



# Telecommunications (Jersey) Law 2002

Case T-063:

## Network Sharing Guidelines

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# Network Sharing Guidelines

## 1 Introduction and objectives

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

## 2 Background and regulatory framework

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

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

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

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

**[Y] COMPLIANCE PROGRAMME**

- Y.1 *Within three months of this Condition coming into effect, the Licensee will adopt, implement and maintain an internal programme encompassing risk management and compliance management (the ‘compliance programme’) in accordance with this Condition and shall confirm to the Authority in writing that it has complied with this Condition, giving reasonable details of such compliance programme.*
- Y.2 *The compliance programme will:*
- (a) *adopt good practice in relation to compliance programmes that are relevant and proportionate to the Licensee;*
  - (b) *include at least the obligations set out under this Licence, the Telecommunications (Jersey) Law, and the 2005 Law;*
  - (c) *be reviewed on a regular basis and no less than once annually by the Licensee’s management body to assess the delivery of the programme and compliance outcomes; and*
  - (d) *comply with any relevant guidelines issued by the Authority that are in effect.*
- Y.3 *Not less frequently than annually, and within 7 days of a written request from the Authority, the Licensee shall provide to the Authority a written statement from or on behalf of the Licensee’s management body that the Licensee is, and at all times since the last such statement (or the date of adoption of the compliance programme in the case of the first such statement) has been, in compliance with the compliance programme or setting out any material failures by the Licensee to comply with such programme.*

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

[Relationship with competition law](#)

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

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

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

### 3 Regulatory objectives

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

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

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

#### Effective competition

- 3.3 The goal of securing effective competition in the mobile communications market is principally achieved either through infrastructure-based competition or through service-based competition. As with any consideration of competition, the consideration of a network sharing arrangement will require consideration of the facts of the matter in the round, and it is not possible to be prescriptive about the type of arrangements that might be compatible with effective competition. The following points provide a broad sense of the Authority's intended approach, subject to the evidence arising in any particular instance.

- 3.4 It is anticipated that infrastructure-based competition will be the principal avenue for competition in Jersey as regards the roll-out of 5G (and future) services. However, the significant investment required by each operator (depending on the scale and timing of its implementation of 5G operations) and the pressures on land development on Jersey militate in favour of network sharing.

- 3.5 Service-based competition is unlikely to deliver an expansion in the Island's network coverage footprint. This is because, in the context of network sharing, the only option offered by service-based competition, is through the means of roaming arrangements or via a mobile virtual network operator structure (whether contractual or by means of a special purpose vehicle).

#### Better connectivity

- 3.6 The goal of improved connectivity can be described as the most consumer-focused of the regulatory objectives because achieving this objective will deliver the most tangible benefits for consumers.

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

### Efficient use of spectrum

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

## 4 Factors for consideration

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

### Evolution of competitive market forces

- 4.2 All network sharing arrangements can be anticipated to have an impact on competition. We recognise that the extent to which competition is affected will vary depending on the nature of the arrangement and the market context in which it operates. Equally important is the process that operators follow in agreeing to enter (or not) into a network sharing agreement: the Authority expects all operators to consider requests for sharing carefully, in a timely manner and in a manner consistent with competition law requirements whatever the final outcome.

### Market shares/competitive forces

- 4.3 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.

### The number of operators involved in the sharing

- 4.4 Closely linked to the competitive force point made above is the question of the number of operators involved in the network sharing arrangement. It is the Authority's view that the number of operators taking part in a network sharing arrangement can 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.

### The technologies involved

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

### The time frame

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

#### Feasible level of competition

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

#### Type of sharing

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

#### The level of information sharing between parties

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

#### Reversibility and contractual/corporate implementation

- 4.11 The extent to which the network sharing arrangement is reversible and the way in which the parties choose to implement the contract are significant factors which will be given consideration<sup>1</sup>.

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<sup>1</sup> For example, whether the arrangement is by way of contract only or envisages the incorporation of a special purpose vehicle with an indefinite duration