

JCRA Media Release

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JCRA Issues First Abuse of Dominance Decision under Jersey's Competition Law

The Jersey Competition Regulatory Authority (“JCRA”) has taken a decision which concludes that the States’ Transport and Technical Services Department (“TTS”) abused a dominant position concerning the provision of sewerage services in Jersey. “Sewerage services” means the collection of waste from tight tanks and septic tanks, the transportation of that waste to the disposal facilities at Bellozanne, and the discharge of the waste at those facilities. To remedy this infringement, the JCRA has fined TTS £15,000.00. This is the first abuse of dominance decision under the Competition (Jersey) Law 2005 (the “Law”).

This matter arose out of licences TTS issued to private companies in Jersey, first in the 1990s and again in 2005, which prohibited those companies from disposing of waste from tight tanks and septic tanks at the Bellozanne disposal facilities. TTS both operates Bellozanne and itself provides sewerage services for tight and septic tanks. Because Bellozanne is the only facility in Jersey that is suitable for the disposal of waste from tight and septic tanks, TTS’s actions in effect created a monopoly for itself in the provision of sewerage services.

The JCRA initiated an investigation of this matter in March 2007, based on a consumer complaint. Whereas the JCRA attempted to resolve this matter in an expedient, cooperative and practical manner, it was only at the end of March 2009 that TTS procured a Ministerial Decision (MD-T-2009-00) that terminated the restrictive licences.

In its decision published today, the JCRA concludes that TTS’s actions infringed Article 16(2)(b) of the Law, which states that an abuse of a dominant position may consist in limiting production, markets or technical development to the prejudice of consumers. The JCRA concludes that TTS’s actions prejudiced consumers by preventing the

development of competition and consumer choice in the provision of sewerage services in Jersey. In addition, the JCRA received evidence that consumers were harmed by high prices TTS charged for the emptying of tight tanks. The abuse occurred from 1 November 2005 (the day the Law came into force) to 30 March 2009 (the day which MD-T-2009-00 formally revoked the restrictive licences).

The JCRA determined the amount of the fine based on the severity of the infringement and the protracted nature by which TTS finally resolved it, taking also into consideration the extent of consumer harm and TTS's ultimate action to procure MD-T-2009-00. This is the third time the JCRA has issued a fine under the Law, although the first based on an abuse of dominance.¹ This amount is specific to this matter and is not determinative of penalties or other remedies that the JCRA may impose on parties found in breach of the Law in the future.

Concerning this matter, Chuck Webb, the JCRA's Executive Director, states:

“This is the JCRA’s first abuse of dominance decision. Whereas we will continue to strive for resolving matters under the Law informally, where appropriate we will not hesitate to use our mandatory enforcement powers. If any undertaking, whether privately owned or within the States, has questions concerning the potential applicability of the Competition Law to its conduct, we strongly encourage early communication and full cooperation with the JCRA.”

Pursuant to the JCRA's decision, TTS must pay the penalty by 15 August 2009. In compliance with the Law, the JCRA will transfer the money it receives from this penalty to the States of Jersey.

¹ Previously, the JCRA has fined two companies for failing to comply with the Law's procedural requirements concerning mergers and acquisitions.

A copy of the JCRA's decision in this matter may be obtained from the JCRA's website, www.jcra.je. All enquiries should be directed to the JCRA's Executive Director, Chuck Webb, on +44 (0)1534 514990.

About the JCRA

The JCRA is an independent authority established by the States of Jersey to enforce Jersey's competition law and regulate its telecommunication and postal sectors. In each of these areas, the JCRA's primary mission is to promote consumer welfare through efforts that encourage lower prices and greater choice and innovation in the goods and services available in Jersey. The JCRA is recognized internationally as a leading voice in the application of competition law and policy in small economies.

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