



MEDIA RELEASE

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COMPETITION AUTHORITY ISSUES FINES TOTALLING £3.4 MILLION FOR INTENTIONAL INFRINGEMENT OF COMPETITION LAW

On 20 December 2021, following an investigation conducted by the Guernsey Competition and Regulatory Authority (the **Authority**), it was found that both Sure (Guernsey) Ltd (**Sure**) and JT (Guernsey) Ltd (**JT**) had broken competition law by attempting to illegally control the provision of mobile networks in Guernsey, including the future introduction of 5G.

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 the Authority 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.

Applying the factors set out in law and following the approach in its [Guideline on Financial Penalties](#), the Authority has now decided to impose a financial penalty of £2,962,632 on Sure and £439,608 on JT for the infringement.

A basic penalty is initially calculated as a percentage of turnover and then multiplied by the number of years for which the infringement lasted, up to a maximum of 3. The percentage of turnover used in this case was 12%, which is towards the bottom end of the appropriate range for serious infringements. As the infringement had lasted between 22 August 2018 and 6 November 2019, the multiplier was 1.21 years. The basic penalty amount may be adjusted if there are mitigating or aggravating factors.

Sure took active and intentional steps to prevent certain key evidence from coming to the attention of the Authority, namely suppression of that evidence and providing contradictory and misleading accounts of the matters contained in communications uncovered by the Authority. Sure personnel were also found to have taken active and intentional steps to prevent certain key evidence regarding the role of a third party from coming to the attention of the Authority, namely providing materially untruthful answers to questions put at statutory interview.

In terms of mitigating factors, the Authority considers that the steps taken by JT constitute efforts to prevent a recurrence of the infringing conduct. Given the comprehensive and wide-ranging nature of

the measures adopted and the speed at which they were adopted, the Authority applied a reduction of 10% to the financial penalty imposed on JT.

The Authority considers that the steps taken by Sure also constitute efforts to prevent a recurrence of the infringing conduct but given these measures were less comprehensive and wide-ranging than those put in place by JT and were not adopted as quickly, the Authority applied a lesser reduction of 5% to the financial penalty to be imposed on Sure.

The full penalty calculation is set out below:

Sure

Starting percentage	12%
Duration multiplier	1.21
Turnover figure	£13,016,780
Step 1 figure	£1,890,036.46
Aggravating factors	65%
Mitigating factors	5%
Step 2 figure	£2,962,632.15
Legal maximum reduction	N/A
Step 3 figure	£2,962,632.15
Final figure	£2,962,632 (rounded to nearest £)

JT

Starting percentage	12%
Duration multiplier	1.21
Turnover figure	£3,364,000
Step 1 figure	£488,452.80
Aggravating factors	0%
Mitigating factors	10%
Step 2 figure	£439,607.52
Legal maximum reduction	N/A
Step 3 figure	£439,607.52
Final figure	£439,608 (rounded to nearest £)

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 – the speed at which they intended to introduce 5G and the removal by JT of its mobile network from Guernsey. This behaviour damages competition in Guernsey and, ultimately, Guernsey consumers.

Ends

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 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 its 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 Authority can impose a financial penalty where it finds a restriction of competition by object. In carrying out this assessment, the GCRA followed the approach set out in its Guideline on Financial Penalties. The GCRA has now made an order imposing a financial penalty on the two undertakings found to have broken competition law.

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.