equipment; - Article 16(4)(a)*

3.5 Consistent with its policy as outlined in the Information Note, the Authority intends to introduce the Licence Conditions into the Current Licences. The Authority considers that the Licence Conditions comply with the provisions of Article 16:

(a) Licence Condition X.2 is consistent with Article 16(1)(f), and also in accordance with Article 23(1) and Condition 4.1 of the Current Licences;

(b) Licence Condition X.3 is consistent with Articles 16(1)(i) and 16(4)(a);

(c) Licence Condition Y.1 is consistent:

(i) as it relates to the compliance programme, Articles 16(1)(i) and 16(4)(a); and

(ii) as it relates to reporting to the Authority, Article 16(1)(f), and also Article 32(1) and Current Licence Condition 4.1.

3.6 The Authority imposed, as part of the Additional Conditions, an additional sub-paragraph (c) in the equivalent of Licence Condition X.3:

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

3.7 The Authority decided that it was appropriate to impose this additional condition on JT and Sure in the context of the Investigation. However, in the context of the Licensees, the Authority believes that it would be disproportionate to include such a condition as part of the Licence Conditions. As stated in the Consultation Paper, the Guidelines will have evidential value in investigations of compliance with Licence Conditions X and Y.

3.8 The modifications must be effected by the exercise of the Authority’s right as Telecoms Regulator under Article 18(1) and Condition 16(1) of each Current Licence to modify its terms. This constitutes the carrying out of a ‘specified regulatory function’ and the Authority is required to follow the procedure set out in Article 11 of the Telecoms Law.

## 4. Licence Conditions

4.1 The Licence Conditions will provide for clear obligations on the Licensees to ensure that any use of shared assets or networks is fully compatible with healthy competition, benefiting consumers through lower prices and faster roll-out of new technology.

4.2 In relation to Article 11(2)(b), as the Licence Conditions are additions to the Current Licence, there is no condition ‘before modification’ but the proposed new Licence Conditions are attached to this Notice; and this Notice and its attachments are available for inspection on the Authority’s website at [www.jcra.je](http://www.jcra.je) and by request to [info@jcra.je](mailto:info@jcra.je).

- 4.3 It is intended that the Licence Conditions will be incorporated into each of the Current Licences on or about 13 September 2022.

## 5. Next Steps

- 5.1 This is Initial Notice of an intended exercise by the Authority of a specified regulatory function, that is to modify the Current Licences by incorporating the Licence Conditions into such licences. If representations are received before 17:00 on 15 August 2022 regarding the proposed exercise of such function, the Authority will consider them and will decide:
- (a) not to exercise such function;
  - (b) to issue a new Initial Notice; or
  - (c) to issue a Final Notice confirming the modification of the Current Licences.
- 5.2 If no responses are received before such time, the Final Notice effecting such modification will be made on or about 13 September 2021. At such time as the modification takes effect, it becomes binding on all parties.
- 5.3 Written representation or objections to the exercise of this specified regulatory function may be made by e-mail to [info@jcra.je](mailto:info@jcra.je) on or before 17:00 on 15 August 2022.

*By Order of the Authority*

12 July 2022

## Licence Conditions

### [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).
- 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.