

STATES OF JERSEY



CHANNEL ISLANDS COMPETITION REGULATORY AUTHORITY: TELECOMMUNICATIONS STRATEGY (P.61/2019) – COMMENTS

Presented to the States on 15th July 2019
by the Minister for Economic Development, Tourism, Sport and Culture

STATES GREFFE

COMMENTS

Summary

The Council of Ministers does not believe that this Proposition ([P.61/2019](#) lodged by Senator S.C. Ferguson) provides the necessary rationale or evidence to be supported.

The Proposition calls for the Government to request the independent telecoms regulator, the Channel Islands Competition Regulatory Authority (“CICRA”), to withdraw its consultation document entitled ‘5G Spectrum: Draft Statement of Intent’¹. This consultation closed on 14th June 2019, prior to the lodging of this proposition on 17th June.

The now closed consultation sought feedback on CICRA’s proposed approach to allocating spectrum in the bands 700 MHz and 3.4–3.8 GHz. It is non-binding on CICRA and the Government of Jersey. It should also be noted that, while the Government has powers under the Law to direct the regulator, this should be considered the exception rather than the rule, and should only be undertaken with a suitable weight of evidence.

The second part of the Proposition calls for a telecommunications strategy to be brought for debate by the States before any allocation of 5G frequencies is commenced. The Government of Jersey’s Telecoms Strategy was published in January 2018 after extensive consultation with stakeholders. The Telecoms Strategy that is currently being implemented supports the delivery of 4 out of 5 of the Strategic Priorities of the [Common Strategic Policy 2018–22](#).

The Telecoms Strategy

The proposition calls for an ‘overall telecommunications strategy’ to be brought forward for debate by the States before any allocation of 5G frequencies is commenced.

The Jersey Telecoms Strategy² and accompanying Action Plan were published in January 2018. This was the first holistic telecoms strategy that was developed in conjunction with departments across the Government of Jersey and approved by the Council of Ministers. Briefings were held for States Members during the development of the Strategy and at its launch.

Jersey’s Telecoms Strategy seeks to build on Jersey’s advanced telecoms infrastructure, by setting out 5 interconnected policy principles, underpinned and guided by a set of policy recommendations. These policy principles are to –

- Promote the path to next-generation connectivity, including 5G, by building on the current advanced digital infrastructure already in place.
- Promote retail competition (not network competition) as the most effective way of delivering the benefits of next-generation connectivity to consumers and businesses.

¹ <https://www.cicra.gg/cases/2019/t1462gj-5g-spectrum-statement-of-intent/>

² <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20A%20telecoms%20strategy%20for%20Jersey%20Oxera%20December%202017%2020180105%20TH.pdf>

- Set out clearly any universal service obligations, and deliver social policies from the telecoms sector, only when it is efficient to do so and the cost/funding are transparent.
- Ensure resilience of off-Island connectivity.
- Measure outcomes using appropriate key performance indicators (“KPI”) developed in consultation with the industry.

The Strategy, published in January 2018, was developed in a collaborative fashion with cross-governmental input, and with extensive engagement with stakeholders, including industry, States Members, CICRA and consumer groups. The accompanying action plan details the actions agreed with Government departments, Digital Jersey and CICRA to implement effectively the Telecoms Strategy.

While it predates the Government of Jersey’s [Common Strategic Policy 2018–22](#), the Telecoms Strategy makes a significant contribution towards delivery of its ambitions for 4 out of 5 Strategic Priorities. This is summarised at a high level in the table below:

	Strategic Priority			
	Improve Islanders’ wellbeing and mental and physical health	Create a sustainable vibrant economy and skilled local workforce for the future	Reduce income inequality and improve the standard of living	Protect and value our environment
How the Telecoms Strategy contributes	Providing residents with the connectivity they need to access digital services and participate in the wider digital society and economy.	Providing the connectivity that today’s and tomorrow’s digital services need. Maximising the benefits of Jersey’s investment in advanced infrastructure and creating the competitive conditions that drive productivity increases.	Addressing the digital divide by ensuring that connectivity is affordable for residents. Using targeted social policies where affordability is an issue for identified groups.	Protecting our environment and the health of residents by ensuring that infrastructure rollout is controlled.

The Strategy recommended that Jersey should be a *fast adopter*, not a pioneer, in new network technologies such as 5G, but should provide the legal and regulatory

framework to enable Jersey to be used as a test-bed. As such, the Government should actively adopt policies to enable innovation in Jersey. For example, such policies could include ensuring early access to 5G spectrum to test the technology, simplifying planning rules for masts, etc. In line with these policy goals, the telecoms operators have committed to testing 5G in 2019.

The Government is currently implementing the Strategy, led by the Deputy Chief Minister, Senator L.J. Farnham. At an officer level, this work is overseen by the Telecoms Strategy Steering Group³.

CICRA Consultation: ‘5G Spectrum: Draft Statement of Intent’

Within the Telecoms Action Plan, CICRA has responsibility for ensuring that the required spectrum for network rollout and testing is available to support new technologies. This includes an action item to develop and manage a forward-looking spectrum strategy to ensure that future spectrum needs are met in line with Government policy.

CICRA’s consultation entitled ‘5G Spectrum: Draft Statement of Intent’, published in May 2019 in both Guernsey and Jersey, sought feedback on the regulator’s proposed approach to the allocation of 2 of the bands of radio spectrum (700 MHz and 3.4–3.8 GHz) that will be used to provide 5G telecommunication services. The consultation closed on 14th June.

The regulator is currently reviewing responses, and will provide the Government of Jersey and the States of Guernsey with feedback on this consultation in July. The Government of Jersey will then be in a better informed position to discuss and agree the potential next steps for the future rollout of 5G.

CICRA’s ‘5G Spectrum: Draft Statement of Intent’ consultation seeks to understand the views of stakeholders in both Bailiwicks. The Government of Jersey is not bound by the approach and timeline that CICRA has proposed in its draft statement.

It is important to recognise that there are other factors regarding 5G spectrum that officers are considering as part of the Telecoms Strategy Steering Group. This includes how to ensure that early allocation of 5G spectrum does not limit future opportunities when user cases for 5G are better understood, and ensuring the most efficient allocation of spectrum for the Island. Another key criteria will be ensuring that the rollout of 5G is managed in a way that respects Jersey’s environment and avoids the proliferation of masts.

There are also broader significant issues relating to 5G that need to be addressed prior to agreeing the future rollout of 5G in Jersey. Not least, regarding the security and resilience of future telecoms networks – and the use of Chinese technology. Officers are in close contact with the United Kingdom’s Department for Digital, Culture, Media and Sport (“[DCMS](#)”) and the National Cyber Security Centre (“[NCSC](#)”) on this evolving matter.

³ Membership includes officers from the Office of the Chief Executive, the Treasury and Exchequer, Growth, Housing and Environment, as well as representatives from Digital Jersey and CICRA.

The policy approach being considered for the future rollout of 5G is therefore taking a range of criteria into account including, but not limited to –

- Benefits to the economy
- Benefits to consumers
- Spectrum Management
- Environment
- Health
- Network Resilience
- Security
- Ease of Regulation.

Allocation of spectrum

CICRA's role is to ensure the optimal use of spectrum in the Channel Islands, and to make a recommendation to Ofcom for an award of spectrum to be made. If Ofcom is satisfied that CICRA's recommendation is in line with its own duties, Ofcom will then issue spectrum allocations. Ofcom's spectrum allocation process is separate to CICRA's licensing process for telecoms operations. However, the allocation of spectrum is dependent on the existence of a local telecoms licence issued by CICRA. The Government of Jersey confirmed its continued support for the current arrangements through which spectrum is allocated by Ofcom in Jersey's Telecoms Strategy. Jersey gains considerable benefits from the existing arrangements. Ofcom provides the significant spectrum policy input needed at international and national levels for all Crown Dependencies, including the arrangements needed to ensure that there is no spectrum interference between users in neighbouring jurisdictions. Ofcom also provides engineering and, if needed, enforcement resources.

The management of radio spectrum is agreed and co-ordinated at an international level by the International Telecommunications Union ("[ITU](#)"). While the UK is a member of the ITU, Jersey and other Crown Dependencies are not. Ofcom, as the UK's Communications Regulator, represents the interests of the UK and Crown Dependencies at the ITU, and in bilateral and multilateral agreements with neighbouring jurisdictions about, for example, how spectrum is allocated to different uses including, but not limited to, the spectrum needed for television and mobile phones. The Government of Jersey is able to input at a policy level through engagement with DCMS and Ofcom.

At a UK and Channel Islands level, Ofcom translates international policy into programmes for the allocation of spectrum to users, ensuring that different uses such as digital television broadcasting, satellite communication, Ministry of Defence, aircraft radar and communication, and commercial mobile phone services, do not cause interference to each other. Where interference issues do arise between different users and different jurisdictions, it is Ofcom's responsibility to deal with these issues including, if needed, using its specialist engineering resources for enforcement to address unauthorised use.

The radio spectrum needed for mobile communications is finite, scarce, and in high demand in large, heavily populated jurisdictions with significant industrial and commercial centres. Very complex and expensive spectrum auctions have yielded considerable revenues for governments in the UK, Germany and Italy. That is unlikely to be the case in the Jersey, with its very small population and limited prospect of telecoms revenue growth. Jersey's 3 main telecoms operators already face significant

challenges to invest in the networks needed to provide existing and future services. It is quite possible that 2 of the 3 Jersey operators would be unable or unwilling to take part in any auction process even if Jersey were able to mount one. Expert advice commissioned from Analysys Mason in relation to 4G spectrum found that there was: “sufficient 4G spectrum available to support four operators (although noting this in itself does not mean that a four-operator market is economically viable), and given the small size of the Channel Islands’ markets, our conclusion is that a simple direct award or a beauty contest-based process (if one or more new entrant operators are envisaged after initial consultation on award options) could be used, rather than an auction.”.

Any profits received from spectrum allocated to telecoms providers in Jersey are returned to the Government of Jersey.

Spectrum management is a complex and resource-intensive undertaking. If Jersey were to manage its own spectrum, it is anticipated the cost of doing so would be considerably more than the profits from spectrum that are currently returned to the Government of Jersey. The Government of Jersey would have to provide CICRA with significant additional funding to provide the necessary resource, which would include recruiting expertise in the following areas: spectrum engineering, spectrum planning, international telecommunications negotiation, and spectrum enforcement.

The Report

The Report accompanying the Proposition makes a number of points that are not directly related to the Proposition; that are unsubstantiated and not evidenced; and that have little or no relevance to the questions that the States Assembly is asked to consider. These are addressed below.

Structural Separation

Firstly, the Report suggests that the Government should set up a wholly-owned infrastructure company in which all 5G and existing frequencies should be placed, as well as all present and future towers and ‘other such equipment’. Little detail is offered as to how this could be achieved.

The Report does not make clear why this would be of best value to Jersey, and appears to have been drafted without any evidence or justification as to why this should be undertaken, nor any consultation with the affected stakeholders.

The Telecoms Strategy notes that structural separation is highly costly, risky and intrusive, and should only be considered when other approaches have been proven to be ineffective. It states that –

“Best-practice regulatory principles indicate that more intrusive forms of regulation, such as structural separation, should be considered as instruments of ‘last resort’, to be used only when other (less heavy-handed) forms of regulation have not been effective in addressing market failures. Indeed, structural separation is an extreme solution as it involves a costly and risky transition that requires the creation of a wholly new company. It also results in the weakest incentives to invest and innovate for the network division (which, in turn, may require further regulatory intervention). Crucially, once implemented, the structural separation can be very expensive to undo. In the

specific case of Jersey, the conditions for adopting any 'heavy handed' form of intervention do not appear to be present at this time."

The Report does not cost the approach it floats, and indeed states that it will save all operators money. It is difficult to see how this can be justified. In response to a similar proposition from Senator Ferguson in November 2017, Treasury officials estimated that the costs of structurally separating JT were likely to be substantial, £100 million in compensating existing network owners and restructuring the market along the lines set out in that proposed strategy, plus £10 million+ in duplicated costs per annum thereafter. There is no reason to believe that these costs would have reduced in the intervening 18 months.

The Report claims that the creation of a Government-owned Infrastructure Company will *'ensure that there is a genuinely competitive telecommunications market and offer more 'transparency in the financial arrangements regarding the fees paid by the operators'*. There is no detail given to support these assertions. It is also not clear what problem the proposal is meant to address.

There appears to be some confusion between the existing fixed and mobile networks in Jersey in the Report. For clarity, there is one main fixed network, and there are 3 mobile networks providing genuine competition between operators in Jersey. Access to the JT fixed network is managed through its Class III Licence, which has specific access conditions. CICRA is progressing a number of initiatives in this area to enhance access and promote competition in support of the Telecoms Strategy. These include the current bitstream project, as well as the consultation on the re-instatement of the wholesale 50 and 100 Mbps product. It is also not clear from the Report which 'fees' are being referred to; however, the regulator already has transparency of the charges made by JT to other operators for wholesale fixed services and this is, again, part of the operator's licence conditions.

Gigabit Fibre

The Report also claims that the decision taken to provide fibre to every home ("FTTH") in Jersey may *'not have been optimal'*. This assertion is unsupported and contradicts the ambitions of most advanced nations, whose own telecoms strategies focus on the need to deliver superfast broadband to every household and business. For example, the UK Government has set a target for building a UK full-fibre network by 2033⁴, and Germany aims to expand its own gigabit networks (preferably by FTTH) by 2025⁵.

For advanced jurisdictions, fibre to the home is considered to be the gold-standard; necessary not just to ensure that current and future consumer demand is met, but also to ensure that countries can capitalise on future technological developments and opportunities. In Jersey's case, the creation of a full-fibre gigabit network supports the development of the Island's digital economy, and has strengthened the reputation of the Island internationally⁶.

⁴ <https://researchbriefings.files.parliament.uk/documents/CBP-8392/CBP-8392.pdf>

⁵ <https://ec.europa.eu/digital-single-market/en/country-information-germany>

⁶ <https://www.bbc.co.uk/news/technology-45810063>

Not Spots

The Report also claims that the current '*division of frequencies*' leaves '*dead*' or '*not spots*' in parts of the Island, and that making parts of the frequencies available to all operators would eliminate this. Jersey does, in fact, benefit from excellent mobile coverage. There were strict coverage conditions attached to the rollout of 4G, which can be seen on these maps on the CICRA website⁷. On the rare occasion where there is an issue with a '*not spot*', these can be, and usually are, addressed by telecoms operators, for example using a specific remedy such as a femtocell.

Timing of the Proposition

This Proposition was lodged after the consultation it referred to closed, and 18 months after the publication of the Telecoms Strategy. The Shareholder is also in the process of reviewing the Memoranda of Understanding with the shareholder entities, including JT.

Evidence and Consultation

The Proposition and accompanying Report offer little evidence, and appear to have been drafted without consultation with the main stakeholders. In preparing these comments, the Government consulted with the 3 main telecoms providers, 2 of whom clearly stated that they would not support it, and that they considered it to be flawed.

Costing

The Proposition does not give cost implications. There are also no cost implications given for the other tangential points raised in the Report. However, in [comments](#) presented to the States in November 2017 on Senator Ferguson's proposition [P.96/2017](#) (that covered similar ground to some of the assertions made in her Report within P.61/2019), Treasury officials estimated that the costs of structurally separating JT were likely to be substantial (£100 million in compensating existing network owners and restructuring the market along the lines set out in that proposed strategy, plus £10 million+ in duplicated costs per annum thereafter). It is also clear that changing the current approach to managing spectrum would have significant cost and resource implications for the Island.

Conclusion

On the grounds that the consultation referred to in the Proposition is already closed and is non-binding on the Government of Jersey, and that a Telecoms Strategy that supports the [Common Strategic Policy 2018–22](#) has already been published and is currently being implemented, reviewed and refreshed, the Council of Ministers asks the Assembly to reject this proposition.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A due to the need to conclude internal review procedures in the time available.

⁷ www.cicra.gg/business-resources/telecoms/4g-mobile-network-performance/jersey/