



# Telecommunications (Jersey) Law 2002

Case T-030 - Final Notice:

Licence Modification affecting:

Clear Mobitel (Jersey) Ltd

Home Net Limited

Jersey Airtel Limited

Newtel Ltd

## Case T-063 – Notification of Adoption of Network Sharing Guidelines

Document No: JCRA 22/77

Date issued: 31 October 2022

Jersey Competition Regulatory Authority  
2<sup>nd</sup> Floor Salisbury House, 1-9 Union Street  
St Helier  
Jersey JE2 3RF  
Tel 01534 514990  
Web: [www.jcra.je](http://www.jcra.je)

## Contents

1. Executive Summary.....	1
2. Background to Additional Conditions .....	2
3. Background to the Guidelines.....	2
4. The Authority’s Response to the Airtel Response .....	3
5. The Authority’s Response to Mobitel .....	7
6. The Authority’s Response to JT.....	8
7. The Authority’s Response to Sure.....	11
8. Conclusions .....	13

## 1. Executive Summary

- 1.1 On 13 July 2022, the Jersey Competition Regulatory Authority (**Authority**) issued an Initial Notice (**Initial Notice**) of its intention to exercise a specified regulatory function to modify:
- (a) the Class II licence granted to Clear Mobitel (Jersey) Limited (**Mobitel**) 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 would take the form of new licence conditions, attached to the Initial Notice (**Additional Conditions**). The Additional Conditions place requirements on Licensees with regard to network sharing and compliance. The means of incorporating licence conditions into the respective Current Licences is by modification pursuant to Condition 6 of each of the Current Licences and Article 18 of the Telecoms Law. Article 11(1) of the Telecoms Law prescribes the procedure that must be followed to make licence modifications, including allowing a period of 28 days for representations to be made to the Authority in respect of the proposed exercise of the function.
- 1.3 The Authority received one response to the Initial Notice, from Airtel, which is attached as **Annex A**. We set out in Section 4 our views, having reviewed the representations received from Airtel.
- 1.4 The Authority has determined to issue this Final Notice, exercising a specified regulatory function by modifying the Current Licences by the addition, in each case, of the Additional Conditions. Such modifications shall take effect on 1 December 2022 and each Licensee has today been served with its modified licence.
- 1.5 On 23 June 2022 the Authority issued a Consultation Paper (**Consultation Paper**) setting out Network Sharing Guidelines (**Guidelines**) which it proposed to adopt and which are referred to in the Initial Notice and the Licence Conditions.
- 1.6 The Airtel response referred to above also contained comments on the proposed Guidelines and responses were received from Mobitel (**Annex B**), JT (Jersey) Limited (**JT**) (**Annex C**) and Sure (Jersey) Limited (**Sure**) (**Annex D**). We set out our views, having reviewed the comments received from each of the operators, in Sections 4, 5, 6 and 7.
- 1.7 In consequence of such review, the Authority has decided to make certain modifications to the initial Guidelines, as set out in Section 8, and the Guidelines as adopted are published today on the Authority's website. Such Guidelines are adopted on the date of this Final Notice and Notification.

## 2. Background to Additional Conditions

- 2.1 The Authority announced that the investigation under Article 26(1) of the Competition (Jersey) Law 2005 (**Competition Law**) into the conduct of JT and Sure (and others<sup>1</sup>) (**Investigation**), as set out in its Case Opening Statement of 4 July 2019 and Statement of Objectives of 20 January 2020<sup>2</sup>, would be closed without a decision.
- 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 the two 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)*
- 2.4 As set out on page 5 of the Consultation Paper, 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 Initial Notice omitted this obligation.
- 2.5 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...’*

## 3. Background to the Guidelines

- 3.1 As noted above, the Guidelines have been issued pursuant to the conclusion of the Investigation. As stated in the Consultation Paper:
- 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.*
- 3.2 The Telecoms Law requires the Authority to carry out its functions in such manner as it considers is best calculated to ensure that (so far as is reasonably practicable) telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as to satisfy all current and prospective demands for them. Consistent with this requirement, the Authority’s role includes:
- (a) Promoting competition among telecoms operators in Jersey, while minimising restrictions placed upon them;
  - (b) Promoting efficiency, economy and effectiveness in the commercial activities of telecoms operators;

---

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

<sup>2</sup> Case C1471GJ

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

- (c) Furthering the economic interests of Jersey; and
  - (d) Ensuring that telecoms operators have sufficient financial and other resources to conduct their activities.
- 3.3 Based on the above, the Authority believes that issuing these Guidelines in Jersey is consistent with its obligations and powers under the Law.

## 4. The Authority's Response to the Airtel Response

- 4.1 This response to Airtel forms part of the consultation exercise which relates to the Initial Notice and the Guidelines consultation. Insofar as Airtel's has made comments in the Airtel Response which refer to the Authority's final position in relation to the modifications to JT and Sure's respective licences, the Authority will only reply in so far as it is necessary to elaborate on its position in relation to the Initial Notice and/or the Consultation Paper. For example, Airtel's assertion at paragraph 4.1 of Airtel's Response that *"the amendments to the licence conditions in the Final Notice (for JT and Sure).... need to be amended and revisited"* is not relevant in the context of this exercise. A separate consultation on the modified licence conditions as they pertained to JT and Sure was undertaken prior to the Final Notice being issued on 6 July 2021. Airtel's response of April 2021 formed part of that consultation and its response was given due consideration by the Authority (see Appendix B of the July 2021 Final Notice (the **July 2021 Response to Airtel**)). Without prejudice to that prior consultation, the Authority will refer back to the July 2021 Response to Airtel but only in so far as it is necessary to elaborate on its position in relation to the Initial Notice and/or the Consultation Paper.

*Section 2 of the Airtel Response: Licence amendments and Guidelines fail to ensure compliance with law and fail to prevent anti-competitive and exclusionary behaviour.*

- 4.2 Airtel draw reference to the JCRA's News Release dated 21 August 2021 and to the July 2021 Response to Airtel in order to maintain that the *"Final Notice, the Initial Notice and the Guidelines fail to achieve the [JCRA's] stated aim"* of ensuring that network sharing must comply with competition law and not result in harm to competition. In particular:
- (a) Airtel considers that *"any network sharing arrangement that does not afford the opportunity for all network providers to be involved on an equal footing, is by its very nature, anti-competitive and exclusionary."*<sup>4</sup>
  - (b) Airtel maintain that *"any network sharing arrangement for which all operators are not offered the opportunity to participate in will not be tolerated by the JCRA."*<sup>5</sup> Its asserts that *"if a network provider is not offered an opportunity to participate in any network sharing arrangement, it is, by definition, an exclusionary arrangement. There can be no clearer form of exclusion than not having any opportunity to participate."*
  - (c) Airtel states that *"it would be impossible for Airtel or any other network provider to compete if, for example, JT and Sure were to enter into a network sharing arrangement alone and to the exclusion of any other network providers."*<sup>6</sup>
- 4.3 As a consequence, Airtel argues that the JCRA has set itself the stated intention of refusing any network sharing arrangements where those are between two parties and not offered to other network providers on a fair and even basis and objects to the fact that this purported intention is not reflected in the Additional Conditions and / or the Guidelines.

---

<sup>4</sup> Responses Received from Airtel Jersey Limited ("Airtel") dated 15 August 2022, paragraph 2.4

<sup>5</sup> Responses Received from Airtel Jersey Limited ("Airtel") dated 15 August 2022, paragraph 2.5

<sup>6</sup> Responses Received from Airtel Jersey Limited ("Airtel") dated 15 August 2022, paragraph 2.7

- 4.4 Airtel refers to the Body of European Regulators for Electronic Communications (“BEREC”) and its *Common Position on Mobile Infrastructure Sharing* document of 13 June 2019.<sup>7</sup> Particular reference is made to section 3.2.2(1)(a) of that document which details one of the parameters which the BEREC considers any national regulatory authority should take into account when assessing the impact on the market of network sharing agreements – namely, market shares/competitive forces. Airtel refer to this parameter for the purpose of demonstrating that the assessment of network sharing agreements is a “*matter for the NRA (the JCRA) to consider and should not be left to licensees to make their own assessment.*”<sup>8</sup>
- 4.5 Airtel also refers to a second parameter as set out in the same BEREC document relating to the number of operators involved in the network sharing. This parameter sets out the following rationale by way of example:
- “a sharing agreement of three operators out of four in the market should be cautiously assessed, because a large part of the market could jointly decide on infrastructure decisions, without an external force that is sufficiently strong to challenge/disrupt and to competitively constrain the operators on the shared infrastructure.”*
- 4.6 Airtel draws on this reference to conclude that “*any network sharing must therefore either allow every network provider the opportunity to be involved or otherwise it is exclusionary and anti-competitive.*”<sup>9</sup>

*The Authority’s Response to Section 2 of the Airtel Response*

- 4.7 A primary aim of the Additional Conditions as set out in the Initial Notice is to ensure that the respective licence operators improve their internal awareness of, and compliance with, competition law. This is consistent with the Authority’s dual roles as a competition authority and telecommunications regulator, to use all reasonable means to ensure knowledge of and compliance with competition law, for the benefit of all licensees and consumers.
- 4.8 The Authority has not asserted that network sharing is always pro-competitive. Rather, it has stressed that any network sharing must comply with competition law and not result in harm to competition. The Authority sees no basis for Airtel’s assertion that it must draft the Additional Conditions in such a way that they prescriptively mandate the terms of any network sharing agreement which a licensee may enter into in future. Furthermore, as referred to at paragraph 3.3 of the draft Guidelines, “*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.*” It would therefore be presumptive and disproportionate for the Guidelines to go so far as to state that the Authority will refuse any network sharing arrangements where those are between two parties and not offered to other network providers on a fair and even basis.
- 4.9 Instead, the Additional Conditions, supplemented by the Guidelines will provide operators and the Authority with reference points regarding conduct in relation to network sharing agreements and investigations and provide the Authority with greater flexibility and speed of action for undertaking investigations than merely relying on the application of *ex-post* competition law alone to inform its approach. Without fettering its discretion or pre-empting the outcome of any potential future review, these levers may well be employed by the Authority in the event that a network sharing agreement which prohibits operators outside of it from competing fairly is brought to the Authority’s attention.

---

<sup>7</sup>[https://www.berec.europa.eu/sites/default/files/files/document\\_register\\_store/2019/6/BoR\\_%2819%29\\_110\\_CP\\_Infrastructure\\_sharing.pdf](https://www.berec.europa.eu/sites/default/files/files/document_register_store/2019/6/BoR_%2819%29_110_CP_Infrastructure_sharing.pdf)

<sup>8</sup> Responses Received from Airtel Jersey Limited (“Airtel”) dated 15 August 2022, paragraph 2.10

<sup>9</sup> Responses Received from Airtel Jersey Limited (“Airtel”) dated 15 August 2022, paragraph 2.11

- 4.10 The Authority notes the references which Airtel draws to BEREC's *Common Position on Mobile Infrastructure Sharing* document in order to:
- (a) support the assertion that the analysis of network sharing agreements is a matter for the Authority and that it *"should not be left to licensees to make their own assessment,"*<sup>10</sup> and;
  - (b) conclude that *"any network sharing must therefore either allow every network provider the opportunity to be involved or otherwise it is exclusionary and anti-competitive."*<sup>11</sup>
- 4.11 The section of the Common Position on Mobile Infrastructure Sharing document from which both of these references are taken in fact sets out a non-exhaustive list of various different parameters which BEREC states as instructive for national regulatory authorities to consider when they are assessing network sharing agreements in order to achieve (amongst other objectives) effective competition. The Authority recognises the relevance of these parameters and notes that they are mirrored in some of the 'factors for consideration' in section 4 of the draft Guidelines.
- 4.12 Nevertheless, the Authority considers that the assumptions referred to above which Airtel draws from BEREC's *Common Position on Mobile Infrastructure Sharing* document are misplaced and taken out of context. The parameter's set out by BEREC do not pre-suppose or imply that the network sharing agreements can only be regulated by means of a mandatory regime whereby the details of each and every such agreement must be assessed by the Authority prior to clearance. As referred to at paragraph 4.17 below, the Authority considers that the obligation on the licensee to notify the Authority in advance of any network sharing arrangements, and to provide information on request, is a proportionate means to enable the Authority to be aware of potential network sharing and to heighten respective licensee's sensitivity to the need to comply with competition law.
- 4.13 Further, having recourse to BEREC's parameter relating to the number of operators involved in the network sharing agreement does not imply that the Authority should assume from the outset that any potential network sharing must automatically be exclusionary and anti-competitive simply because the opportunity to be involved in the arrangement was not offered to every network provider. On the basis of the rationale set out at paragraph 4.7 above, such an approach would be presumptive and disproportionate. By way of helpful cross reference, as previously stated at paragraph 1.11 of Authority's July 2021 Response to Airtel: *"there is no dichotomy between a network sharing arrangement which benefits JT and Sure and one that benefits the whole of Jersey. The key is to ensure that the effect of any network sharing is to generate benefits without harming competition. If that goal is achieved, it will benefit the sharing operators and Jersey consumers."*
- 4.14 This same logic applies to potential network sharing arrangements which may be entered into and benefit any of the other operators who are referred to as Licensees in the Initial Notice.

### *Section 3 of the Airtel Response: Initial Notice and Guidelines*

- 4.15 In the third section of its August 2022 Response, Airtel repeats its concerns with the self-referral aspect of the notification process referred to in Licence Condition X. It takes the view that the Authority is adopting an excessively minimalist approach in requiring that the licensee "must only provide reasonable details" and "is only required to provide any draft agreement upon written request from the JCRA". Since there are "unlikely to be many network sharing arrangements in Jersey," Airtel concludes that the Authority has no reason to "not be more prescriptive and hands-on in its consideration of them." In not seeking to review every network

---

<sup>10</sup> Responses Received from Airtel Jersey Limited ("Airtel") dated 15 August 2022, paragraph 2.10

<sup>11</sup> Responses Received from Airtel Jersey Limited ("Airtel") dated 15 August 2022, paragraph 2.11

agreement, Airtel is concerned that the overall consequence is that the JCRA will be putting “the risk of exclusion and anti-competitive behaviour in the hands of the licensees without sufficient oversight at an early stage.”

- 4.16 The Airtel Response maintains that the competition law implications for passive and active network sharing agreements differ and that the Authority cannot therefore properly consider the risk to competition, without seeing the terms of the agreement. Airtel therefore submits that the Authority must review each and every proposed network sharing agreement “to ensure that they are compliant, otherwise the result is effectively self-regulation.” In addition, in order to ensure that any network sharing is non-exclusionary and open to all providers, Airtel maintain that the Additional Conditions require and / or the Guidelines ensure that any licensee seeking to enter into a network sharing arrangement must advise the Authority of the parties (other than the parties to the network sharing arrangement) to whom the network sharing has been offered and any difference in the terms offered.

#### *The Authority’s Response to Section 3 of the Airtel Response*

- 4.17 The July 2021 Response to Airtel made it clear that the Authority considered that incorporating the modified licence conditions into the JT and Sure licences would achieve the aim of heightening awareness of, and increasing compliance with, competition law. The Authority considers that this same logic applies to its rationale for now proposing to introduce the Guidelines and the licence modifications set out in the Initial Notice with respect to Airtel and others. As stated in the July 2021 Response to Airtel *“it is consistent with the Authority’s dual roles as a competition authority and telecommunications regulator, to use all reasonable means to ensure knowledge of and compliance with competition law, for the benefit of all licensees and consumers.”*<sup>12</sup>
- 4.18 The Authority reiterates as previously stated in the July 2021 Response to Airtel, that it *“intends to be vigilant in relation to any future network sharing arrangements”* and that *“the intended outcome of the Licence Condition X is to equip the Authority to perform that role more effectively.”* As in the case of JT and Sure, the Authority considers that that the obligation on the licensee to notify the Authority in advance of any network sharing arrangements, and to provide information on request, is a proportionate means to enable the Authority to be aware of potential network sharing and to heighten respective licensee’s sensitivity to the need to comply with competition law.<sup>13</sup>
- 4.19 The Authority anticipates that the requirement on the part of the Licensee to notify it of *“reasonable details of the proposed arrangement and disclosing the identity of the Licensed Operator with which it proposes to enter into”* of any network sharing arrangement, provides a sufficient basis from which the Authority can determine if the arrangement might raise concerns about competition would therefore merit more detailed scrutiny by it requesting a draft of the agreement.
- 4.20 The Authority considers that it would be placed under a disproportionate administrative burden if it were to require the mandatory nature of proposed Licence Condition X.2 to extend to the point that its legally required to review each and every proposed network sharing agreement to ensure that they are compliant. Such a measure would also limit the incentive on Licensees to set up their own internal policies, procedures and training concerning the risk of breaches of competition law.

---

<sup>12</sup> See para 1.8, Annex B of the JCRA’s Final Notice: Licence Modifications affecting JT and Sure dated 6 July 2021, Document No: JCRA 21/19

<sup>13</sup> See para 1.12, Annex B of the JCRA’s Final Notice: Licence Modifications affecting JT and Sure dated 6 July 2021, Document No: JCRA 21/19



- 4.21 The Authority notes Airtel's submission that the Additional Conditions require, and / or the Guidelines ensure, that any licensee seeking to enter into a network sharing arrangement must advise the Authority of the parties (other than the parties to the network sharing arrangement) to whom the network sharing has been offered and any difference in the terms offered. The Authority considers that placing such a requirement into the wording of the Additional Conditions would be unnecessarily prescriptive and disproportionate. To do so would require the insertion of information that was impossible to verify and which could not be guaranteed was exhaustive. As previously noted in the July 2021 Response to Airtel, the Authority considers that Airtel-Vodafone has set up an expectation – namely, the transparency of contract details – to then note that that expectation may not be met. However, the modified licence conditions (as they pertain to JT, Sure or any other licensed operator) were not intended to achieve that outcome
- 4.22 It should also be noted that the Guidelines as drafted already provide for the fact that, during the course of any potential investigation into a proposed network sharing agreement, the Authority would consider "*the position of, and impact upon the competitive threat from, any operators who are not included in the network sharing arrangement*" and retains the discretion to seek further information from other operators where appropriate.<sup>14</sup> Such an assessment would ordinarily by its very nature be preceded by a request for information from the Authority within which details such as those suggested above by Airtel would be sought.

## 5. The Authority's Response to Mobitel

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

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

- 5.1 In response to question 1 Mobitel agreed with the proposed scope of the Guidelines. However, in response to both question 1 and question 4 Mobitel considered that there should be an obligation for operators to engage in discussions and 'carry forward' requests to share network components following a request from an operator not subject to the licence condition.<sup>15</sup>

### *The Authority's Response*

- 5.2 The Authority is encouraged by Mobitel's agreement with the proposed scope of the Guidelines. We agree that operators should engage meaningfully with any network sharing requests they receive and that this will further strengthen the network sharing regime<sup>16</sup>.
- 5.3 The Authority does not agree that imposing a requirement on operators to carry requests for access in all circumstances would necessarily be in the best interests of operators or consumers and therefore would not be a proportionate response. In particular, obliging operators to carry forward such requests where there are no likely efficiencies to be gained would waste time and resources. The Authority considers each request should be able to be considered on a case by case basis, on its merits, and it is a matter for the parties involved to determine any benefits and seek to reach agreement.

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

- 5.4 Mobitel stated that it had reservations regarding compliance with requests from smaller operators and new entrants. Mobitel , said that this would appear to be at odds with the

---

<sup>14</sup> Jersey Competition Regulatory Authority's Consultation Paper of 23 June 2022 in relation to Case T-063: Network Sharing Guidelines (JCRA 22/42), paragraph 4.4

<sup>15</sup> Clear Mobitel's Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, page 2.

<sup>16</sup> See [JCRA's Competition Guideline: Cartels](#). This document outlines the type of engagement/ interactions between companies which will be considered inappropriate.

Authority's general objective of improving access, spectrum efficiency and competition. Mobitel stated that "[c]ompliance rules for the general condition would appear to be otherwise appropriate".<sup>17</sup>

#### *The Authority's Response*

- 5.5 The Authority notes Mobitel's concerns in relation to compliance with requests from smaller operators and new entrants. In the event that an operator considers that their request has not been treated appropriately, the operator may submit a complaint in accordance with the procedure outlined in CICRA Guideline 8.<sup>18</sup>

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

- 5.6 Mobitel expressed its view that network sharing is the most efficient way of deploying future 5G services. It stated that *"network sharing has no impact on service competition save that it should over time reduce the overall cost of network coverage as more efficient modern network components are deployed."* In light of this view Mobitel submitted that *"provided that there is no collusion on pricing following an agreement, the authority should be satisfied if overall coverage and competition is improved"*.<sup>19</sup>

#### *The Authority's Response*

- 5.7 The Authority agrees that network sharing will provide greater efficiencies in deploying 5G. Our view is that each of the factors for consideration which are outlined in the Guidelines are relevant and must be considered in relation to each network sharing arrangement that the Authority considers in order to ensure a thorough assessments of each arrangement.

## 6. The Authority's Response to JT

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

- 6.1 JT's stated preference is that all class II and III operators are required to comply with Guidelines. In particular, JT has requested that the Authority provide more detail as to why it considers it would be disproportionate for the OLOs to be obliged to comply with the Guidelines.
- 6.2 JT also noted that, in its view, it is ambiguous as to whether the Guidelines are intended to apply to any network sharing or just mobile network sharing. This is on the basis that the Consultation Paper describes mobile communication services and the allocation of 5G spectrum and the BEREC guidelines referenced in the Consultation Paper are specific to mobile infrastructure sharing. However, the Network Sharing licence condition defines:

*"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.**"*

- 6.3 JT therefore asks the Authority to clarify its interpretation of ....*"or for or in relation to the public telecommunications system operated by that Licensed Operator"*.

---

<sup>17</sup> Clear Mobitel's Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, page 2.

<sup>18</sup> See <https://www.jcra.je/media/4163/how-to-make-a-complaint.pdf>.

<sup>19</sup> Clear Mobitel's Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, pages 2 and 3.

### *The Authority's Response*

- 6.4 The Authority's view is that the definition of network sharing is unambiguous. The words "any element of the Mobile Telecommunications Network" is broad and encompasses any part of the telecommunications network which is used by a Mobile network. In short, the definition applies to any aspects of a network which allow a mobile network to function.

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

- 6.5 JT states its disagreement with the statements made in paragraph 3.5 of the Guidelines on the basis that, as drafted, it suggests that service-based competition is unlikely to deliver an expansion to the Jersey's network coverage. JT maintains that this is to ignore the fact that operators will be motivated to deepen coverage to encourage more consumers to use the network.
- 6.6 JT is also of the view that paragraph 3.7 of the Guidelines should also refer to other real measurable outcomes for better connectivity such as faster rollout, more extensive coverage and lower prices for consumers.
- 6.7 Furthermore, JT also objects to what it regards as the implication of paragraph 3.8 of the Guidelines, namely, that "spectrum pooling must [our emphasis] enable entry" into the mobile communications market.<sup>20</sup> JT takes the view that the wording of paragraph 3.8 should be amended to account for the fact that spectrum pooling might still produce efficiency benefits even if it does not necessarily result in enabling entry into the mobile communications market. It therefore proposes that paragraph 3.8 be rephrased as follows:

*"Spectrum is a scarce resource. Therefore, to the extent that a sharing arrangement encourages the efficient use of spectrum ~~and~~ [or] 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."*

### *The Authority's Response*

- 6.8 A key aim of the Guidelines is to assist industry to understand the appropriate balance between the 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. The Guidelines should facilitate operators in their design and implementation of network sharing arrangements, ensuring that they are aligned with competition law and the broader objectives of the Authority. Securing effective competition in the mobile communications market is one such objective. That is the case regardless of how the mobile network in Jersey evolves over time, be that principally through infrastructure-based competition or service-based infrastructure. While the Authority takes the view that the former is more likely than the latter to deliver an expansion to the Jersey's network coverage, the Guidelines are in no way prejudiced in favour of one avenue over the other provided that the best interests of consumers are protected.
- 6.9 The Authority notes that the various factors (see paragraph 3.7 of the Guidelines as drafted) which it will consider in assessing the degree to which network sharing arrangements secure real measurable outcomes for improved connectivity are non-exhaustive. The factors provided are by way of example and need not be considered at the prejudice of other factors which are not directly referred to in this section of the Guidelines.

---

<sup>20</sup> JT's Non-Confidential Response to JCRA Network Sharing Guidelines Consultation, dated 12 August 2022, page 4.

- 6.10 The Authority notes that the implication of paragraph 3.8 of the Guidelines is not that it must enable entry into the mobile communications market. Nevertheless, the Authority considers that efforts should be taken to ensure that the efficient use of spectrum does not counteract such enablement. The Authority therefore proposes that paragraph 3.8 of the Guidelines will be re-phrased as follows:

*Spectrum is a scarce resource. Therefore, to the extent that a sharing arrangement encourages the efficient use of spectrum ~~and~~ [and/or] 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.*

- 6.11 The Authority also clarifies that reference to the word “expansion” in paragraph 3.8 refers to expansion of output rather than changes in market shares *per se*.

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

- 6.12 With reference to paragraph 4.4 of the Guidelines as drafted, JT disagrees with the view stated by the Authority that higher the number of operators taking part in a network sharing arrangement, the more likely it is that the arrangement will raise competition concerns. JT also considers that paragraph 4.7 of the Guidelines as currently drafted underplays the potential consumer benefits of network sharing particularly in smaller markets such as lowering cost and its relation to price, quality and speed to market.

#### *The Authority’s Response*

- 6.13 The Authority notes that there need not necessarily be a strict correlation between the number of operators taking part in a network sharing arrangement and the risk that the arrangement will raise competition concerns. The Authority recognises that, as with any consideration of competition, the consideration of a network sharing arrangement will require consideration of the facts in the round. In light of this, the Authority has decided to amend the wording of paragraph 4.4 of the Guidelines as drafted in the following way:

*“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 can, the more likely it is that the arrangement will raise competition concerns.~~ However, whether this occurs with high numbers or small numbers of operators sharing is fact specific i.e. it can occur with either. 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.”*

- 6.14 As is already made clear at paragraph 3.7 of the Guidelines as drafted, the Authority agrees that, to the extent that a balance is struck with the operation of effective competition, network sharing can have potential consumer benefits. In the event that the Authority is required to review and assess potential network sharing agreements in the future, it will seek to ensure that this balance is adhered to. The Authority does not consider that paragraph 4.7 of the Guidelines as currently drafted prejudices such a future outcome being achieved.
- 6.15 The Authority clarifies that paragraph 4.3 of the Guidelines as drafted should refer to “network sharing arrangements”, not “market sharing arrangements”. It also clarifies that the reference to “technologies” in the second sentence of paragraph 4.5 of the Guidelines as drafted should be read as referring to “new technologies”.

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

- 6.16 JT notes the small market characteristics of Jersey as well as environment impacts need to be considered more in the Guidelines to ensure the overarching regulatory objectives are met in

any assessment by the JCRA. JT draws attention to the limited human and space resources in Jersey in supporting its view that energy consumption, carbon output and the impact on the natural landscape are considered as important aspects in any assessment.

#### *The Authority's Response*

- 6.17 The Authority notes JT's concerns in relation to environmental impacts. In carrying out our duties in relation to network sharing agreements the Authority considers all relevant factors in the round, which includes public interest considerations of potential environmental concerns in the context of any proposed network sharing agreement.

## 7. The Authority's Response to Sure

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

- 7.1 Sure stated that it agreed with the proposed scope of the Guidelines and the proposals for implementation. However, it said that it was unsure as to the extent that the Guidelines provide further information for compliance with LC Y and requested that the Authority explain how the proposed Guidelines inform the Authority's thinking when assessing operators' compliance with LC Y.21.
- 7.2 Similar to Mobitel, Sure raised a concern in relation to the lack of guidance regarding the way in which interested parties must engage when agreeing a proposal that is notified to the Authority under LC X.2.<sup>22</sup> It was particularly concerned to ensure that the Authority would provide *ex ante* guidance on the appropriate way network sharing arrangements can be agreed prior to notification. Sure considered that this would help LOs to ensure that any discussions are compliant from a competition law and LC perspective

#### *The Authority's Response*

- 7.3 The Authority welcomes Sure's agreement with the proposed scope of the Guidelines and the proposals for implementation. However, the Authority does not consider it appropriate to publish *ex ante* Guidance on network sharing at this time having regard to the number of network sharing transactions that are likely to occur in Jersey and the resources that would be required. Regardless, it is the responsibility of each industry participant to ensure that their actions are compliant with competition law and to seek their own legal advice where they are in doubt. "Guideline 2 on Cartels",<sup>23</sup> issued by the Authority in May 2022, provides a good indication of the topics which we will consider inappropriate, if discussed as part of a network sharing proposal. We expect operators to refer to and comply with this guideline when agreeing a proposal.

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

- 7.4 Sure was supportive of the regulatory objectives outlined by the Authority though it requested clarification in relation to three points.
- (a) Sure sought further explanation from the Authority of its view that service-based competition is unlikely to deliver an expansion in the island's network coverage footprint.<sup>24</sup>
  - (b) Noting the Authority's position that any proposed network sharing arrangement must demonstrate that it benefits customers through improved connectivity, Sure raised a

---

<sup>21</sup> Sure (Jersey) Limited Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, page 3.

<sup>22</sup> Ibid.

<sup>23</sup> <https://www.jcra.je/media/598533/guideline-2-cartels.pdf>

<sup>24</sup> Sure (Jersey) Limited Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, page 4.

concern that as drafted the Guidelines suggest that any demonstrable benefits must relate to the connectivity and service quality experienced by the end user, and not to any cost-savings (and therefore price impact) that network sharing can deliver. It referenced the opportunity to introduce new technologies at lower cost and more efficient use of spectrum as other potential benefits which network sharing could offer. Sure went on to explain that it considered that there was a risk that the Authority's objectives could act as an insurmountable barrier to any network sharing arrangements that do not deliver network performance-related benefits, even where the arrangement would deliver significant price benefits to customers.<sup>25</sup>

- (c) Sure requested clarification of the extent to which cost savings and lower prices would be considered 'better connectivity' when assessing any putative network sharing arrangements. Specifically, Sure would like the Authority to make explicit reference to cost savings and lower prices in the Guidelines, as well as setting out what weight would be placed on cost savings when compared with other connectivity non-price benefits that could be delivered through network sharing.<sup>26</sup>

### *The Authority's Response*

- 7.5 We explained at paragraph 3.5 of the Consultation Paper, that our view that service-based competition is unlikely to deliver an expansion in the island's network footprint is based on the fact that roaming arrangements or mobile virtual networks are the only options for purported expansion where service-based competition is concerned. Neither of these options expand the overall geographic network coverage footprint in real terms. This is because these options rely on the existing infrastructure to deliver the network, meaning that areas where there is little to no network coverage will not benefit from improved coverage as a result of these arrangements. In light of this, expansion of the overall geographic network footprint can only be achieved through increasing infrastructure, which requires significant investment.
- 7.6 In relation to Sure's concern that the Guidelines as drafted could amount to an insurmountable barrier to any network sharing arrangements that do not deliver performance-related benefits the Authority disagrees with Sure's position.
- 7.7 We have outlined that ensuring that mobile services are provided with effective consumer choice and that infrastructure to provide mobile services is used efficiently is a key responsibility of the Authority. Additionally, we identified cost, efficiency and respect for the environment as relevant aspects when considering potential network sharing arrangements.
- 7.8 We outlined three regulatory objectives in the Guidelines which any network sharing arrangements should strive to achieve. These were effective competition, better connectivity and the efficient use of spectrum. Sure stated that it supported the objectives which we had outlined and did not seek to suggest any further objectives. In any case, given objectives are forward looking in nature and tailored to meet the specific needs of the Jersey market, it is difficult to see how they could amount to an insurmountable barrier to competition.
- 7.9 Further, Sure cites both efficient use of spectrum and the opportunity to introduce new technologies at a significantly lower cost as examples of additional benefits which should be taken into account by the authority. Paragraph 3.8 of the Guidelines states that "to the extent that a sharing arrangement encourages the efficient use of spectrum...the arrangement will be more likely to be considered to promote the regulatory objective of efficient use". Further at paragraph 4.5 of the Guidelines, we state that "We will consider what technologies are involved... Competitive technologies (in particular 5G and beyond) require a substantial investment and so network sharing arrangements are likely to be instrumental in securing the

---

<sup>25</sup> Sure (Jersey) Limited Non-Confidential Response to the JCRA's Network Sharing Guidelines Consultation, dated 15 August 2022, page 5.

<sup>26</sup> Ibid.

deployment of these technologies.” Consequently, it is clear that the demonstrable benefits which the Authority will be taking into account are broader than improvements in service quality. We have made explicit reference to the two examples which Sure considers will offer additional benefits, as relevant to any consideration of a network sharing agreement.

- 7.10 The Authority will consider each agreement in the round, assessing each of the specific factors which are present in any agreement, including likely benefits to consumers which may differ depending on the agreement. Where cost savings are made, this is likely to lead to greater investment in new network technology and making newer consumer devices (e.g. handsets) more widely available. Better and more widespread connectivity flows from this since mobile communications would be made more affordable and more services more widely available to greater numbers, encouraging more people to take advantage of the services.

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

- 7.11 As far as the assessment factors were concerned, Sure simply stated it was broadly supportive of the factors proposed by the Authority.<sup>27</sup>

*The Authority’s Response*

N/A

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

- 7.12 Sure stated that it did not believe that any other factors would be relevant at this time.<sup>28</sup>

*The Authority’s Response*

N/A

## 8. Conclusions

- 8.1 Having carefully considered the representations made by each of the respondents, the Authority has decided to proceed with exercising a specified regulatory function under Article 18 of the Telecoms Law by modifying the Current Licence by the addition of proposed Additional Conditions largely in the form set out in the Initial Notice and to issue and publish on its website this Final Notice to that effect. The modified licences will take effect on 28 November 2022.
- 8.2 The Authority has decided to make the following non-substantive changes to the text of the Additional Conditions published in the Initial Notice:
- (a) as the Effective Date of each licence pre-dates the date of issuing the modified licences, the Authority has made it clear that the Additional Conditions take effect only from the latter date; and
  - (b) to clarify that network sharing agreements could be between more than two operators, the substantive Licence Condition relating to such agreements has been changed in each case to:

*“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 or Licensed Operators with which it proposes to enter into such agreement...”*

---

<sup>27</sup> Ibid.

<sup>28</sup> Sure (Jersey) Limited Non-Confidential Response to the JCRA’s Network Sharing Guidelines Consultation, dated 15 August 2022, page 6.



8.3 Having carefully considered the representations made by Airtel, Mobitel, JT and Sure, the Authority has decided to proceed with the proposed Guidelines largely in the form set out in the Consultation Paper, subject to the amendments proposed in this Response.

8.4 The Authority has nonetheless decided to make the following non-substantive changes to the text of the Guidelines published in the Consultation Paper.

8.5 Paragraph 3.8 of the Guidelines will be re-phrased as follows:

*Spectrum is a scarce resource. Therefore, to the extent that a sharing arrangement encourages the efficient use of spectrum ~~and~~ and/or 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.*

8.6 The Authority also clarifies that reference to the word "expansion" in paragraph 3.8 refers to expansion of output rather than changes in market shares per se.

8.7 Paragraph 4.4 of the Guidelines will now read as follows:

*"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 can, the more likely it is that the arrangement will raise competition concerns.~~ However, whether this occurs with high numbers or small numbers of operators sharing is fact specific i.e. it can occur with either. 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."*

8.8 Paragraph 4.3 of the Guidelines will read:

*"~~Market Network~~ 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."*

8.9 Paragraph 4.5 of the Guidelines will read:

*"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 ~~new~~ technologies."*

<b>Annex A</b>	<b>Airtel Response</b>
<b>Annex B</b>	<b>Response from Mobitel</b>
<b>Annex C</b>	<b>Response from JT</b>
<b>Annex D</b>	<b>Response from Sure</b>



**JERSEY COMPETITION REGULATORY AUTHORITY'S INITIAL NOTICE UNDER THE TELECOMMUNICATIONS (JERSEY) LAW 2002 RELATING TO CASE T-030: PROPOSED LICENCE MODIFICATIONS AFFECTING JERSEY AIRTEL LIMITED (AND OTHERS) DATED 13 JULY 2022 (JCRA 22/49)**

**JERSEY COMPETITION REGULATORY AUTHORITY'S CONSULTATION PAPER OF 23 JUNE 2022 IN RELATION TO CASE T-063: NETWORK SHARING GUIDELINES (JCRA 22/42)**

**RESPONSE BY JERSEY AIRTEL LIMITED**

**1. INTRODUCTION**

1.1. This is Jersey Airtel Limited's ("**Airtel**") response to:

1.1.1. the Jersey Competition Regulatory Authority's ("**JCRA**") Initial Notice of 13 July 2022<sup>1</sup> under the Telecommunications (Jersey) Law 2002 (the "**Telcoms Law**"), relating to proposed license modifications to telecommunication licenses held by Airtel and others (the "**Initial Notice**"); and

1.1.2. the JCRA's Consultation Paper of 23 June 2022 in relation to Network Sharing Guidelines (the "**Guidelines**") (the "**Consultation Paper**")<sup>2</sup>.

1.2. Airtel's concerns regarding network sharing in Jersey are relevant to its submissions on both the Initial Notice and the Consultation Paper, and indeed the licence amendments and guidelines are very much interlinked, so Airtel makes this submission in relation to both the Initial Notice and Consultation Paper.

1.3. For the reasons set out in more detail in this response and in Airtel's early response of 30 April 2021 (the "**April Response**")<sup>3</sup> in relation to license modifications which were subsequently implemented for two licenses held by JT (Jersey) Limited ("**JT**") and Sure (Jersey) Limited ("**Sure**"), Airtel has significant concerns regarding the JCRA's approach to network sharing. In particular, Airtel raised concerns in the April Response that the proposed modifications to licenses and the proposed guidelines would fail to ensure that any network sharing in Jersey is done on fair and anti-competitive basis.

1.4. For that reason, as part of this response, and notwithstanding the JCRA's Final Notice of 6 July 2021<sup>4</sup> (the "**Final Notice**"), Airtel hereby repeats all submissions made by it in its April Response.

**2. LICENCE AMENDMENTS AND GUIDELINES FAIL TO ENSURE COMPLIANCE WITH LAW AND FAIL TO PREVENT ANTI-COMPETITIVE AND EXCLUSIONARY BEHAVIOUR**

2.1. Airtel notes that in its News Release of 4 August 2021, the JCRA stated that (our emphasis):

*"We are determined that any requirements for network sharing, or any type of competitive sharing, such as to enable the rolling out of 5G, are developed **in a fair manner that lets all operators***

<sup>1</sup> JCRA Initial Notice, Case T-030 <https://www.jcra.ie/media/598576/initial-notice-of-proposed-modifications-to-certain-class-ii-licences.pdf>

<sup>2</sup> JCRA Consultation Paper, Case T-063 <https://www.jcra.ie/media/598546/network-sharing-guidelines-consultation-paper.pdf>

<sup>3</sup> Airtel's Response, appearing at Annex A of the Final Notice <https://www.jcra.ie/media/598346/t-038-final-notice-licence-modifications-jt-and-sure.pdf>

<sup>4</sup> JCRA Final Notice, Case T-038 <https://www.jcra.ie/media/598346/t-038-final-notice-licence-modifications-jt-and-sure.pdf>

**compete fairly**, safeguarding the interests of consumers and promoting economic growth and sustainability.”

2.2. Further, in the Final Notice, JCRA stated at Annex B, paragraph 1.19 (our emphasis):

*“The Authority has not asserted that network sharing is always pro-competitive: it has stressed that any network sharing must comply with competition law and **not result in harm to competition**. Accordingly, the Authority sees no basis for Airtel-Vodafone's assertion that the licence modifications will encourage (or permit) exclusionary network sharing arrangements. Without pre-empting the outcome of any future review, **the Authority does not anticipate that it would permit such an arrangement to stand.**”*

and at Annex B, paragraph 1.21 (our emphasis):

*“For the avoidance of doubt, **the Authority's intention in setting the proposed Licence Conditions is to reduce the possibility that Airtel-Vodafone (or any operator) might be excluded from the market as a result of a network sharing arrangement**, if such an arrangement was contrary to those operators' regulatory obligations or competition law.”*

2.3. Airtel wholly supports this objective, but the Final Notice, the Initial Notice and the Guidelines fail to achieve the stated aim, at least on the face of those documents.

2.4. The result of effective network sharing arrangements is clearly advantageous to the parties involved, as detailed in Airtel's April Response at paragraph 3.3. Given such clear financial and operating gains from any network sharing, it is inconceivable to think that any party not included in such network sharing would be able to continue to compete with those parties. That means that, any network sharing arrangement that does not afford the opportunity for all network providers to be involved on an equal footing, is by its very nature, anti-competitive and exclusionary.

2.5. The JCRA has stated its intent clearly in the News Release of 4 August 2021. Network sharing shall be developed “*in a fair manner that lets all operators compete fairly*”. That must therefore mean that any network sharing arrangement for which all operators are not offered the opportunity to participate in will not be tolerated by the JCRA.

2.6. That is supported by the JCRA's response in Annex B of the Final Notice. The JCRA “*does not anticipate that it would permit [exclusionary network sharing arrangements] to stand.*” If a network provider is not offered an opportunity to participate in any network sharing arrangement, it is, by definition, an exclusionary arrangement. There can be no clearer form of exclusion than not having any opportunity to participate.

2.7. The JCRA seeks to ensure that Airtel (and presumably any other network provider) is not excluded from the market as a result of a network sharing arrangement. As we have stated, it would be impossible for Airtel or any other network provider to compete if, for example, JT and Sure were to enter into a network sharing arrangement alone and to the exclusion of any other network providers.

2.8. So, it must follow that the JCRA intends to refuse any network sharing arrangements where those are between two parties and not offered to other network providers on a fair and even basis. Why is this therefore not a part of the licence conditions and/or Guidelines?

2.9. It is a widely-accepted consideration of competition law that the more concentrated a market, the more acutely the effects of any agreement or behaviour are felt. The absence of a wider group of competitors means that there is less ability for those involved in arrangements to be challenged. Jersey's telecoms market is extremely concentrated, with one dominant provider, JT and two major competitor firms, Airtel and Sure. Again, this brings to focus the point that a network sharing agreement between two parties only will have the real effect of damaging the market and lessening, if not eliminating, competition.

2.10. It is important to note the guidance from the Body of European Regulators for Electronic Communications ("BEREC") in its Common Position on Mobile Infrastructure Sharing document of 13 June 2019<sup>5</sup>. BEREC stated:

***"Market shares/competitive forces:** Sharing agreements can change the market structure, especially if one of the sharing parties is already benefiting from a strong position in the market. A sharing agreement should not lead to a situation where any or all sharing party/parties is/are in a position to impose its/their commercial strategy on the market, independently of its competitors, and ultimately the market. Effective competition between MNOs needs to be ensured. The NRA should thus consider whether a proposed agreement negatively affects rivalry between the parties to the agreement and thus competition and/or creates entry or expansion barriers for other competitors on the market."*

As above, this is a matter for the NRA (the JCRA) to consider and should not be left to licensees to make their own assessment.

2.11. BEREC also provided helpful guidance on concentrated markets with a dominant party, as is the case with telecoms in Jersey:

***"Number of operators involved in the sharing:** the above point implies that the number of operators involved in the sharing, as well as the number of operators that are not involved, is an important parameter. For example, a sharing agreement of three operators out of four in the market should be cautiously assessed, because a large part of the market could jointly decide on infrastructure decisions, without an external force that is sufficiently strong to challenge/disrupt and to competitively constrain the operators on the shared infrastructure."*

This is the key concern and risk for the end users in Jersey; network sharing agreements without an external force to challenge or disrupt those involved in network sharing. As before, any network sharing must therefore either allow every network provider the opportunity to be involved or otherwise it is exclusionary and anti-competitive.

<sup>5</sup> BEREC Common Position on Infrastructure Sharing 13 June 2019

[https://www.berec.europa.eu/sites/default/files/files/document\\_register\\_store/2019/6/BoR\\_%2819%29\\_110\\_CP\\_Infrastructure\\_sharing.pdf](https://www.berec.europa.eu/sites/default/files/files/document_register_store/2019/6/BoR_%2819%29_110_CP_Infrastructure_sharing.pdf)

### 3. INITIAL NOTICE AND GUIDELINES

- 3.1. The JCRA has given the Final Notice relating to JT and Sure's Licence conditions and to the extent that these apply on the same basis to Airtel and others by way of the Initial Notice, Airtel does not make any submissions. However, Airtel reiterates its concern with the scope of the licence conditions generally, as detailed above and in the April Response.
- 3.2. The JCRA, by the Licence and the Guidelines, places the onus on the Licensee to ensure that its network sharing is compliant with competition law and does not result in any lessening of competition. This is a dangerous position and, given the investigations and action taken in relation to network sharing arrangements in the past, is likely to result in problems coming to light, too long after they have had effect.
- 3.3. There are unlikely to be many network sharing arrangements in Jersey, so why can the JCRA not be more prescriptive and hands-on in its consideration of them? A licensee must only provide "reasonable details" and a licensee is only required to provide any draft agreement upon written request from the JCRA. Why does the JCRA not seek to review every network sharing agreement (which, as we submit, is unlikely to be many)? Why put the risk of exclusion and anti-competitive behaviour in the hands of the licensees without sufficient oversight at an early stage? The result could or will be the inability of other providers to compete, with resulting reduced competition and likely increased costs for consumers. This is particularly so where the parties involved are dominant in the market, such as was the case with JT and Sure. Airtel submits that the JCRA must review those agreements to ensure that they are compliant, otherwise the result is effectively self-regulation.
- 3.4. The nature of the network sharing arrangement also affects the consideration that the JCRA should give it. The competition law implications for passive and active network sharing agreements differ, so how can the JCRA properly consider the risk to competition, without seeing the terms of the agreement?
- 3.5. The Licensee is required to ensure compliance with the Competition (Jersey) Law 2005 (the "**Law**"). Any network provider entering into a network sharing arrangement will obtain legal advice, so why does the JCRA not require a network provider to arrange a legal opinion from a Jersey lawyer, addressed to the JCRA, confirming compliance with the Law? This would be a simple solution, easily obtained and provide a real safeguard from wrongdoing.
- 3.6. The JCRA has stated that a key aim is that any network sharing must be non-exclusionary (ie. open to all providers) and that it would not allow such network sharing arrangements to stand. The JCRA cannot properly understand whether any network sharing arrangement is compliant and non-exclusionary, without information as to whom the network sharing arrangement has been offered to. Clearly, given the JCRA's stated intent, if the answer is that it has only been offered to one party, there is a problem and the JCRA would not let such exclusionary arrangement stand.
- 3.7. So, Airtel would propose amendments to the licences and/or the Guidelines to ensure that any licensee seeking to enter into a network sharing arrangement must advise the JCRA of the parties (other than the parties to the network sharing arrangement) to whom the network sharing has been offered and any difference in the terms offered. The JCRA would take steps to verify that information which, in practical terms, involves simple correspondence to those other providers.

3.8. The Guidelines do not adequately reflect the JCRA's publicly stated intention of ensuring that any network sharing arrangement is non-exclusionary. In particular, at paragraph 3.3 of the Guidelines, the JCRA states that "*it is not possible to be prescriptive about the type of arrangements that might be compatible with effective competition.*" Airtel submits that it is possible to be prescriptive about certain elements of a network sharing arrangement that would be incompatible, namely any contract which excludes network providers.

#### 4. CONCLUSION

4.1. For the reasons set out above, Airtel considers that the amendments to the licence conditions in the Final Notice (for JT and Sure), together with those in the Initial Notice, need to be amended and revisited, to ensure that the JCRA is following through on its stated intent of preventing exclusionary behaviour and compliance with the Law. Further, the Guidelines can be worded to reflect this and to ensure that the JCRA has all the relevant information it requires to properly assess whether a proposed network sharing arrangement is compliant and non-exclusionary. In particular, if any two parties intend to enter into a network sharing arrangement, the other network providers should be given adequate opportunity of representation and participation on a fair and even basis to ensure continuity of fair competition in the market, and to that end, the modifications / additions should be revisited to have mechanisms built in to achieve this.

4.2. Airtel therefore urges the JCRA to reconsider the proposed modifications and additions in the Final Notice (for JT and Sure), together with those in the Initial Notice, bearing in mind the suggestions made in this submission.

4.3. Airtel would be very happy to discuss this response further with the JCRA if that would be helpful.

Jersey Airtel Limited  
15<sup>th</sup> August 2022



**Clear Mobitel (Jersey) Limited**

**Case T-063: Network Sharing Guidelines:  
Consultation Paper  
for consultation**

August 2022

## Introduction

Clear Mobitel (Jersey) Limited ('CMJ') holds a telecommunications licence and some spectrum allocations which have been awarded over time for use with 4G Technology. Currently CMJ is in the process of developing a strategy for the application of this spectrum.

## Response to Consultation

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

CMJ welcomes the prospect of network sharing as a means of efficiently deploying services particularly in relation to 5G. CMJ is on record promoting the idea of a separate holding company for mobile networks in which all operators have a share as being the most effective way of ensuring island wide coverage for future 5G services.

CMJ does however note that there is no obligation in the licence condition or guidelines for operators to engage in discussions from a request from an operator not subject to this licence condition. Such an omission would still allow the dominant operators to sideline smaller operators and new entrants.

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

As outlined above CMJ has reservations regarding compliance with requests from smaller operators and new entrants. This would appear to be at odds with the Authority's general objective of improving access, spectrum efficiency and competition. Compliance rules for the general condition would appear to be otherwise appropriate.

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

As noted CMJ is of the view that network sharing is the most effective and efficient way of deploying future 5G services. Network sharing has no impact on service competition save that it should over time reduce the overall cost of network coverage as more efficient modern network components are deployed. Provided that there is no collusion on pricing following an

agreement, the authority should be satisfied if overall coverage and competition is improved.

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

As stated above CMJ is concerned that there is no requirement for an operator to respond to a request. In order to ensure a level playing field requests to share network components should be carried forward even if there is no final agreement.

**For the avoidance of doubt, this document may be published in its entirety.**

**Clear Mobitel (Jersey) Limited**

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





# JT's Non-Confidential Response to JCRA Network Sharing Guidelines Consultation

12th August 2022

## 1. Introduction

JT (Jersey) Limited (“JT”) welcomes the opportunity to respond to the JCRA’s network sharing guidelines consultation (the “Guidelines”). This is a non-confidential response and can be published in full.

## 2. JT’s Response to Consultation Questions

### Question 1. Do you agree with the proposed scope of the Guidelines?

We make the below comments on each section of the guidelines:-

#### Status of Guidelines

The blue box at the top of page 4 says that the Authority has determined that JT and Sure will be obliged by their licence condition to comply with the Guidelines but OLOs will not as it would be disproportionate. Nevertheless in an investigation, the JCRA will assess compliance with the Guidelines in determining whether an OLO is complying with its licence condition.

The reason why it would be ‘disproportionate’ is not explained. We would like to understand why the JCRA believe that OLOs should be treated differently from JT and Sure. In a situation where an OLO shares with JT or Sure, only JT or Sure would have to comply with Guidelines and the other does not. We would like to understand how this would work and the effect it will have on commercial negotiations. JT recognises that competition analysis will depend on the identity of the operators that are sharing but this is already reflected in the Guidelines and therefore there is no reason to apply the Guidelines differently with respect to compliance with the licence. We recommend that this is changed so that the guidelines apply to all operators of a class II or class III licence.

### Scope of Guidelines

The consultation document is ambiguous as to whether it deals with any network sharing or just mobile network sharing. The background sections describes mobile communication services and the allocation of 5G spectrum and the BEREC guidelines referenced in the Consultation are specific to mobile infrastructure sharing however the Network sharing licence condition defines:-

*“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;*

Please can the JCRA clarify its interpretation of “... or for or in relation to the public telecommunications system operated by that Licensed Operator”.

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

We have the following comments on the regulatory objectives the JCRA will pursue when considering the compliance with the Network Sharing condition:-

#### Effective Competition

Paragraph 3.5 suggest that service based competition is unlikely to deliver an expansion to the island’s coverage. This seems to ignore the fact that operators will be motivated to deepen coverage to encourage more consumers to use the network. We therefore do not agree with the statements in this paragraph.

#### Better Connectivity

This section of the guidance in 3.7 should also refer to other real measurable outcomes for better connectivity such as faster rollout, more extensive coverage and lower prices for consumers.

### **Efficient use of spectrum**

As it is currently worded, 3.8 implies that spectrum pooling must enable entry. However, spectrum pooling can produce benefits even if no entry. An important benefit of spectrum pooling may also be higher speeds (due to larger channels) which should also be considered here. We believe that the second line of paragraph 3.8 should be reworded replacing “and” with “or”. We assume the use of the word “expansion” means expansion of output rather than changes in market shares per se.

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

We have the following comments on the assessment factors and the wording in the draft guidelines:-

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

The reference to ‘market sharing’ here we believe is a typo and we assume this should be ‘network sharing’. If not, please explain how network sharing arrangements translate into ‘market sharing’ arrangements and what is meant by market sharing in this context.

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

We don’t agree with the statement that the more operators involved in the network sharing arrangement the greater the competition problem. Many regulators take the opposite view and prefer sharing arrangements that involve all the operators in the market so as to avoid exclusionary effects. The competitive assessment should be focused on their market position and power in the market. Please can the JCRA explain why it believes that there is more likely to be competition problems with more operators involved in a network sharing arrangement.

#### **The technologies involved**

We assume here that the JCRA mean ‘new’ technologies in the second sentence. If not, how can operators determine what a ‘competitive technology’ is? Please can the JCRA clarify.

**Feasible level of competition**

While we appreciate that 4.7 touches on the small market characteristics of Jersey, the draft guidelines underplay the potential consumer benefits of network sharing particularly in smaller markets such as lowering cost and its relation to price, quality and speed to market.

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

As per the comments above, we believe the small market characteristics of Jersey as well as environment impacts need to be considered more in these guidelines to ensure the overarching regulatory objectives are met in any assessment by the JCRA. In an island with limited human and space resources it is important that energy consumption, carbon output and the impact on the natural landscape are considered as important aspects in any assessment.



## NETWORK SHARING GUIDELINES – CONSULTATION PAPER – CASE T-036

SURE (JERSEY) LIMITED –RESPONSE – 15<sup>TH</sup> AUGUST 2022

### Introduction

1. Sure (Jersey) Limited (“Sure”) is pleased to respond to the Jersey Competition and Regulatory Authority’s (“the Authority”) consultation paper on its proposed Network Sharing Guidelines (“the Guidelines”). We are grateful to the Authority for publishing these Guidelines and for providing the opportunity to comment on, and clarify our understanding of, the Guidelines.
2. This is a non-confidential response, which we are happy for the Authority to publish in its entirety.
3. We would like to commend the Authority for its pragmatic and proportionate approach to its investigation into the conduct of JT and Sure in relation to arrangements for network sharing. The Licence Condition (“LC”) obligations imposed on JT and Sure, and soon other Class II licence holders<sup>1</sup>, have been useful in enabling operators to review and refresh competition law compliance programmes and allow operators to better understand what must be undertaken before proceeding with any future network sharing arrangements. We believe that these Guidelines are also helpful and provide important insight into how the Authority will consider proposed network sharing agreements.
4. Notwithstanding our strong support for these Guidelines, we have a number of queries for which we would appreciate clarification. Specifically:
  - I. Can the Authority please clarify how these Guidelines apply to LC ‘Y’ (LC 26 in Sure’s licence)? We are currently unclear as to which part of the Guidelines apply or impact the way in which LOs implement their compliance programmes.
  - II. We note that the Authority provides a lot of detail about how it will assess a proposed network sharing arrangement. This detail is very useful. However, its proposed Guidelines

---

<sup>1</sup> We support the Authority’s proposals to introduce these LC ‘X’ and ‘Y’ into the licences of other Class II licence holders. We also agree with the proposed approach not to include a specific LC to ‘comply with any relevant guidelines issued by the Authority that are in effect’.

do not provide any information regarding the Authority's expectation for how parties ought to engage prior to establishing a proposed network sharing agreement. For example, our interpretation of LC X.2 (LC 25.2 in Sure's licence) is that any proposed network sharing arrangement must have substance. What level of detail should interested parties reach before approaching the Authority? Explicitly setting out the Authority's expectation for early discussions will help LOs understand the kind of conversations that can and cannot occur pre-notification.

III. We would be grateful if the Authority could confirm whether our interpretation of the Guidelines is correct. In our understanding, by setting out the Authority's objectives and approach, the Guidelines provide LOs with certain outcomes and thresholds that must be achieved by any proposed network sharing arrangement and this must be demonstrated in any submission made under LC X.2 (LC 25.2 in Sure's licence). If our understanding *is* correct, then we have several minor requests for clarification regarding these outcomes and thresholds.

5. These queries, along with further information about why we need clarification, are set out in our responses to the Authority's questions (in the Annex below). Where appropriate, we would be grateful if the Authority could make changes to the proposed Guidelines in order address our queries or requests for clarification. Whilst we appreciate the Authority's desire not to be overly prescriptive in these Guidelines, we believe that there is merit in greater levels of prescriptivism regarding the issues and queries raised in this response.
6. As always, we remain ready to engage with the Authority on these issues and can provide further information if and where required.

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

We are supportive of the proposed scope of the Authority's Guidelines. We agree with the Authority's proposals for implementation (including its decision not to include a specific LC to 'comply with any relevant guidelines issued by the Authority that are in effect') and its rationale for doing so.

However, we note that the Authority appears to suggest that the proposed Guidelines be used 'when assessing compliance with LC Y (LC 26 in Sure's licence)' in addition to assessing compliance with LC X (LC 25 in Sure's licence). Whilst we agree that the Guidelines will be a useful tool for assessing compliance with LC X, we are unclear as to the extent that these Guidelines provide further information for compliance with LC Y. Can the Authority please explain how these proposed Guidelines inform the Authority's thinking when assessing LO compliance with LC Y? If it is the case that the Guidelines will inform the decision-making of the Authority, then we request that the Authority set this out explicitly in the Guidelines as it will be important for LOs to consider this when assessing their own compliance. If not, then we request that the Authority remove reference to LC Y in these Guidelines.

The Guidelines provide a lot of information about how the Authority will assess proposed network sharing arrangements. This information is useful for LOs as it enables them to understand the issues that must be addressed in any notification made under LC X.2. However, we note that the Authority does not provide any guidance regarding the way in which interested parties must engage when agreeing a proposal that is notified to the Authority under LC X.2.

In our view, the plain reading of LC X.2 and the proposed Guidelines suggests that the Authority expects any proposal made under LC X.2 to have substance. That is, it ought to set out in some detail the proposal being put forward and the way in which it will sustain effective competition, benefit consumers and drive efficient use of spectrum. However, in order to understand and agree on these issues, parties interested in network sharing will need to have relatively detailed conversations about how any future network sharing arrangements will achieve those objectives. For example, when seeking to demonstrate how any future network sharing agreement would benefit consumers through improved connectivity, the interested parties may need to discuss future plans for increasing network coverage or lowering latency experienced by customers by moving processing facilities closer to the network edge. Similarly, if the parties wish to make the case to the Authority that a future network sharing arrangement will reduce capital and/or operational expenditure, those parties may need to discuss the extent of those



network costs savings and where those savings are likely to be made. Given the competition law obligations that apply to all LOs, it would be useful if the Authority could provide ex ante guidance regarding the way in which network sharing arrangements can be agreed prior to notification in a compliant manner. Such guidance will help LOs ensure that any discussions are compliant from a competition law and LC perspective, whilst also giving the requisite information to the Authority when making a notification under LC X.2.

Whilst we appreciate the Authority's desire not to be overly prescriptive when setting rules for network sharing arrangements, we believe that the conduct of parties interested in network sharing, along with the expectations of the Authority, are areas in which greater prescriptivism could be warranted. We therefore request that the Authority explicitly set out its expectations for how parties interested in network sharing should engage prior to notifying the Authority under LC X.2. In our view, it would be helpful if this was added to the Guidelines as a separate section, distinct from the objectives and factors it will take into account when assessing whether the network sharing arrangement will have a positive effect on competition and/or for consumers.

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

We are broadly supportive of the Authority's proposed regulatory objectives. However, we would welcome clarification or further information on some of the statements made in the proposed Guidelines.

Firstly, the Authority notes that, in its view, service-based competition is 'unlikely to deliver an expansion in the Island's network coverage footprint'<sup>2</sup>. Can the Authority please explain its rationale for this position? In our view, it is not necessarily the case that service-based competition over a shared network will result in narrower network coverage. If anything, there is an argument that network sharing could increase network coverage – only one network needs to be expanded in order to provide that wider coverage (as opposed to all MNOs), meaning that less capital expenditure is required, and which can be recovered over a wider customer-base (the customers of the MVNOs as well as the MNO). Whilst we do not strongly agree or disagree with the Authority's position that infrastructure-based competition is ultimately preferable, we would be grateful for further explanation about the circumstances under which service-based competition *would* fulfil the Authority's regulatory objective of 'effective competition'.

---

<sup>2</sup> Case T-063: Network Sharing Guidelines: Consultation Paper – para. 3.5

Secondly, we note the Authority's position that any proposed network sharing arrangement must demonstrate that it benefits customers through improved connectivity<sup>3</sup>. We certainly agree with the Authority that any future network sharing arrangements must deliver demonstrable benefits to consumers in Jersey. However, the Authority's Guidelines appear to suggest that these demonstrable benefits must relate to the connectivity and service quality experienced by the end-user, and not to any cost-savings (and therefore price impact) that network sharing can deliver. As the Authority is aware, a primary driver for, and potential benefit of, mobile network sharing is the opportunity to introduce new technologies at a significantly lower cost by avoiding the duplication of mobile radio access network ("RAN") equipment and lowering network administrative costs<sup>4</sup>. Another benefit of network sharing is more efficient use of scarce mobile spectrum – less spectrum is required to achieve a broadly similar level of connectivity. These key network sharing drivers deliver the same outcome; they lower the cost of providing new or existing mobile network services in a given jurisdiction and thus enable mobile operators to charge a lower price for mobile services. However, network sharing will not necessarily deliver improved network continuity or network performance (e.g. lower latency). There is therefore a risk that the Authority's regulatory objectives, as currently drafted, could act as an insurmountable barrier to any network sharing arrangements that do not deliver network performance-related benefits, even where the arrangement would deliver significant price benefits to consumers.

We would be grateful if the Authority could clarify the extent to which cost savings and lower prices would be considered 'better connectivity' when assessing any putative network sharing arrangements. Will cost and lower prices be considered in the round with other potential benefits, such as increased network coverage? If so, can the Authority please make explicit reference to cost savings and lower prices in its Guidelines. Additionally, can the Authority set out what weight it would place on cost savings when compared with other connectivity non-price benefits that could be delivered through network sharing.

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

Yes, we are broadly supportive of the proposed factors that the Authority will use to assess whether its regulatory objectives have been met.

---

<sup>3</sup> Case T-063: Network Sharing Guidelines: Consultation Paper – para. 3.7

<sup>4</sup> BEREC Common Position on Mobile Infrastructure Sharing – para. 2.2.1

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

No, we do not believe any other factors would be relevant at this time.