



NEWS RELEASE

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Competition Authority issues infringement proceedings against two mobile network operators

The Guernsey Competition and Regulatory Authority (the **Authority**) has provisionally found that two mobile network providers in Guernsey infringed Guernsey's competition law by entering into an agreement that had the object of preventing competition within Guernsey.

Sure and JT colluded by sharing commercial information and agreeing secretly that JT would pull out of operating existing 4G and future 5G mobile networks in Guernsey, in return for Sure doing the same in Jersey.

This agreement to trade mobile network infrastructure would have given each of JT and Sure a far stronger position as mobile network providers in their home Island achieved not by fair and open competition but through a secret anti-competitive arrangement.

The Authority has provisionally concluded that this collusion took place through a coordinated exchange of information between JT and Sure over more than a year.

The Parties will now be given a chance to make representations to the Authority before it reaches a final decision.

Additional Information

What is the purpose of competition law?

Competition law seeks to protect free, open and fair competition. Competition is good for consumers because it results in lower prices, new products of a better quality and more choice. It is also good for fair-dealing businesses, which flourish when markets are competitive. The impact of competitors engaging in cartel behaviour results in poorer value for money, less innovation, and less choice for consumers.

What is the essential concern with the alleged conduct?

Guernsey has historically benefitted from high quality mobile services through promoting choice between mobile network providers who took part in a competitive process to win the right to do so. Whether the existing approach continues with next generation mobile or a single mobile network provider approach is adopted in future, achieving that position should be on its merits and not arranged through agreement between competitors. The material available to the Authority gives sufficient reason to believe that the Parties had been engaged in a hard-core competition law restriction, attempting to divide up the Channel Island mobile network markets in a secret arrangement between them.

The Parties say they have been discussing network sharing. What is wrong with network sharing?

The evidence the Authority has obtained suggests that at a senior level JT and Sure were aware that their behaviour was likely to raise concerns but used phrases like ‘network sharing’ and ‘infrastructure sharing’ to describe their objectives. Network sharing of mobile mast infrastructure is positive as it reduces mobile mast density and can be more efficient because it avoids unnecessary duplication of infrastructure. It is encouraged by governments and regulators around the world, including in Guernsey. However, the evidence from information the Authority has obtained suggests that JT and Sure agreed between them that:

- Sure would acquire JT’s mobile network infrastructure in Guernsey by trading its mobile network infrastructure in Jersey and vice versa and, subsequently,
- each of Sure and JT would construct the single standalone 5G network in its “home” Island.

This is not mobile network sharing. It is market sharing between competitors, which is illegal,

Can competitors ever cooperate?

Yes they can, but if the competition law applies to them, they have to do so accountably and transparently. Businesses will at times want to enter into agreements that on the face of it could contravene competition law where they substitute competition for cooperation. There are circumstances when some forms of cooperation are directly linked to benefits to the consumer and can take a variety of forms. Parties therefore have a facility available to them in the competition law that enables a case to be made to the Authority for assessment; where the case is persuasive the parties are given an exemption under the law. The Parties did not make their discussions known nor did they request this facility available to them in competition law which would have brought greater accountability and transparency of their behaviour.

How does this relate to the Jersey Competition Regulatory Authority investigation?

The JCRA investigation related to the arrangements between JT and Sure for sharing network elements in connection with the roll-out of 5G services in Jersey. The GCRA decision does not relate to network sharing but market sharing. On 30 March 2021 the JCRA announced that its 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 Jersey Competition Law.

A Memorandum of Understanding between the two Authorities provides a framework for the working relationship between the JCRA and GCRA. It governs the basis for information sharing between the two Authorities information on matters of mutual interest.

What happens now?

The Parties have until 18 June 2021 to make written representations to the Authority in relation to the decision that it proposes to take. The Authority will assess those submissions and then make a decision whether the draft decision will be confirmed, modified or withdrawn.

NOTES TO EDITORS:

About the Guernsey Competition & Regulatory Authority:

The Guernsey Competition & Regulatory Authority (GCRA) (formerly the Office of Utility Regulation) was established under The Guernsey Competition & Regulatory Authority Ordinance, 2012. The GCRA is responsible for regulating the telecoms, postal and electricity sectors and for the administration and enforcement of the Guernsey competition law since it came into force on 1 August 2012.

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