



Change of control of Itex (Guernsey) Limited

Provisional decision

Channel Islands Competition and Regulatory Authorities

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

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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.

For the reasons set out in section 4 below, CICRA has provisionally concluded that it should approve the change of control of the Licensee unconditionally.

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. Responses

CICRA invites comments on its provisional decision to approve the change of control of the Licensee.

Interested parties are invited to submit comments to:

Guernsey Competition and Regulatory Authority
Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

Email: info@cicra.gg

All comments should be clearly marked “Change of Control of Itex (Guernsey) Limited – Provisional Decision” and should arrive by 5.00 pm on 10 September 2013.

3. 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.

4. Provisional Decision

CICRA consulted on the application of change of control provisions in the licences of telecommunications operators in the Channel Islands in January 2013 (CICRA 13/01), and the results of that consultation were reported in CICRA's provisional decision on the change of control of Cable & Wireless Guernsey Limited (**CWG**) and Cable & Wireless Jersey Limited (**CWJ**) (CICRA 13/06).

CICRA 13/06 set out CICRA's view that the focus of an assessment of a change of control should be on whether the change to the control of the relevant licensee jeopardises its willingness or ability to provide high quality, sustainable telecoms services, or to comply with its licence conditions or other regulatory requirements.

In CICRA 13/06, CICRA also indicated its view that the question of whether to approve a change of control of a telecoms licensee, and the appropriate intensity of the review, would depend to a large extent on the importance of the licensee's assets and services to the overall telecoms market. It noted that the impact on consumers and the wider economy of a serious breakdown in the operations of CWG (given its role as the operator of the fixed-line network in Guernsey, and by far the largest mobile operator in Guernsey) would be considerably greater than the same occurrence with respect to CWJ, or a smaller operator in either Bailiwick.

In its final decision on the change of control of CWG and CWJ (CICRA 13/10), CICRA concluded that it would not be appropriate to undertake a detailed review of the change of control with respect to CWJ. The decision also stated that "while such decisions will turn on their facts, it is likely that CICRA would take an equivalent view with respect to future changes of control for other telecoms licences in a similar position to that of CWJ".

The Licensee does not hold significant market power in any telecoms market, and does not supply wholesale services to other telecoms operators. As such, the conclusions drawn with respect to CWJ in the above decision are even more compelling with respect to the Licensee. Moreover, in this case the acquirer, C5 Alliance, already holds a telecommunications licence in Jersey.

CICRA has reviewed the information provided in the notification of the proposed change of control of the Licensee, and is not aware of any evidence that the proposed change of control of the Licensee would jeopardise its willingness or ability to provide high quality, sustainable telecoms services, or to comply with its licence conditions or other regulatory requirements. CICRA does not therefore consider that a detailed review of the change of control of the Licensee would be appropriate.

CICRA is minded to approve the notified change of control of the Licensee resulting from its acquisition by C5 Alliance, and has provisionally concluded that no change to the existing licence terms or conditions is necessary under this Condition 2.4 notification.