



Change of control of Itex (Guernsey) Limited

Final Decision

Channel Islands Competition and Regulatory Authorities

Document No: CICRA 13/41

23 September 2013

*Guernsey Competition & Regulatory Authority
Suites B1 & B2, Hirzel Court,
St Peter Port, Guernsey, GY1 2NH
Tel: +44 (0)1481 711120
Web: www.cicra.gg*

CONTENTS

1. Introduction 3

2. Legal Background 4

3. Decision 6

1. Introduction

On 25 June 2013, the Channel Islands Competition and Regulatory Authorities (**CICRA**)¹ received a notification of the change of control of Itex (Guernsey) Limited (**the Licensee**), which holds a Fixed Telecommunications Services Licence issued under *The Telecommunications (Bailiwick of Guernsey) Law, 2001*.

The change of control resulted from a share sale whereby the ultimate ownership of the Licensee transferred from the Guiton Group Limited (Guiton) to C5 Alliance Limited (**C5 Alliance**). C5 Alliance currently holds a Class I telecommunications licence in Jersey.

The Licensee is obliged under its licence to notify CICRA of the change of control. CICRA is then required to consider whether to approve or reject the change of control, or to approve the change of control with conditions (e.g. by modifications to the licence or other regulatory action).

Consideration of this change of control application by CICRA was put on hold while the acquisition was considered for competition law purposes since the transaction passed the relevant notification threshold for mergers and acquisitions in Jersey. The acquisition received approval from CICRA² on 19 July 2013.

On 13 August 2013 CICRA issued a provisionally decision to approve the change of control of the Licensee (CICRA 13/40).

¹ CICRA comprises the Jersey Competition Regulatory Authority (JCRA) and the Guernsey Competition and Regulatory Authority (GCRA), and all references in this document to CICRA should therefore be read as references to each of the JCRA and the GCRA, unless the context otherwise requires.

²Case M996, http://www.cicra.gg/_files/~JCRA%20decision%20markup.pdf

2. Legal Background

Change of control provisions in licences held by telecommunications operators in the Channel Islands

Telecoms licences in Guernsey and Jersey each contain change of control provisions, in very similar form. Conditions 2.4 and 2.5 of the licence granted to the Licensee provide as follows:

2.4 The Licensee shall notify the [GCRA]:

(a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and

(b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

2.5 On receipt of notification the [GCRA] may:

(a) approve the proposed change or the change in writing;

(b) disapprove the proposed change or the change in writing, giving reasons; or

(c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Section 8 of the Telecommunications Law,

and, or in addition to any of the above measures, the [GCRA] may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the [GCRA] considers necessary or appropriate.

In taking action under this section, the [GCRA] may have regard to whether or not the [GCRA] would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

The concepts of “control” and “change of control” are defined in Condition 2.6 of the licence:

In this Condition 2, “Control” shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event, a person or group of persons shall be deemed to Control the Licensee if:

(a) he or they exercises or controls the exercise of fifty-one per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or

(b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or

(c) he or they exercises or controls the exercise of fifty-one per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and "Change of Control" shall mean any change as a result of which any other person or group of persons acquires Control.

3. Decision

After reviewing the information provided in the notification of the proposed change of control of the Licensees, CICRA issued on 13 August 2013 a provisional decision to approve the notified change of control of the Licensee resulting from its acquisition by C5 Alliance.

As no responses were received in relation its provisional decision during the consultation period, CICRA has decided to confirm its provisional decision, and to approve the notified change of control. No changes are sought to the existing conditions of the licences held by the Licensee.