



## **MEDIA RELEASE**

**20 December 2021**

### **Competition body finds telcos infringed competition law**

**The Guernsey Competition and Regulatory Authority (GCRA) has decided that JT and Sure have broken competition law by attempting to illegally control the provision of mobile networks in Guernsey, including the future introduction of 5G. While businesses like Sure and JT will have valid reasons for communicating and exchanging information, the nature and purpose of the exchanges uncovered by the Competition Authority were found to go well beyond legitimate purposes. The GCRA will now consider whether it would be appropriate to impose a financial penalty on JT and Sure.**

The GCRA opened an investigation into a suspected anti-competitive agreement between JT and Sure in relation to their mobile networks in Guernsey, where each of them operates their own network. The GCRA's investigation initially focused on a suspected agreement in relation to 5G but as further evidence was uncovered it was expanded to include all mobile networks operated by Sure and JT.

The GCRA's investigation found that over a period of approximately a year, through repeated contacts and exchanges of information between them JT and Sure privately developed a joint plan without disclosing it to their regulator or the States that would mutually benefit each in their home markets. They also exchanged information on their commercial strategy for introducing next generation mobile networks at a slower pace than that sought by the States of Guernsey and on a common "line to take" that they were working to achieve the objective of introducing that technology to Guernsey in line with, or ahead of, the UK while privately agreeing not to do so. Airtel, the second largest mobile provider in Guernsey, was not party to the arrangements.

Guernsey competition law requires competitors to "compete not collude" – making independent decisions about how they plan to behave in the market. Competitors are not

allowed to exchange information with each other on their commercial strategy, which includes the matters on which JT and Sure repeatedly exchanged information. This behaviour risked damaging fair competition in Guernsey and, ultimately, Guernsey consumers' interests.

The GCRA protects the interests of consumers and promotes trust in markets by promoting value and choice, supporting Government policy and keeping the operation of markets and regulated companies under review. Effective competition is fundamental to the health of the economy and the perception of Guernsey as a well-regulated and modern jurisdiction. Where the GCRA acts, it does so by following a clear set of principles and will be clear about the detriment caused by inaction.

## **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 anti-competitive behaviour results in poorer value for money, less innovation, and less choice for consumers.

### **What is the essential concern with the 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 between competitors. The Authority has found that, in the context of the States of Guernsey exploring ways in which 5G in Guernsey could be implemented more quickly than, or in line with, the UK, the Parties exchanged information between them and held discussions over an extended period of time about:

- JT removing its mobile network infrastructure from Guernsey (in return for Sure doing the same in Jersey).
- Their commercial plans for a slower speed of implementation of 5G (which did not align with the States of Guernsey's aspirations).

- Development of a shared “line to take” with Government, which did not reflect the Parties’ actual intentions with respect to the speed of implementation of 5G.

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

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, JT and Sure were not engaged in “network sharing” but rather in an agreement and a concerted practice pursuant to which JT would remove its mobile network infrastructure from Guernsey in exchange for Sure reciprocating in Jersey. Airtel, the second largest mobile provider in Guernsey, was potentially affected as it shares masts with these operators but was not included in the arrangement.

**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. However, serious restrictions of competition, such as those found in this case, are unlikely to benefit from exemption and in any event the Parties did not make an application in this case.

**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 investigation extended to all mobile network provision. 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 on matters of mutual interest. If the JCRA has new evidence it can choose to reopen an investigation.

### **What happens now?**

The GCRA may make an order imposing a financial penalty on an undertaking which is found to have broken competition law.

The Authority will be minded to impose a financial penalty where it finds a restriction of competition by object. It will therefore now consider whether it would be appropriate to issue a draft penalty statement to the Parties in respect of the by object infringement described in this Decision. In carrying out this assessment, the GCRA will follow the approach set out in its Guideline on Financial Penalties.

### **NOTES TO EDITORS:**

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### **About the Guernsey Competition & Regulatory Authority:**

The Guernsey Competition and Regulatory Authority (GCRA) (formerly the Office of Utility Regulation) was established under The Guernsey Competition and 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.